
BULLETIN

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DIRECTORY

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DOCKETS

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321-06-BZ

315 West 57th Street, North side of West 57th Street, 200 feet west of Eight Avenue., Block 1048, Lot(s) 20 Borough of **Manhattan, Community Board: 4.** (SPECIAL PERMIT)-73-36-To allow the operation of a Physical Culture Establishment in a portion of the first floor of a multi-story mixed use building.

322-06-BZ

117-57 142nd Place, East side of 142nd Place, midway between 119th Road and Foch Boulevard., Block 12015, Lot(s) 317 Borough of **Queens, Community Board: 12.** Under 72-21-To permit the construction of a one-family dwelling on a vacant lot, without the required side-yards.

323-06-A

389 College Avenue, Northside of College Avenue; 140.08' east of the corner formed by the intersection of College Avenue and Lockwood Place, running thence east 111.38', thence north 168.99', thence s/w 82.20', thence west 64.92', thence south 89.27'., Block 391, Lot(s) 93 Borough of **Staten Island, Community Board: 1.** General City Law Section 35-To request a variance to alter an existing one family dwelling by adding two bay car garage and an additional floor area on top.

324-06-A

1449 Rosedale Avenue, Facing Cross Bronx Expressway in front of #44 bus stop., Block 3895, Lot(s) 77 Borough of **Bronx, Community Board: 9.** Appeal-The order of closure.

325-06-BZ

100 Delancey Street, Between Ludlow Street and Essex Street, Block 46, Lot(s) 71 Borough of **Manhattan, Community Board: 1.** (SPECIAL PERMIT)-73-36-To permit the proposed Physical Culture Establishment to be located on the second floor of the structure under construction.

326-06-A

1523 Richmond Road, North side of Richmond Road; 44.10' west of Forest Road and Richmond Road., Block 870, Lot(s) 1 Borough of **Staten Island, Community Board: 2.** Appeal-Renewal of permit due to expiration of two year window to complete work after law change.

327-06-BZ

133 East 58th Street, 6th Floor, Between Lexington and Park Avenues, Block 1313, Lot(s) 14 Borough of **Manhattan, Community Board: 5.** (SPECIAL PERMIT) 73-36-To legalize the existing Physical Culture Establishment.

328-06-BZ

50-52 Laight Street, Between Hudson and Greenwich Streets, Block 219, Lot(s) 2 & 3 Borough of **Manhattan, Community Board: 1.** Under 72-21-To construct a new 8-story building with retail use on the ground floor and loft dwellings on the seven upper floors.

329-06-BZ

34-34 Bel Boulevard, West of Bell Boulevard, 184.07 feet from corner of cross street 35th Avenue., Block 6112, Lot(s) 39 Borough of **Queens, Community Board: 11.** (SPECIAL PERMIT)-73-36a-For a Physical Culture Establishment.

330-06-A

203 Oceanside Avenue, North side 86.67' east of Bedford Avenue., Block 16350, Lot(s) p/o 400 Borough of **Queens, Community Board: 14.** Appeal-Proposed to modify the interior space on the first floor, construct a new second floor and install a new septic system.

331-06-BZ

3647 Palmer Avenue, South side of Palmer Avenue, between Needham Avenue & Crawford Avenue., Block 4917, Lot(s) 17 Borough of **Bronx, Community Board: 12.** Under 72-21-Seeks variance of front yard and side yard requirements to permit the construction of a three family dwelling.

332-06-A

636 Bayside Avenue, North of Bayside Avenue (unmapped street) East of Bayside Drive (unmapped street)., Block 16350, Lot(s) 300 Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-

333-06-BZ

29-26 Bell Boulevard, Bell Boulevard and 32nd Avenue., Block 6053, Lot(s) 34 Borough of **Queens, Community Board: 11.** Under 72-21-To permit the expansion of existing two family dwelling.

DOCKET

334-06-BZ

1119 East 23rd Street, East 23rd Street between Avenue K and Avenue L., Block 7623, Lot(s) 37 Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) 73-622-To allow the enlargement of a single of a single family residence.

1-07-BZ

1792 West 11th Street, West 11th Street between Quentin Road and Highlawn Avenue, Block 6645, Lot(s) 46 Borough of **Brooklyn, Community Board: 11.** (SPECIAL PERMIT)-73-622-To allow the enlargement of a single family residence.

2-07-A

3212 Tiemann Avenue, Northeast corner of Tiemann Avenue and Unnamed Street, Block 4752, Lot(s) 128 Borough of **Bronx, Community Board: 12.** General City Law Section 35-For the construction of four-3 story, 2 family homes.

3-07-A

3214 Tiemann Avenue, Northeast corner of Tiemann Avenue and Unnamed Street., Block 4752, Lot(s) 129 Borough of **Bronx, Community Board: 12.** General City Law Section 35-To permit the construction of four 3-story, 2 family homes.

4-07-A

3216 Tiemann Avenue, Northeast corner of Tiemann Avenue and Unnamed Street, Block 4752, Lot(s) 132 Borough of **Bronx, Community Board: 12.** General City Law Section 35-To permit the construction of four 3 story, 2 family homes.

5-07-A

3218 Tiemann Avenue, Northeast corner of Tiemann Avenue and unnamed Street., Block 4752, Lot(s) 133 Borough of **Bronx, Community Board: 12.** General City Law Section 35-To permit the construction for 3-four, 2 family homes.

6-07-A

127-09 Gurino Drive, Between 127th Street and Ulmer Street, Block 4269, Lot(s) 1 & 27 Borough of **Queens, Community Board: 7.** General City Law Section 36-To permit the construction of four buildings.

7-07-A

127-11 Gurino Drive, Between 127th Street and Ulmer Street., Block 4269, Lot(s) 1 & 17 Borough of **Queens, Community Board: 7.** General City Law Section 36-To permit the construction of four buildings.

8-07-A

127-15 Gurino Drive, Between 127th Street and Ulmer Street., Block 4269, Lot(s) 1 & 27 Borough of **Queens, Community Board: 7.** General City Law Section 36-To permit the construction of four buildings.

9-07-A

127-17 Gurino Drive, Between 127th Street and Ulmer Street., Block 4269, Lot(s) 1 & 27 Borough of **Queens, Community Board: 7.** General City Law Section 36-To permit the construction of four buildings.

10-07-BZ

118 Graham Boulevard, South side of Graham Boulevard, 65' east from corner of Graham & Colony Avenue., Block 3768, Lot(s) 23 Borough of **Staten Island, Community Board: 2.** Under 72-21-Propose to build a 2.5 story concrete building with dimension 14' wide by 42' long, to build a viable house 20' by 100'.

11-07-BZ

41-06 Junction Boulevard, South west corner formed by Jubctiion Boulevard & 41st Avenue., Block 1598, Lot(s) 7 & 8 Borough of **Queens, Community Board: 4.** Under 72-21-To construct a propoed five (5) story office structure with retail use on the ground floor.

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

JANUARY 30, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 30, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

52-55-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bouck Oil Corp., owner.

SUBJECT – Application November 28, 2006 – Amendment, filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.

PREMISES AFFECTED – 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.

COMMUNITY BOARD #12BX

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC, owner; Helm Bros., lessee.

SUBJECT – Application November 16, 2006 – Extension of Time/Waiver to complete construction to permit the erection of a second story (5,000 sq. ft.) to the existing (UG6) commercial building (auto repair shop, sales & exchange of vehicles and products) which expired on April 29, 2005, located in a C2-2(R6B) & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

258-90-BZ

APPLICANT – Sheldon Lobel, P.C., for John Isikli, owner.

SUBJECT – Application December 13, 2006 – Extension of Time to obtain a Certificate of Occupancy for the operation of a restaurant and banquet hall (UG9) in an R5 zoning district which expired on December 7, 2006.

PREMISES AFFECTED – 2337 Coney Island Avenue, east side, between Avenue T and Avenue U, Block 7315, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #15BK

30-00-BZ

APPLICANT– Sheldon Lobel, P.C., for Sand Realty Group, Inc., owner.

SUBJECT – Application October 13, 2006 – Extension of term/Waiver of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) within an R7-2 zoning district.

PREMISES AFFECTED – 458 West 166th Street, north side of West 166th Street, between Amsterdam Avenue and Edgecomb Avenue, Block 2111, Lot 57 (aka 53-55, 57, 71-73), Borough of Manhattan.

COMMUNITY BOARD #12M

104-02-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC., owner; Helms Brothers, lessee.

SUBJECT – Application November 16, 2006 – Extension of Time to complete construction and waiver of the rules which expired on August 13, 2006 for the construction of a new car preparation building (Use Group 16B) at an existing automobile storage facility in a C-3 zoning district.

PREMISES AFFECTED – 23-40 120th Street, west side of 120th Street, between 25th Avenue and 23rd Avenue, Block 4223, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

172-06-A

APPLICANT – Adam Rothkrug, Esq., for Paul F. DeMarinis, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of a two family dwelling located within the bed of mapped streets(20th Ave.) which is contrary to Section 35 of the General City Law .R3-1 Zoning District

PREMISES AFFECTED – 157-05 20th Avenue, south side of 20th Avenue, east of Clintonville Street, Block 4750, Lot 10, Borough of Queens.

COMMUNITY BOARD #7Q

CALENDAR

JANUARY 30, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 30, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

425-05-BZ

APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§ 72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§ 23-141c and § 24-162), front yard (§ 24-34), side yards (§24-35), lot coverage (§ 23-141 and § 24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 & 104, Borough of Brooklyn.

COMMUNITY BOARD #15BK

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (Section 24-35) and front yards (Section 24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

31-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR sections 22-00 and 32-00.

PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

178-06-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for Zurich Holding, Co., LLC, owner; Samson International Inc. dba Nao Spa, lessee.

SUBJECT – Application August 16, 2006 – Special Permit (§73-36) to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.

PREMISES AFFECTED – 609 Madison Avenue, southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #5M

218-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tower Plaza Associates, Inc., owner; TSI East 48 Inc. d/b/a New York Sports Club, lessee.

SUBJECT – Application August 30, 2006 – Special Permit pursuant to Z.R. 73-36 to allow the operation of an existing PCE located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building. The Premises is located in C1-9 (TA), R8B, and R10 zoning districts. The proposal is contrary to Z.R. 32-01 (a).

PREMISES AFFECTED – 885 Second Avenue, westerly side of Second Avenue between East 47th Street and 48th Street, Block 1321, Lot 22, Borough of Manhattan.

COMMUNITY BOARD # 6M

268-06-BZ

APPLICANT– Omnipoint Communications Inc., for Mokom Sholom Cemetery Assoc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application October 2, 2006 – Special Permit for non-accessory radio tower under (§73-30). In an R-4 district, on a lot consisting of 714,600 SF, and located in a portion of Mokom Sholom Cemetery, permission sought to erect an 80' stealth flagpole disguised as a radio tower for public utility wireless communications.

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150 east of the intersection of Pitkin Avenue and 80th Street, Block 9141, Lot 20, Borough of Queens.

COMMUNITY BOARD #10Q

CALENDAR

275-06-BZ

APPLICANT– Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.

PREMISES AFFECTED – 408-414 West 13th Street and 13-15 Little West 12th Street, south side of West 13th Street, 124.16' west of the corner formed by the intersection of Ninth Avenue and West 13th Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, JANUARY 9, 2007 10:00 A.M.

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, October 17, 2006 as printed in the bulletin of October 26, 2006, Vol. 91, Nos. 39 and 40. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

615-57-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application October 10, 2006 – Extension of term for ten years, waiver of the rules for a gasoline service station (Exxon) which expired on June 5, 2003 and an extension of time to obtain a certificate of occupancy in an R-4 zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, between Kissena Boulevard and 145th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of term for a previously granted variance for a gasoline service station, which expired on June 5, 2003; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in *The City Record*, with a continued hearing on December 12, 2006, and then to decision on January 9, 2007; and

WHEREAS, Community Board, 7, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of Horace Harding Expressway between Kissena Boulevard and 145th Place; and

WHEREAS, the site is located in an R4 zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject

calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

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

WHEREAS, most recently, on January 19, 1994, the grant was amended to permit the addition of one diesel pump and the alteration of the existing accessory building to accommodate a convenience store; the term was also extended for ten years from the expiration of the prior grant; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

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

WHEREAS, the applicant states that a new certificate of occupancy was not obtained by the previous owner after the most recent amendment and extension of term; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on January 14, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 5, 2003 to expire on June 5, 2013, and to permit an extension of time to obtain a certificate of occupancy, to expire on October 9, 2007, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received October 10, 2006’-(12) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 5, 2013;

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

THAT a certificate of occupancy shall be obtained within nine months of the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 400032255)

Adopted by the Board of Standards and Appeals, January 9, 2007.

304-82-BZ

APPLICANT – Bryan Cave, LLP, for Dansar, LLC, owner.

SUBJECT – Application October 6, 2006 – Re-open and

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amend an existing variance (§72-21) granted in 1984 for the conversion of floors two through nine in a commercial building to residential use with an existing commercial (UG6) on the first and cellar floors in an M1-5M zoning district.

PREMISES AFFECTED – 36 East 22nd Street, south side of East 22nd Street, 205’ west of the corner of Park Avenue, south and East 22nd, Block 850, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Ivan Sconfeld.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow for the conversion of the second through ninth floor of a commercial building; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

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

WHEREAS, Community Board 5, Manhattan, recommends disapproval of this application, contending that any hardship arising from the vacancy of the commercial building was self-created, due to a failure to maintain the building; and

WHEREAS, the subject tax lot (Lot 54) is located on the south side of East 22nd Street between Park Avenue South and Broadway, and has a lot area of 2,592 sq. ft.; and

WHEREAS, the subject tax lot is occupied by a nine-story, 118’-0” high commercial building, with retail use on the ground floor and offices on the ninth floor, a floor area of 20,701 sq. ft., a Floor Area Ratio of 8.1, and a rear yard of 6’-3”; and

WHEREAS, Lot 54 is part of a larger zoning lot, also comprised of Lots 44, 55, and 28; and

WHEREAS, the zoning lot is partially within a C6-4A zoning district and partially within a M1-5M zoning district, though the subject tax lot is entirely within the M1-5M district; and

WHEREAS, on May 1, 1984, under the subject calendar number, the Board granted a variance that allowed the construction of a 27-story with penthouse residential building on another portion of the zoning lot; and

WHEREAS, the granted variances related to floor area, sky exposure plane, rear yard, minimum distance between

buildings, and lot area per room; and

WHEREAS, none of the variances relate to the subject building, which continued to be used for retail and office purposes; and

WHEREAS, further, the subject building did not contribute floor area to the zoning lot, since it is overbuilt; and

WHEREAS, the applicant now proposes the conversion of the subject building’s second through ninth floors; and

WHEREAS, the proposal is to convert approximately 19,886 sq. ft. of commercial floor area to residential use, with eight residential units; the ground floor would remain in retail use; and

WHEREAS, because the subject building is located entirely within the M1-5M zoning district where residential use is not permitted and because the zoning lot as a whole is under Board jurisdiction, further Board action is required; and

WHEREAS, since the prior action contemplated continuing commercial revenue from the subject building in order to sustain the predicted economic return over the entire zoning lot, a new filing was not deemed necessary; and

WHEREAS, nevertheless, the applicant addressed all of the findings in relation to the proposed conversion; and

WHEREAS, the applicant notes that the Board previously found that the zoning lot was unique and posed an unnecessary hardship, given its unusual shape, location within two zoning districts, and varied buildings; and

WHEREAS, the applicant also notes that the subject building is unique in of itself, given its narrow frontage and small floor plates; and

WHEREAS, the applicant states that such small floor plates are obsolete for modern office tenants; and

WHEREAS, the Board agrees that the zoning lot remains uniquely burdened, and that the subject building suffers its own inherent hardship; and

WHEREAS, the applicant submitted a feasibility study that illustrates that because of the building’s shortcomings, “as is” office and retail usage of the building will not realize a reasonable return; and

WHEREAS, in response to a question from the Board at hearing, the applicant also clarified that the comparable buildings used in conjunction with this study were similar buildings in terms of square footage and design, and were located in comparable zoning districts; and

WHEREAS, the applicant also states that the owner attempted to market the building but was unsuccessful; the building is now nearly vacant; and

WHEREAS, at the request of the Board, the applicant submitted documentation of the marketing attempts; the marketing consisted of print advertisements and listings with commercial brokers; and

WHEREAS, the applicant states that the addition of eight new residential units would not negatively impact the established mixed-use character of the neighborhood, with many residential buildings in immediate proximity to the subject building; and

WHEREAS, finally, the applicant notes that the

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requested conversion would allow the owner to realize a reasonable return from the subject building itself, and is also required in order to achieve the contemplated return over the entire zoning lot, which, as noted above, contemplated continued revenue from full commercial occupancy of the building; and

WHEREAS, accordingly, the Board finds that the proposed conversion comports with its prior grant; and

WHEREAS, the Board notes in passing that the proposed conversion of the building is allowed in the M1-5M zoning district through an action of the City Planning Commission pursuant to Article I, Chapter V of the ZR and ZR § 74-782, upon a showing of a good faith marketing efforts for a specific time period and a showing that the change in use will not impact industrial users, existing tenants or the surrounding neighborhood; and

WHEREAS, however, since the site is under the jurisdiction of the Board, the instant filing was deemed the appropriate course of action, so long as these concerns were addressed; and

WHEREAS, as noted above, the owner has engaged in such good faith marketing and the Board has determined that the proposed conversion will not have any adverse effects on nearby conforming uses or the character of the neighborhood; and

WHEREAS, finally, the Board notes that the fee owner of the subject building authorized the instant application; authorization by other parties in interest to the larger zoning lot is waived, as the waiver requested here (a use conversion) has no bearing on the bulk waivers previously granted; and

WHEREAS, based upon its review of the record, the Board finds that the proposed conversion is appropriate.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 1, 1984, so that as amended this portion of the resolution shall read: “to permit the conversion of the second through ninth floors of an existing nine-story commercial building to residential use, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked ‘Received October 6, 2006’-(6) sheets; and *on further condition*:

THAT the building shall comply with all light and air standards applicable to conversion under Article I, Chapter V of the Zoning Resolution;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.
(DOB Application No. 104528423)

Adopted by the Board of Standards and Appeals,
January 9, 2007.

190-92-BZ

APPLICANT – Alfonso Duarte, for 180 Tenants Corp., owner; Waterview Parking Inc., lessee.

SUBJECT – Application August 15, 2006 – Extension of Term to allow the use of surplus parking spaces for transient parking which was granted contrary to Section 60, Sub. 1b of the Multiple Dwelling Law. R10A and R8B zoning district.

PREMISES AFFECTED – 180 East End Avenue, north side between East 88th and East 89th Streets, Block 1585, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted variance for a transient parking garage, which expired on October 5, 2003; and

WHEREAS, a public hearing was held on this application on December 5, 2007 after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, the subject premises is located on the east side of East End Avenue between East 88th Street and East 89th Street; and

WHEREAS, the site is occupied by a 20-story with penthouse building; and

WHEREAS, the site is located partially within an R10A zoning district and partially within an R8B zoning district; and

WHEREAS, there are a total of 60 parking spaces in the lower cellar and 55 parking spaces in the upper cellar; and

WHEREAS, on May 8, 1962, the Board granted a waiver, under BSA Cal. Nos. 1659-61-BZ and 1660-61-A, to allow transient parking spaces in the lower and upper cellar accessory garage of the subject building for a term of 21 years; and

WHEREAS, on October 5, 1993, under the subject calendar number, the Board reinstated the grant and granted an extension of term to permit transient parking; and

WHEREAS, the applicant submitted a photograph of the required sign, explaining building residents’ right to recapture parking spaces; and

WHEREAS, the applicant also noted the location of the sign on the site plan; and

WHEREAS, at hearing the Board asked the applicant to provide a photograph demonstrating that the sign is affixed to

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the wall in a permanent fashion in a conspicuous location; and
WHEREAS, the applicant provided photographic evidence that the sign is installed and permanently affixed to the wall; and

WHEREAS, based upon its review of the record, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on October 5, 1993, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from October 5, 2003, to expire on October 5, 2013; *on condition* that that all work shall substantially conform to drawings filed with this application and marked ‘Received November 20, 2006’-(1) sheet and ‘December 4, 2006’-(1) sheet; and *on further condition*:

THAT this term shall expire on October 5, 2013;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

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

THAT a new certificate of occupancy shall be obtained within one year of the date of this grant;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 104183571)

Adopted by the Board of Standards and Appeals, January 9, 2007.

17-93-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lincoln Square Commercial Holding, owner; MP Sports Club Upper Westside LLC on behalf of Reebok-Sports Club/NY, Ltd., lessee.

SUBJECT – Application October 13, 2006 – Extension of term of a previously granted special permit (§73-36) for a physical culture establishment (Reebok Sports Club/NY Ltd.) which expired on June 7, 2004; a waiver to file more than a year after the expiration of the term; extension of time to obtain a permanent certificate of occupancy and an amendment for the change in management/ownership and

the hours of operation located in a C4-7(L) zoning district. PREMISES AFFECTED – 160 Columbus Avenue (a/k/a 1992 Broadway), Block 1139, Lots 24, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Elizabeth Larsen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, approval of a change in ownership, a change in the hours of operation, an extension of time to obtain a permanent certificate of occupancy, and an extension of the term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on June 7, 2004; and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, with a continued hearing on December 12, 2006, then to decision on January 9, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the block bounded by Broadway, Columbus Avenue, West 67th Street, and West 68th Street; and

WHEREAS, the site has a lot area of approximately 55,462.22 sq. ft., is occupied by a 47-story mixed-use building, and is located within a C4-7 zoning district within the Special Lincoln Square District; and

WHEREAS, the PCE occupies portions of the first floor and floors three through eight; and

WHEREAS, the PCE is operated as Reebok Sports Club; and

WHEREAS, on June 7, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE; and

WHEREAS, on March 28, 1995, under the subject calendar number, the Board approved an amendment to allow a running track on the roof of the fourth floor and several other modifications to the site; and

WHEREAS, the instant application seeks approval of a change in the hours of operation to open on weekdays one half hour earlier than the prior approval; and

WHEREAS, the proposed hours of operation are Monday through Thursday, 5:00 a.m. through 11:00 p.m.; Friday, 5:00 a.m. through 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. through 9:00 p.m.; and

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WHEREAS, at hearing, the Board asked the applicant to notify the residents of the building about the requests and about the hearing date; and

WHEREAS, the applicant represented that a notice regarding the application and the public hearing had been mailed to all residents of the subject building; and

WHEREAS, the Board notes that five consents and one objection regarding the operation of the facility were received; and

WHEREAS, further, the applicant also requests an approval of a change in ownership; and

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

WHEREAS, the applicant also seeks an extension of time to obtain a permanent certificate of occupancy; and

WHEREAS, lastly, the applicant requests a ten-year extension of term of the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested change in hours of operation, approval of new ownership, extension of time to obtain a certificate of occupancy, and extension of term are appropriate, with the conditions 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 June 7, 1994, so that as amended this portion of the resolution shall read: “to grant approval of a change in ownership, a change in the hours of operation, an extension of time to obtain a permanent certificate of occupancy, and an extension of the term for a term of ten years from the expiration of the last grant to expire on June 7, 2014; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received October 13, 2006’ –(7) sheets and ‘October 17, 2006’ –(1) sheet; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from June 7, 2004, expiring June 7, 2014;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:00 a.m. through 11:00 p.m.; Friday, 5:00 a.m. through 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. through 9:00 p.m.;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all PCE-related HVAC systems shall comply with Noise Code requirements;

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. 100363562)

Adopted by the Board of Standards and Appeals, January 9, 2007.

16-95-BZ

APPLICANT – Stadtmauer Bailkin, LP, for STA Parking Group, owner.

SUBJECT – Application September 29, 2006 – Extension of Time to complete construction, which expired on October 23, 2003, on a previously granted variance for a UG8 parking garage with accessory auto repairs and an amendment to permit the legalization of the ramps within the existing parking garage and the relocation of the accessory office from the first floor to the second floor in an R8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, a/k/a 433 East 76th Street, located between East 76th and 77th Street, between York and First Avenue, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to permit modifications to the plans, and an extension of time to complete construction of an enlargement to an existing three-story garage building, which expired on October 23, 2003; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

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

WHEREAS, the subject zoning lot is located on a through lot with frontage on East 76th Street and East 77th Street, between York Avenue and First Avenue, and is located within an R8B zoning district; and

WHEREAS, in 1921, under BSA Cal. No. 396-21-BZ, the Board permitted the conversion of the subject building from

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a horse stable to a public parking garage; and

WHEREAS, in 1922, under BSA Cal. No. 1061-22-BZ, the Board permitted an enclosed third-story enlargement of the subject building, which was not built; and

WHEREAS, on March 23, 1999, under the subject calendar number, the Board permitted the enlargement of the existing structure pursuant to ZR § 11-412; at that time, the Board also granted an appeal, under BSA Cal. No. 17-95-A, regarding required egress and fire ratings; and

WHEREAS, most recently, on February 12, 2002, the Board granted an extension of time to complete construction; and

WHEREAS, the applicant now requests an additional extension of time to complete construction; and

WHEREAS, the applicant represents that approximately 70 percent of the required construction has been completed, including the enclosure of the third floor and the underpinning; and

WHEREAS, the applicant represents that construction has not been completed due to damage to the adjacent building's foundation at the commencement of the construction; and

WHEREAS, further, the applicant represents that additional time was required to conduct thorough geotechnical tests to prevent additional damage, and to complete the required underpinning; and

WHEREAS, the applicant states that all but one of the DOB violations related to damage to the adjacent building's foundation have been resolved and that the remaining violation will be resolved when construction resumes; and

WHEREAS, additionally, the applicant proposes to legalize modifications to the previously-approved plans; and

WHEREAS, these modifications include the installation of two ramps – one from the first floor to the cellar and one from the cellar to the sub-cellar - and the relocation of the accessory office space from the first floor to the second floor; and

WHEREAS, the applicant states that these modifications result in a reduction of one parking space on the second floor, three parking spaces in the cellar, two parking spaces in the sub-cellar, and a reduction in the total number of parking spaces from 133 to 127; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and the modifications to the approved plans are appropriate, with the conditions 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, said resolution having been adopted on March 23, 1999, so that as amended this portion of the resolution shall read: "to permit a two-year extension of time to complete substantial construction from the date of this grant, to expire on January 9, 2009, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received November 17, 2006'-(2) sheets and 'December 28, 2006'-(2)

sheets; and *on further condition*:

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

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

(DOB Application No. 100664372)

Adopted by the Board of Standards and Appeals, January 9, 2007.

56-96-BZ

APPLICANT– Agusta & Ross, Rainer Group of New York, LLC, owner; Fountain of Youth Health Spa, Inc., lessee.

SUBJECT – Application April 23, 2006 – Extension of Term and waiver of the rules for a Special Permit (§73-36) to allow a Physical Culture Establishment (Fountain of Youth Health Spa) in an M1-1 zoning district which expired on March 1, 2006, and an amendment to permit a change in the hours of operation and a change in ownership/control of the PCE.

PREMISES AFFECTED – 32-02 Linden Place, southerly block front of 32nd Avenue, between Farrington Street and Linden Place, Block 4950, Lot 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to the hours of operation, approval of a change in operator, and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on March 1, 2006; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board, 7, Queens, recommends approval of this application on condition that: the term be limited to five years, the parking lot and sidewalk be maintained in a clean condition, there be no changes to the facility, there be no change in the operation and services provided by the facility, and there be no changes in the hours of operation; and

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WHEREAS, the subject premises is located on the south side of 32nd Avenue, between Farrington Street and Linden Place; and

WHEREAS, the site is occupied by a one and two-story commercial building and an accessory parking lot, and is located in an M1-1 zoning district; and

WHEREAS, the PCE currently occupies a total of 13,684.47 sq. ft. on portions of the first and second floors of the subject building; and

WHEREAS, on September 23, 1997, the Board granted a special permit pursuant to ZR § 73-36, to permit the continued operation of the PCE for a term of nine years to expire on March 1, 2006; and

WHEREAS, on December 11, 2001, the Board granted a two-year extension of time to obtain a certificate of occupancy; and

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

WHEREAS, additionally, the applicant notes that the operating control of the PCE has changed and seeks approval of this change; and

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

WHEREAS, finally, the applicant seeks an extension of the hours of operation from 10:00 a.m. until 10:00 p.m., daily to 7:00 a.m. to 1:00 a.m., daily; and

WHEREAS, at hearing, in response to the Community Board's concerns about the maintenance of the facility and the hours of operation, the Board asked the applicant about the other uses at the site; and

WHEREAS, the applicant responded that other uses at the site include a billiard parlor and an administrative office for the Police Department; and

WHEREAS, the applicant represents that the billiard parlor is open 24 hours a day and that the police access the office periodically throughout the night; and

WHEREAS, the applicant states that the accessory parking lot is open 24 hours a day to accommodate these uses; and

WHEREAS, the applicant represents that it has met with concerned neighbors and a tenants' association to resolve any concerns about the use and operation of the site; and

WHEREAS, the applicant notes that there are not any residential uses in the immediate vicinity; and

WHEREAS, the Board directed the applicant to submit testimony into the record documenting the outreach meetings with the community; and

WHEREAS, the Board directed the applicant to repair the fence; and

WHEREAS, in response, the applicant repaired the fence and submitted photographs reflecting the repair and improved parking lot conditions; and

WHEREAS, based upon its review of the record, the

Board finds that the requested extension of term, change in operator, and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated September 23, 1997, so that as amended this portion of the resolution shall read: "to permit a change in the hours of operation, a change in the operator, and an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received April 25, 2006'-(2) sheets and 'October 30, 2006'-(3) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from March 1, 2006, expiring March 1, 2016;

THAT the hours of operation shall be limited to 7:00 a.m. to 1:00 a.m., daily;

THAT the above conditions shall appear 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); 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. 400604459)

Adopted by the Board of Standards and Appeals, January 9, 2007.

48-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Bethune West Associates, LLC, owner.

SUBJECT – Application October 30, 2006 – Request for a re-opening and amendment of a previously granted zoning variance that allowed a fifteen- (15) and three- (3) story residential building with ground floor retail use (UG 6), sixty-four (64) dwelling units and sixty (60) accessory parking spaces in C1-7A and C1-6A zoning districts. The proposed amendment includes the following: (1) ground floor level to change from retail to residential use; (2) dwelling units to increase from 64 to 84; (3) minor increase in lot coverage; and (4) modifications to the building's height and setback.

PREMISES AFFECTED – 469 West Street, a/k/a 70 Bethune Street, West Street between Bethune Street and West 12th Street, Block 640, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

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For Applicant: Jerry Johnson and Doris Diether, CB #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow for various modifications to the BSA-approved plans; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to closure and decision on January 9, 2007; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is an irregular “L”-shaped lot, with a lot area of approximately 32,106 sq. ft., with 160’-0” of frontage along West Street (a wide street, a/k/a the West Side Highway), 124’-0” along West 12th Street (a narrow street), and 278’-0” along Bethune Street (a narrow street); and

WHEREAS, previously, on January 10, 2006, the Board granted a variance to permit on the subject lot, which is partially within a C1-7A zoning district and partially within a C1-6A zoning district, the proposed construction of a fifteen and three story mixed-use residential/commercial building, with ground floor retail and an underground accessory parking garage; and

WHEREAS, the particular waivers concerned floor area ratio (“FAR”), lot coverage, side yards, height and setback, and off-street parking; and

WHEREAS, the project as approved was for a mixed-use mid-rise 15-story plus penthouse building fronting on West Street midway between Bethune and West 12th Streets, with a three-story base at the corners formed by the intersection of West Street with the two side streets, a twelve story residential tower centered along West Street, setting back approximately 35 ft. from West 12th Street and 25 ft. from Bethune Street, and a series of five three-story townhouses fronting on Bethune Street; and

WHEREAS, the building was proposed to contain 64 total dwelling units (including the five townhouses), a height of 186’-9” (including bulkheads, 173’-2” without), a setback on the West Street side at the eighth floor, setbacks on the West 12th and Bethune Streets sides at the fourth floor, with a total FAR of 5.0, a residential FAR of 4.7, a commercial FAR of 0.3, lot coverages of 89% and 98% for the corner lot portions, 61% for the through lot portion and 62% for the interior lot portion; and

WHEREAS, the Board notes that the approved building envelope was the result of negotiation between the applicant

and neighboring buildings, as well as elected officials; and

WHEREAS, the applicant now proposes the following modifications: (1) the elimination of commercial floor area on the ground floor, and a reutilization of such floor area for residential units; (2) an increase in the number of dwelling units from 64 to 84; (3) a minor increase in lot coverage; and (4) modifications to the height and setback; and

WHEREAS, as to the use change, the applicant states that the building will now contain only residential use, and the accessory parking has been relocated to a mezzanine level in the main building, with storage and amenity space remaining in the cellar; and

WHEREAS, the Board notes that the elimination of the commercial floor area results in more residential floor area, which drives the increase in dwelling units; and

WHEREAS, the applicant states that the lot coverage of one of the corner lot portions has increased from 89% to 92%, primarily because the edge of the building adjacent to the parking ramp has been straightened; and

WHEREAS, the applicant notes that overall lot coverage has been reduced; and

WHEREAS, the changes to height and setback are illustrated on the BSA-approved plans and described in the statement of facts; however, they can be summarized as follows: (1) the cantilevers on the north and south facades have been eliminated; (2) the height of the West Street building base has been raised to 39.46 ft. from 38.75 ft., which reduces the amount of waiver in the C1-7A district; (3) the height of the townhouse portion has been raised to 40.39 ft. from 38.75 ft., which eliminates the street wall waiver in the C1-6A district; (4) the setback in the West Street portion of the building has been lowered to 63.14 ft. (from 83.58 ft.), which complies with C1-7A district regulations; (5) the setback has been reduced to 10 ft. in depth (it previously varied from 11.87 ft. to 16.7 ft.); and (6) the upper portion of the West Street building façade has been realigned to be parallel with West Street above the fifth floor; and

WHEREAS, the applicant represents that all of these changes either comply with applicable zoning district regulations or reduce the degree of the previously granted waivers; and

WHEREAS, the Board notes that the bulkhead has also been enlarged, but that it still complies with applicable zoning regulations, including those concerning permitted obstructions; and

WHEREAS, finally, because the bulkhead in the easternmost townhouse has been relocated, no side yard objection remains; and

WHEREAS, the applicant states that overall floor area is the same as was previously approved; and

WHEREAS, the applicant notes that the proposed changes are the result of a new architectural design; and

WHEREAS, at the request of the Board, the applicant provided documentation of discussion of the proposed changes with the parties who appeared in the prior proceeding; and

WHEREAS, none of these parties appeared or made

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submissions in opposition to this application; and
WHEREAS, based upon its review of the record, the Board finds that the proposed changes are appropriate, given that they either eliminate or reduce the previously granted waivers.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on January 10, 2006, so that as amended this portion of the resolution shall read: “to permit (1) the elimination of commercial floor area on the ground floor, and a reutilization of such floor area for residential units; (2) an increase in the number of dwelling units from 64 to 84; (3) a minor increase in lot coverage; (4) modifications to the height and setback, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked ‘Received October 30, 2006’–sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: 84 total dwelling units (including the five townhouses), a height of 186’-9” (including bulkhead, 173’-2” without); setbacks as illustrated on the BSA-approved plans; a total FAR of 4.97; a residential FAR of 4.97; and lot coverages of 92% and 98% for the corner lot portions; 55% for the through lot portion and 55% for the interior lot portion;

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

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

(DOB Application No. 104044133)

Adopted by the Board of Standards and Appeals, January 9, 2007.

300-05-A

APPLICANT – Zygmunt Staszewski, P.E., for Breezy Point Cooperative, Inc., owner; Ed Keisel, lessee.

SUBJECT – Application July 6, 2006 – Reconstruct and enlarge an existing one family dwelling which lies within the bed of a mapped street (B209th Street) contrary to Section 35 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 995 Bayside, east of Bayside, north of West Market Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown..4
Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 16, 2006, acting on Department of Buildings Application No. 402178754, reads in pertinent part:

“A1 – The proposed enlargement is on a site where the building and lot are located in the bed of mapped street. Therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law.”; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, the subject site was previously granted a waiver under Section 36 of the General City Law on February 7, 2006 ; and

WHEREAS, by letter dated August 2, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 21, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 21, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 16, 2006, acting on Department of Buildings Application No. 402178754 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 July 6, 2006”–(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);

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, January 9, 2007.

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733-56-BZ

APPLICANT – Cozen O'Connor Attorneys, for S & B Bronx Realty Associates, owner.

SUBJECT – Application October 26, 2006 – Extension of Term and a waiver of the rules to a previously granted variance to allow a parking lot (UG8) in an R7-1 residential zoning district which expired on December 6, 1997.

PREMISES AFFECTED – 283 East 164th Street, northwest corner of East 164th Street, and College Avenue, Block 2432, Lot 19, Borough of The Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 30, 2007, at 10 A.M., for decision, hearing closed.

717-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.

PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for continued hearing.

308-79-BZ

APPLICANT – Stuart A. Klein, Esq., for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Assoc. LLC; lessee.

SUBJECT – Application July 3, 2006 – Extension of Term/Amendment/Waiver – To allow the continuation of an existing Physical Culture Establishment, located in a R7-1 (LH-1) zoning district, which was granted pursuant to §73-36 of the zoning resolution. The amendment seeks to make minor interior modifications.

PREMISES AFFECTED – 43 Clark Street, a/k/a 111 Hicks Street, south west corner of Hicks and Clark Streets, Block 231, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for decision, hearing closed.

60-82-BZ

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

SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to §11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for continued hearing.

230-98-BZ

APPLICANT – Agusta & Ross, for John and Gaetano Iacono, owners.

SUBJECT – Application October 16, 2006 – Extension of Time to obtain a Certificate of Occupancy which expired on April 30, 2003 for an automotive repair shop and the sale of used cars (2) in an R5 zoning district.

PREMISES AFFECTED – 5810-5824 Bay Parkway, northeasterly corner of Bay Parkway and 59th Street, Block 5508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23, 2007, at 10 A.M., for decision, hearing closed.

244-01-BZ

APPLICANT– Sheldon Lobel, P.C., for Gregory Pasternak, owner.

SUBJECT – Application October 24, 2006 – Extension of Time to complete construction which expired on September 24, 2006 for the legalization of residential units in an existing building located in an M1-2/R6A zoning district.

PREMISES AFFECTED – 325 South 1st Street, a/k/a 398/404 Rodney Street, northeast corner of intersection formed by Rodney Street and South First Street, Block 2398, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinesmith.

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ACTION OF THE BOARD – Laid over to February 6, 2007, at 10 A.M., for continued hearing.

44-06-BZ, Vol. II

APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215’ east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 30, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

153-06-A

APPLICANT – Sheldon Lobel, P.C., for Paul Ullman, owner.

SUBJECT – Application July 12, 2006 – Appeal challenging the Department of Buildings interpretation that Quality Housing Bulk regulations may be utilized by a single-family residence seeking to enlarge in a non-contextual zoning district.

PREMISES AFFECTED – 159 West 12th Street, Seventh Avenue and Avenue of the Americas, Block 608, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #14M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

THE RESOLUTION:

WHEREAS, the instant appeal is brought by the owner of 157 West 12th Street (hereinafter, “Appellant”), a neighbor to the subject premises (hereinafter, the “Owner’s Lot”); and

WHEREAS, on November 6, 2006, DOB issued a building permit (No. 104306528; the “Permit”) for an enlargement and conversion of the existing three-story, two-family townhouse on the Owner’s Lot to a single-family residence (the “Enlargement”); and

WHEREAS, the appeal challenges a DOB final determination as to the Permit, signed by Acting Manhattan Borough Christopher M. Santulli, P.E., dated June 19, 2006 and issued to Appellant (the “Final Determination”); and

WHEREAS, the Final Determination reads in pertinent part:

“This letter is in reference to your June 6, 2006 letter regarding the above-referenced matter and former Manhattan Borough Commissioner Laura Osorio’s interpretation of the Quality Housing Program (QHP) bulk regulations.

Ms. Osorio’s previous determination, that the QHP bulk regulations may be utilized by a single-family residence seeking to enlarge in a non-contextual zoning district, is hereby *affirmed*. This is the Department’s final decision on this matter and it may be appealed to the Board of Standards and Appeals pursuant to New York City Charter § 666(6)(a).”; and

WHEREAS, DOB clarified that this determination applies not just to the Owner’s Lot, but globally; and

WHEREAS, in addition to challenging the applicability of the QHP bulk regulations to single-family homes, Appellant also argues that the plans associated with the Permit do not even show compliance with the QHP regulations; and

WHEREAS, a public hearing was held on this appeal on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, Appellant, the Owner, and DOB were represented by counsel in this proceeding; and

WHEREAS, another nearby neighbor appeared in support of the appeal; and

WHEREAS, counsel to the Department of City Planning submitted a letter supporting the position of DOB; and

WHEREAS, the Owner’s Lot has a lot area of 2,151.04 sq. ft. and is occupied by a three-story two-family townhouse; and

WHEREAS, both the Owner’s Lot and Appellant’s lot are within an R6 non-contextual zoning district; and

WHEREAS, on December 7, 2005, the Owner applied to DOB to enlarge the existing townhouse and to convert it from a two-family to a single-family residence under DOB Application No. 104306528; and

WHEREAS, in connection with this application, the Owner sought to utilize the QHP bulk regulations; and

WHEREAS, the ZR provisions describing the QHP are found at ZR § 28-00, *et seq.* (Article II, Chapter 8); and

WHEREAS, ZR § 28-01 sets forth the applicability of Chapter 8 and provides “[t]he Quality Housing Program is a specific set of standards and requirements for buildings containing residences.”; and

WHEREAS, more specifically, the QHP is a set of zoning parameters that may be utilized in certain instances on an optional basis in non-contextual districts unless specifically prohibited; and

WHEREAS, ZR § 28-01 provides that for non-contextual districts such as the subject R6 zoning district, when the QHP is elected, the bulk regulations applicable to the QHP as set forth in Article II, Chapter 3 may be applied as an alternative to the normal bulk regulations, also set forth in Article II, Chapter 3; and

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WHEREAS, additionally, certain amenities may be required to be provided, as set forth in Article II, Chapter 8; and

WHEREAS, after the application for the Enlargement was filed, Appellant wrote DOB, contending that the QHP bulk regulations could not be used for a single-family home; and

WHEREAS, after some internal discussion at DOB, the Final Determination was issued in response to this contention; and

WHEREAS, Appellant then filed this appeal; and

WHEREAS, subsequently, DOB issued the Permit on November 6, 2006; and

WHEREAS, as noted above, Appellant makes two primary arguments in support of the position that DOB should revoke the Permit: (1) the QHP bulk regulations apply only to multi-family housing (three units or more) and not to single and two-family dwellings; and (2) even if the QHP bulk regulations are determined to apply to such dwellings, the Enlargement is non-complying as to floor area, FAR, and lot coverage; and

WHEREAS, as to the application of the QHP bulk regulations, Appellant first argues that the intent of the QHP was to promote the construction of multi-family housing, rather than single and two-family dwellings; and

WHEREAS, Appellant cites to the general purpose provision of ZR § 28-00, which provides in part that “the Quality Housing Program is established to foster the provision of multi-family housing”; and

WHEREAS, Appellant argues that this provision makes clear that the provision of single-family homes was not an intended goal of the QHP, and that QHP regulations are thus not applicable to them; and

WHEREAS, however, DOB argues that ZR § 28-00 is not inconsistent with the application of the QHP to single or two-family dwellings; and

WHEREAS, DOB notes that not every project that is eligible to use the QHP bulk regulations will necessarily satisfy each element of the general purpose section; and

WHEREAS, for example, ZR § 28-00(b) provides that the QHP is established to foster the provision of multi-family housing that “provides on-site recreation space to meet the needs of its occupants”; and

WHEREAS, however, ZR § 28-31, which concerns “Required Recreation Space”, specifically provides that recreation space is only required in QHP developments, enlargements, extensions, or conversions with nine or more dwelling units; and

WHEREAS, DOB properly concludes that it was contemplated that there would be some multi-family housing built pursuant to the QHP regulations that will not provide on-site recreation space and therefore not satisfy this goal of the purpose section; and

WHEREAS, the Board concurs with DOB that ZR § 28-00 cannot be properly read to be a restriction on the applicability of the QHP regulations to single-family homes; and

WHEREAS, this provision, like other general purpose

sections in the ZR, explains what the goals of the subsequently listed operative provisions are; and

WHEREAS, the Board observes that general purpose sections in the ZR do not list exclusions; and

WHEREAS, further, to the extent that such a section would contain a specific exclusion, this would be obvious from the plain language; and

WHEREAS, any language that explicitly provides that the QHP does not apply at all to single-family homes is noticeably absent from ZR § 28-00; and

WHEREAS, further, the Board agrees that the application of the QHP regulations to single-family homes does not compromise or conflict with the goal of fostering multi-family housing; and

WHEREAS, thus, any argument that ZR § 28-00 acts to prohibit applicability of the QHP to single-family homes is erroneous; and

WHEREAS, the Board also finds that Appellant’s reliance on ZR 28-01 as evidence that single and two-family homes are excluded from the QHP is misplaced; and

WHEREAS, ZR § 28-01 provides that in contextual districts some QHP requirements will be mandatory for development or enlargement of buildings other than single and two-family homes; and

WHEREAS, however, this provision does not prohibit the application of the QHP to single-family homes in non-contextual districts; it merely speaks to the mandatory nature of some requirements for multi-family buildings; and

WHEREAS, the Board concludes that the ZR does not contain any explicit prohibition on the applicability of the QHP to single and two-family homes; and

WHEREAS, Appellant also argues that since single and two-family dwellings are not specifically listed as included housing forms in the QHP provisions, they must be excluded; and

WHEREAS, DOB disagrees, noting that the plain language of various provisions leads to a conclusion that the QHP program applies to single-family homes; and

WHEREAS, first, DOB cites to ZR § 23-01, which is listed under the heading “Bulk Regulations for Residential Buildings in Residence Districts” and sets forth the applicability of all bulk regulations in Article II, Chapter 3 of the ZR, which also includes the bulk regulations that are applicable under the QHP; and

WHEREAS, this provision reads in pertinent part: “The bulk regulations of the Chapter apply to any building or other structure...on any zoning lot or portion of a zoning lot located in any Residence District, including all...enlargements.”; and

WHEREAS, the subject home meets the ZR § 12-10 definition of “building or other structure” as “any building or structure of any kind.”; and

WHEREAS, the home also meets the ZR § 12-10 definition of “residence or residential”, which provides that a residence is a “building or part of a building containing dwelling units or rooming units, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels.”; and

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WHEREAS, thus, the subject home is a residence in a residence district, and the Chapter 3 bulk regulations, including the QHP regulations, are applicable to it; and

WHEREAS, second, DOB cites to specific provisions related to the QHP; and

WHEREAS, specifically, DOB cites to ZR § 28-01, which, as noted above, concerns the applicability of the QHP and provides that the program “is a specific set of standards for buildings containing residences”; and

WHEREAS, again, the definition of “residence” includes single-family homes; and

WHEREAS, DOB also notes that ZR § 28-01 specifically provides that in non-contextual districts “residential developments or residential enlargements” may use the QHP; and

WHEREAS, by definition, a residential enlargement may be of a single or two-family home; and

WHEREAS, finally, the Board observes that certain exceptions to the applicability of the QHP regulations are set forth at ZR § 23-011(c); and

WHEREAS, one of these exceptions (ZR § 23-011(c)(3)) provides that within R6 districts and certain geographically-defined study areas, the QHP does not apply to single-family homes “where more than 70 percent or more of the aggregate length of the blockfronts in residential use on both sides of the street facing each other are occupied by residences.”; and

WHEREAS, this provision clearly indicates that under certain circumstances, single-family homes were contemplated to be excluded from the QHP if they were in certain study areas and on blocks as described by this provision; and

WHEREAS, the Board observes that if single-family homes in R6 zoning districts were meant to be excluded altogether from the QHP, as Appellant contends, the exception listed in ZR § 23-011(c)(3) would be redundant and unnecessary; and

WHEREAS, however, there is no reason to presume that the provision is superfluous; thus, ZR § 23-011(c)(3) reinforces the fact that the QHP is applicable to single-family homes; and

WHEREAS, in sum, the Board finds that the plain language of the above-mentioned provisions makes clear that the QHP is applicable to single-family homes; and

WHEREAS, therefore, the Board finds that: (1) Appellant has failed to establish that the QHP provisions expressly exclude single-family homes; and (2) DOB has sufficiently established that the inclusion of single-family homes in the QHP has a textual basis; and

WHEREAS, further, since the plain language of the ZR provides a basis for the applicability of the QHP to single-family homes, a review of the QHP’s legislative history is unnecessary; and

WHEREAS, Appellant’s secondary argument is that even if the QHP provisions were to apply, the Enlargement does not comply with bulk regulations as to floor area, floor area ratio, and lot coverage; and

WHEREAS, DOB disagrees, stating that the plans submitted with the Permit show full compliance with applicable QHP regulations; and

WHEREAS, Appellant was given the opportunity to review the same plans during the hearing process; and

WHEREAS, Appellant’s most recent submission contains the claim that based upon a review of the plans, the calculations for existing and proposed floor area and lot coverage on one of the drawings are incorrect; and

WHEREAS, however, Appellant made no attempt to explain how the calculations are wrong, which precludes Board consideration of this claim; and

WHEREAS, in the absence of any explanation as to why the calculations may reflect a non-compliance with the applicable QHP regulations, the Board must reject Appellant’s secondary argument as unsubstantiated and accept DOB’s technical review that concludes that the plans show compliance; and

WHEREAS, in sum, the Board concludes as follows: (1) the QHP provisions do apply to the Enlargement; and (2) Appellant has provided no evidence of the Enlargement’s alleged non-compliance with the QHP bulk regulations; and

Therefore it is Resolved that this appeal, which challenges a Final Determination issued by DOB on June 19, 2006 concerning DOB Permit No. 104306528, is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

154-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Appeals denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson.....3

THE RESOLUTION:

WHEREAS, these two matters are applications for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R6 zoning district; and

WHEREAS a public hearing was held on this application on October 17, 2006 after due notice by publication in *The City Record*, with continued hearings on November 14, 2006 and

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December 5, 2006, and then to decision on January 9, 2007; and

WHEREAS, BSA Cal. No. 154-06-A relates to 357 15th Street and BSA Cal. No. 155-06-A relates to 359 15th Street; the two properties are adjacent to each other; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently, and the record is the same for both; and

WHEREAS, the Department of Buildings appeared in opposition to these applications; and

WHEREAS, certain owners of condominium units at the subject premises wrote in support of the application; and

WHEREAS, both of the subject properties are located on the north side of 15th Street between 7th and 8th Avenues; and

WHEREAS, each property is 25 ft. wide by 100 ft. deep, and both are developed with unoccupied four-story, eight-unit buildings; and

WHEREAS, the two properties are contiguous with the property at 392 14th Street; this property is also developed with a four-story, eight-unit building; and

WHEREAS, the applicant states that the developer and owner of the subject premises (hereinafter, the "Developer") purchased the properties in 1998; and

WHEREAS, at this time, the premises was within an R6 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to develop each property with a four-story building and each application was given a separate job number by DOB; and

WHEREAS, the applicant states that by 2000, DOB approved plans for the construction of the three buildings; and

WHEREAS, the three buildings appeared together on the same plan sheet and were part of a single condominium offering plan; and

WHEREAS, the applicant contends that the Developer initially obtained a permit for the building on 14th Street (Permit No. 300799107), finished construction on that building, and received a certificate of occupancy in 2002; and

WHEREAS, on April 30, 2003 (hereinafter, the "Rezoning Date"), the City Council voted to approve a rezoning, which rezoned the premises from R6 to R6B and rendered the one completed building and the two proposed buildings non-complying as to Floor Area Ratio, maximum base height, and maximum building height; and

WHEREAS, on May 7, 2003, the Developer erroneously obtained invalid permits (Permit Nos. 300991540 and 300991577) for the two remaining buildings that are the subject of these applications, and work commenced on the buildings; and

WHEREAS, the work permits were invalid because they authorized work under the prior and inapplicable R6 zoning parameters; and

WHEREAS, on July 20, 2005, DOB issued a letter to the Developer ordering that all work be stopped on construction of the two buildings; and

WHEREAS, the applicant states that neither the Developer nor the project architect received a copy of this letter, and that work continued into late 2005; and

WHEREAS, the applicant states that construction on both buildings is almost completely finished; and

WHEREAS, on March 1, 2006 and on July 6, 2006, DOB determined that the two buildings were not vested pursuant to ZR § 11-331 because no permits had been issued for the construction of each building prior to the Rezoning Date, which is required; and

WHEREAS, the applicant now requests that the Board find that the Developer has obtained a vested right to finish construction on both buildings and obtain certificates of occupancy for each under the prior R6 zoning; and

WHEREAS, in spite of the fact that all work on both buildings was performed impermissibly in the absence of valid permits, the applicant makes the following related arguments in support of the appeals: (1) the plan approvals issued by DOB prior to the Rezoning Date are a sufficient substitute for the actual issuance of a building permit; and (2) the right to finish construction of both buildings was vested pursuant to the "single integrated project theory" ("SIPT"), as established by New York State courts; and

WHEREAS, the applicant also suggests that the equities in the instant applications weigh in favor of the Developer; and

WHEREAS, as to the initial arguments, the applicant states, in sum and substance, that approvals of building permit applications reflect the approval by DOB of the application's compliance with applicable laws, while the permits themselves are only authorizations to construct the already approved building; and

WHEREAS, the applicant states that an approval, therefore, is a more important indicator of whether a proposed construction project should be allowed to vest than an actual work permit; and

WHEREAS, the applicant concludes that under the SIPT, the obtained plan approvals are sufficient to vest the right to finish construction on the two buildings under the R6 zoning; and

WHEREAS, the SIPT allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval but not issuance of each and every building permit (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep't, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep't, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applicable to a vesting determination if the following requirements are met: (1) the reviewing approval body was on notice that the various buildings were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss

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would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, the Board observes that the SIPT has been primarily applied to large-scale developments in upstate New York, involving multiple subdivision or plat approvals and numerous buildings; and

WHEREAS, nevertheless, the applicant argues that the single completed building and the two subject buildings are a lower-scale version of a single integrated project; and

WHEREAS, the Board agrees that in the SIPT cases, the courts found that it is not necessary that building permits be obtained for each proposed building within the development; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time; and

WHEREAS, this is because such projects are developed in numerous stages, and it is more logical for permits to be obtained on a plat by plat or phased basis; and

WHEREAS, the applicant argues that the subject development of the three buildings meets the requirements of the SIPT; and

WHEREAS, first, the applicant notes that DOB approved a site plan showing all three buildings, and thus was on notice that they were proposed to be developed as a single integrated development; and

WHEREAS, the applicant also notes that one building is complete, satisfying the requirement that some physical work be completed; and

WHEREAS, the applicant also contends that since the three buildings were the subject of a condominium offering plan, the requirement that some work related to the development that benefits all components was completed is satisfied; and

WHEREAS, more specifically, the applicant notes that the condominium offering plan changed the legal status of the properties, and created certain legal obligations for the unit purchasers; and

WHEREAS, the applicant also claims that the Developer would suffer economic loss if vesting were not found; and

WHEREAS, finally, the applicant states that there is no overriding public concern related to the new R6B zoning sufficient to deny vesting; and

WHEREAS, the applicant concludes that if the Board were to apply the SIPT to the Developer's project, the lack of valid permits for, and the illegal construction of, the two subject buildings could be ignored by the Board; and

WHEREAS, the Board has carefully considered the arguments made by the applicant; and

WHEREAS, first, the Board finds that there does not appear to be any precedent for the application of the SIPT to

a development project as small as the one presented here; and

WHEREAS, the SIPT cases concern multi-acre parcels of land with hundreds of proposed units, usually single-family homes; and

WHEREAS, thus, the Board rejects the applicant's arguments because it is not persuaded that the SIPT should be applied to lower-scale development projects such as the Developer's; and

WHEREAS, since the project only encompasses three buildings and since the plan approvals for the buildings had already been obtained, the Developer could have easily obtained the permits needed for all three buildings; and

WHEREAS, the Board notes that nothing prevented the Developer from obtaining permits for the two subject buildings prior to the Rezoning Date; and

WHEREAS, this is different than the large-scale multi-plat projects discussed in the SIPT cases, where the acquisition of permits for each and every building is not feasible; and

WHEREAS, in fact, as conceded by the applicant, it was not the scale of the project or the need to install infrastructure that prevented simultaneous or near-simultaneous construction of the three buildings, but a lack of financial resources on the part of the developer; and

WHEREAS, the applicant suggests that the Board may overlook the factual context of the SIPT cases and focus only on the broader theory itself; and

WHEREAS, however, the Board concludes that this would be improper; and

WHEREAS, the Board finds that there is a direct relationship between the size of a project and the degree with which it is spread out over a series of plats and the need to engage in staged development, with issuance of permits occurring on a phased basis in tandem with the construction of common infrastructure; and

WHEREAS, in fact, plat approvals may contain municipally imposed restrictions on the issuance of permits, requiring them to be issued in phases after the installation of infrastructure (see e.g. Ellington Const. Corp. v. Zoning Bd. of Appeals of Incorporated Village of New Hempstead, 152 A.D.2d 365 (1989)) – such a restriction is entirely absent here; and

WHEREAS, instead, although the three properties are contiguous, no physical infrastructure connects the three buildings since none was required to be constructed prior to commencement of construction on any of the buildings; and

WHEREAS, accordingly, no reason exists to deviate from the general rule that vesting can only occur where, prior to the zoning change, construction has proceeded pursuant to a valid permit; and

WHEREAS, in sum, the Board concludes that the SIPT does not apply to the Developer's project; and

WHEREAS, the Board notes that the requirement of a validly issued permit is a fundamental requirement for a finding of common law vested rights, and no vesting may occur pursuant to an invalid permit (see e.g. Vil. Of Asharokan v. Pitassy, 119 A.D.2d 404 (1986); Perrotta v.

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City of New York, Dept. of Bldgs., 486 N.Y.S.2d 941 (1985)); and

WHEREAS, while the Developer may have expected to receive permits for the two subject buildings, construction is not authorized and vesting may not occur unless and until valid permits are obtained; and

WHEREAS, the Board has no authority or desire to rewrite the law to suit the needs of the Developer; and

WHEREAS, even assuming *arguendo* that the SIPT applies to this development proposal, the Board notes that its requirements are not met in the instant applications; and

WHEREAS, first, the Board does not consider the condominium offering plan to be the equivalent of physical work that benefits all of the components of the development; and

WHEREAS, while it does create legal obligations for the Developer, it does not benefit all of the components of development in a physical sense, like roads or sewer systems; and

WHEREAS, the Board also observes that there is nothing that physically connects the three buildings; all could stand separately, with independent street access and utilities; and

WHEREAS, second, the construction already completed on the subject buildings could have been adapted to a complying R6B development if the Developer performed adequate due diligence and was aware of the zoning change; and

WHEREAS, the Board notes that foundations, superstructure, and most of the interior are already completed; and

WHEREAS, all of these components could have been adapted, in whole or in part, to a complying R6B building, if only the impermissible construction had not proceeded to the point of near-completion, at a cost of approximately \$43,000 in architectural fees; and

WHEREAS, further, the Board is aware that condominium offering plans can be, and often are, amended if there is a change in the development proposal; such amendment and related costs are not extraordinary or exceptional, except perhaps in a situation where a developer, like the one here, fails to conduct appropriate due diligence before entering into contracts for units in a proposed building that does not comply with zoning; and

WHEREAS, here, the applicant has conceded that the cost of such amendment would only be \$10,000; and

WHEREAS, as to the loss of revenue from the decrease in sellable floor area, the Board notes that under the SIPT, the test of economic harm relates to the losses that would result from an inability to proceed under the prior zoning; and

WHEREAS, the lack of ability to proceed under the prior zoning in turn relates to an inability to adapt the work already performed to a complying development; and

WHEREAS, the SIPT cases do not make mention of the inability to achieve larger buildings; and

WHEREAS, as noted above, since the two subject properties were undeveloped on the Rezoning Date and no

physical infrastructure work had occurred which would have made it impossible to develop the sites in compliance with the R6B zoning, there was no inability to adapt the remainder of the proposal to a complying development; and

WHEREAS, instead, as reflected above, such a change required only minimal outlay; and

WHEREAS, finally, any costs related to the adaptation of the already completed structures in order to comply with the height and FAR parameters of the R6B zoning arise due to the Developer's own due diligence failure, and, as conceded by applicant, cannot be considered in this application; and

WHEREAS, as to the equitable arguments, the applicant, in a submission dated December 27, 2006, lists various reasons why the equities weigh in favor of the Developer; and

WHEREAS, in sum and substance, the applicant points to the plan approval, the economic loss that the Developer might suffer if vesting is denied, and the lack of opposition or complaint about the development and applications; and

WHEREAS, even presuming that each contention is accurate, the Board does not conclude that it must grant the instant applications; and

WHEREAS, without valid permits in place for the subject buildings, the Developer was unauthorized to commence construction; and

WHEREAS, the Board notes that the Developer is charged with constructive knowledge of all changes in law that could affect his development, including zoning changes; and

WHEREAS, that the Developer made an error in not obtaining permits and commencing construction before the Rezoning Date because of this due diligence failure is not a situation that must be remedied by the Board merely because the Developer or others will suffer from this mistake or because no one has opposed these applications; and

WHEREAS, most if not all vesting applications, if denied, result in a detriment to the developer, and the lack of opposition has no bearing on the fundamental requirement that vesting must be predicated on a validly issued permit; and

WHEREAS, finally, the Board notes that it does not possess the equitable powers of a court; and

WHEREAS, in sum, since the Board disagrees with the applicant's arguments, the instant applications must be denied.

Therefore it is Resolved that these applications made under BSA Cal. Nos. 154-06-A and 155-06-A, relating to 357 and 359 15th Street, Brooklyn, are hereby denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

155-06-A

APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.

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SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Appeals denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson.....3

THE RESOLUTION:

WHEREAS, these two matters are applications for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R6 zoning district; and

WHEREAS a public hearing was held on this application on October 17, 2006 after due notice by publication in *The City Record*, with continued hearings on November 14, 2006 and December 5, 2006, and then to decision on January 9, 2007; and

WHEREAS, BSA Cal. No. 154-06-A relates to 357 15th Street and BSA Cal. No. 155-06-A relates to 359 15th Street; the two properties are adjacent to each other; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently, and the record is the same for both; and

WHEREAS, the Department of Buildings appeared in opposition to these applications; and

WHEREAS, certain owners of condominium units at the subject premises wrote in support of the application; and

WHEREAS, both of the subject properties are located on the north side of 15th Street between 7th and 8th Avenues; and

WHEREAS, each property is 25 ft. wide by 100 ft. deep, and both are developed with unoccupied four-story, eight-unit buildings; and

WHEREAS, the two properties are contiguous with the property at 392 14th Street; this property is also developed with a four-story, eight-unit building; and

WHEREAS, the applicant states that the developer and owner of the subject premises (hereinafter, the “Developer”) purchased the properties in 1998; and

WHEREAS, at this time, the premises was within an R6 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to develop each property with a four-story building and each application was given a separate job number by DOB; and

WHEREAS, the applicant states that by 2000, DOB approved plans for the construction of the three buildings; and

WHEREAS, the three buildings appeared together on the same plan sheet and were part of a single condominium offering plan; and

WHEREAS, the applicant contends that the Developer initially obtained a permit for the building on 14th Street (Permit No. 300799107), finished construction on that building, and received a certificate of occupancy in 2002; and

WHEREAS, on April 30, 2003 (hereinafter, the “Rezoning Date”), the City Council voted to approve a rezoning, which rezoned the premises from R6 to R6B and rendered the one completed building and the two proposed buildings non-complying as to Floor Area Ratio, maximum base height, and maximum building height; and

WHEREAS, on May 7, 2003, the Developer erroneously obtained invalid permits (Permit Nos. 300991540 and 300991577) for the two remaining buildings that are the subject of these applications, and work commenced on the buildings; and

WHEREAS, the work permits were invalid because they authorized work under the prior and inapplicable R6 zoning parameters; and

WHEREAS, on July 20, 2005, DOB issued a letter to the Developer ordering that all work be stopped on construction of the two buildings; and

WHEREAS, the applicant states that neither the Developer nor the project architect received a copy of this letter, and that work continued into late 2005; and

WHEREAS, the applicant states that construction on both buildings is almost completely finished; and

WHEREAS, on March 1, 2006 and on July 6, 2006, DOB determined that the two buildings were not vested pursuant to ZR § 11-331 because no permits had been issued for the construction of each building prior to the Rezoning Date, which is required; and

WHEREAS, the applicant now requests that the Board find that the Developer has obtained a vested right to finish construction on both buildings and obtain certificates of occupancy for each under the prior R6 zoning; and

WHEREAS, in spite of the fact that all work on both buildings was performed impermissibly in the absence of valid permits, the applicant makes the following related arguments in support of the appeals: (1) the plan approvals issued by DOB prior to the Rezoning Date are a sufficient substitute for the actual issuance of a building permit; and (2) the right to finish construction of both buildings was vested pursuant to the “single integrated project theory” (“SIPT”), as established by New York State courts; and

WHEREAS, the applicant also suggests that the equities in the instant applications weigh in favor of the Developer; and

WHEREAS, as to the initial arguments, the applicant states, in sum and substance, that approvals of building permit applications reflect the approval by DOB of the application’s compliance with applicable laws, while the permits themselves are only authorizations to construct the already approved building; and

WHEREAS, the applicant states that an approval,

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therefore, is a more important indicator of whether a proposed construction project should be allowed to vest than an actual work permit; and

WHEREAS, the applicant concludes that under the SIPT, the obtained plan approvals are sufficient to vest the right to finish construction on the two buildings under the R6 zoning; and

WHEREAS, the SIPT allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval but not issuance of each and every building permit (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep't, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep't, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applicable to a vesting determination if the following requirements are met: (1) the reviewing approval body was on notice that the various buildings were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, the Board observes that the SIPT has been primarily applied to large-scale developments in upstate New York, involving multiple subdivision or plat approvals and numerous buildings; and

WHEREAS, nevertheless, the applicant argues that the single completed building and the two subject buildings are a lower-scale version of a single integrated project; and

WHEREAS, the Board agrees that in the SIPT cases, the courts found that it is not necessary that building permits be obtained for each proposed building within the development; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time; and

WHEREAS, this is because such projects are developed in numerous stages, and it is more logical for permits to be obtained on a plat by plat or phased basis; and

WHEREAS, the applicant argues that the subject development of the three buildings meets the requirements of the SIPT; and

WHEREAS, first, the applicant notes that DOB approved a site plan showing all three buildings, and thus was on notice that they were proposed to be developed as a single integrated development; and

WHEREAS, the applicant also notes that one building

is complete, satisfying the requirement that some physical work be completed; and

WHEREAS, the applicant also contends that since the three buildings were the subject of a condominium offering plan, the requirement that some work related to the development that benefits all components was completed is satisfied; and

WHEREAS, more specifically, the applicant notes that the condominium offering plan changed the legal status of the properties, and created certain legal obligations for the unit purchasers; and

WHEREAS, the applicant also claims that the Developer would suffer economic loss if vesting were not found; and

WHEREAS, finally, the applicant states that there is no overriding public concern related to the new R6B zoning sufficient to deny vesting; and

WHEREAS, the applicant concludes that if the Board were to apply the SIPT to the Developer's project, the lack of valid permits for, and the illegal construction of, the two subject buildings could be ignored by the Board; and

WHEREAS, the Board has carefully considered the arguments made by the applicant; and

WHEREAS, first, the Board finds that there does not appear to be any precedent for the application of the SIPT to a development project as small as the one presented here; and

WHEREAS, the SIPT cases concern multi-acre parcels of land with hundreds of proposed units, usually single-family homes; and

WHEREAS, thus, the Board rejects the applicant's arguments because it is not persuaded that the SIPT should be applied to lower-scale development projects such as the Developer's; and

WHEREAS, since the project only encompasses three buildings and since the plan approvals for the buildings had already been obtained, the Developer could have easily obtained the permits needed for all three buildings; and

WHEREAS, the Board notes that nothing prevented the Developer from obtaining permits for the two subject buildings prior to the Rezoning Date; and

WHEREAS, this is different than the large-scale multi-plat projects discussed in the SIPT cases, where the acquisition of permits for each and every building is not feasible; and

WHEREAS, in fact, as conceded by the applicant, it was not the scale of the project or the need to install infrastructure that prevented simultaneous or near-simultaneous construction of the three buildings, but a lack of financial resources on the part of the developer; and

WHEREAS, the applicant suggests that the Board may overlook the factual context of the SIPT cases and focus only on the broader theory itself; and

WHEREAS, however, the Board concludes that this would be improper; and

WHEREAS, the Board finds that there is a direct relationship between the size of a project and the degree with which it is spread out over a series of plats and the need

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to engage in staged development, with issuance of permits occurring on a phased basis in tandem with the construction of common infrastructure; and

WHEREAS, in fact, plat approvals may contain municipally imposed restrictions on the issuance of permits, requiring them to be issued in phases after the installation of infrastructure (see e.g. Ellington Const. Corp. v. Zoning Bd. of Appeals of Incorporated Village of New Hempstead, 152 A.D.2d 365 (1989)) – such a restriction is entirely absent here; and

WHEREAS, instead, although the three properties are contiguous, no physical infrastructure connects the three buildings since none was required to be constructed prior to commencement of construction on any of the buildings; and

WHEREAS, accordingly, no reason exists to deviate from the general rule that vesting can only occur where, prior to the zoning change, construction has proceeded pursuant to a valid permit; and

WHEREAS, in sum, the Board concludes that the SIPT does not apply to the Developer's project; and

WHEREAS, the Board notes that the requirement of a validly issued permit is a fundamental requirement for a finding of common law vested rights, and no vesting may occur pursuant to an invalid permit (see e.g. Vil. Of Asharokan v. Pitassy, 119 A.D.2d 404 (1986); Perrotta v. City of New York, Dept. of Bldgs., 486 N.Y.S.2d 941 (1985)); and

WHEREAS, while the Developer may have expected to receive permits for the two subject buildings, construction is not authorized and vesting may not occur unless and until valid permits are obtained; and

WHEREAS, the Board has no authority or desire to rewrite the law to suit the needs of the Developer; and

WHEREAS, even assuming *arguendo* that the SIPT applies to this development proposal, the Board notes that its requirements are not met in the instant applications; and

WHEREAS, first, the Board does not consider the condominium offering plan to be the equivalent of physical work that benefits all of the components of the development; and

WHEREAS, while it does create legal obligations for the Developer, it does not benefit all of the components of development in a physical sense, like roads or sewer systems; and

WHEREAS, the Board also observes that there is nothing that physically connects the three buildings; all could stand separately, with independent street access and utilities; and

WHEREAS, second, the construction already completed on the subject buildings could have been adapted to a complying R6B development if the Developer performed adequate due diligence and was aware of the zoning change; and

WHEREAS, the Board notes that foundations, superstructure, and most of the interior are already completed; and

WHEREAS, all of these components could have been adapted, in whole or in part, to a complying R6B building, if

only the impermissible construction had not proceeded to the point of near-completion, at a cost of approximately \$43,000 in architectural fees; and

WHEREAS, further, the Board is aware that condominium offering plans can be, and often are, amended if there is a change in the development proposal; such amendment and related costs are not extraordinary or exceptional, except perhaps in a situation where a developer, like the one here, fails to conduct appropriate due diligence before entering into contracts for units in a proposed building that does not comply with zoning; and

WHEREAS, here, the applicant has conceded that the cost of such amendment would only be \$10,000; and

WHEREAS, as to the loss of revenue from the decrease in sellable floor area, the Board notes that under the SIPT, the test of economic harm relates to the losses that would result from an inability to proceed under the prior zoning; and

WHEREAS, the lack of ability to proceed under the prior zoning in turn relates to an inability to adapt the work already performed to a complying development; and

WHEREAS, the SIPT cases do not make mention of the inability to achieve larger buildings; and

WHEREAS, as noted above, since the two subject properties were undeveloped on the Rezoning Date and no physical infrastructure work had occurred which would have made it impossible to develop the sites in compliance with the R6B zoning, there was no inability to adapt the remainder of the proposal to a complying development; and

WHEREAS, instead, as reflected above, such a change required only minimal outlay; and

WHEREAS, finally, any costs related to the adaptation of the already completed structures in order to comply with the height and FAR parameters of the R6B zoning arise due to the Developer's own due diligence failure, and, as conceded by applicant, cannot be considered in this application; and

WHEREAS, as to the equitable arguments, the applicant, in a submission dated December 27, 2006, lists various reasons why the equities weigh in favor of the Developer; and

WHEREAS, in sum and substance, the applicant points to the plan approval, the economic loss that the Developer might suffer if vesting is denied, and the lack of opposition or complaint about the development and applications; and

WHEREAS, even presuming that each contention is accurate, the Board does not conclude that it must grant the instant applications; and

WHEREAS, without valid permits in place for the subject buildings, the Developer was unauthorized to commence construction; and

WHEREAS, the Board notes that the Developer is charged with constructive knowledge of all changes in law that could affect his development, including zoning changes; and

WHEREAS, that the Developer made an error in not obtaining permits and commencing construction before the

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Rezoning Date because of this due diligence failure is not a situation that must be remedied by the Board merely because the Developer or others will suffer from this mistake or because no one has opposed these applications; and

WHEREAS, most if not all vesting applications, if denied, result in a detriment to the developer, and the lack of opposition has no bearing on the fundamental requirement that vesting must be predicated on a validly issued permit; and

WHEREAS, finally, the Board notes that it does not possess the equitable powers of a court; and

WHEREAS, in sum, since the Board disagrees with the applicant's arguments, the instant applications must be denied.

Therefore it is Resolved that these applications made under BSA Cal. Nos. 154-06-A and 155-06-A, relating to 357 and 359 15th Street, Brooklyn, are hereby denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

239-06-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Hugh Ferguson, lessee.

SUBJECT – Application September 13, 2006 – Reconstruction and enlargement of an existing one- family dwelling not fronting a mapped street, contrary to Article 3, Section 36 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 8 Suffolk Walk, west side 110.3' south of Oceanside Avenue, Block 16350, Lots p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 25, 2006, acting on Department of Buildings Application No. 402446108, reads in pertinent part:

“Proposal to enlarge the existing first floor and construct a new second story on a home which lies within an R4 zoning district but does not front on a mapped street (Suffolk Walk) is contrary to Article 3, Section 36 (2) of the General City Law and must therefore be referred to the Board of Standards & Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 20, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 25, 2006, acting on Department of Buildings Application No. 402446108, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 13, 2006”–(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);

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, January 9, 2007.

255-06-A thru 257-06-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bell Building Corp., owner.

SUBJECT – Application September 19, 2006 – Application to permit the construction of a one family dwelling not fronting on mapped street, contrary to General City Law Section 36. R3A zoning district.

PREMISES AFFECTED – 76, 74, 72 Bell Street (a/k/a Wall Street) east side of Bell Street, south of intersection with Fletcher Street, Block 2987, Lots 20, 21, 22, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of the Standards and Appeals, January 9, 2007.

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77-06-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Dennis & Judy Dunne, lessee.

SUBJECT – Application October 16, 2006 – Reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law and the upgrade of an existing disposal system in the bed of a private service road contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 27 Roosevelt Walk, east side Roosevelt Walk 193.04' south of West End Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 402409700, reads in pertinent part:

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

A2- The private disposal system I is in the bed of a private service road contrary to Department of Buildings policy.”; and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 20, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens

Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 402409700, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 16, 2006”-(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 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, January 9, 2007.

295-06-A

APPLICANT – Gary Lenhart, RA, for Breezy Point Cooperative Inc., owner; Christine Campisi, lessee.

SUBJECT – Application November 9, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 22 Graham Place, South side of Graham Place 163.99' east of mapped Beach 203rd Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No.402454474, reads in pertinent part:

“A1- The street giving access to the existing building to be altered is not duly placed on the official

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- map of the City of New York, therefore:
- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 27, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 402454474, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 9, 2006” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the Department of Buildings must ensure compliance with all 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, January 9, 2007.

296-06-A

APPLICANT – Gary Lenhart, RA, for Breezy Point Cooperative Inc., owner; Erica & Abert Ashforth, lessee.
 SUBJECT – Application November 9, 2006 – Propose reconstruction and enlargement of single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District
 PREMISES AFFECTED – 37 Beach 222nd Street, East side of Beach 222nd Street 220.92' north of mapped Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
 Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
 Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 16, 2006, acting on Department of Buildings Application No.402454465, reads in pertinent part:

“A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, therefore:

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 27, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 16, 2006, acting on Department of Buildings Application No. 402454465, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 9, 2006” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 9, 2007.

337-05-A

APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.

SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district.

Premises is located in a R4-A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug and Karen Ryan.

For Opposition: Michael R. Treanor, Pedro Toledo Jr. and Jenice Toledo.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 23, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 9, 2007

1:30 P.M.

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

ZONING CALENDAR

175-05-BZ

APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.

SUBJECT – Application July 28, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking

spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.

PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13, 16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 28, 2005, acting on Department of Buildings Application No. 301973639, reads in pertinent part:

“Proposed residential development within M1-1 zoning district is contrary to Zoning Resolution Section 42-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a three-story and cellar residential building, which is contrary to ZR § 42-00; and

WHEREAS, the proposed building will have a total floor area of 14,025 sq. ft. (1.65 FAR), a street wall and total height of 34’-0”, a rear yard of 30’-0”, a front yard of 15’-0”, 12 dwelling units, and 12 parking spaces (the “Proposed Building”); and

WHEREAS, the applicant initially proposed to construct a four-story building, with a setback, with 18,700 sq. ft. of floor area (2.2 FAR), a street wall and total height of 44’-0”, 16 dwelling units, and eight parking spaces; and

WHEREAS, the Board expressed concern about this proposal, noting that the context in the immediate vicinity is small two and three-story single-family and multi-family buildings; and

WHEREAS, the Board suggested to the applicant that the initially-proposed height and bulk would not be compatible with the character of the community, given the heights of the surrounding buildings, and that the amount of FAR did not appear to be economically justified; and

WHEREAS, the Board directed the applicant to reduce the building’s height and to provide an FAR which is permitted in an R5 zoning district; and

WHEREAS, the applicant responded to the Board’s concerns by submitting revised plans, which reflect a reduced height and an FAR that complies with R5 zoning district regulations; and

WHEREAS, the Board finds the current version acceptable in terms of impact and compatibility with the surrounding context; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in

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the *City Record*, with continued hearings on October 17, 2006 and November 21, 2006, and then to decision on January 9, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of the application on condition that the bricks be earth colored, air conditioner sleeves be provided for each apartment, and the building have a cornice; and

WHEREAS, the Southwest Brooklyn Industrial Development Corporation provided a letter in support of this application, noting the residential character of the block; and

WHEREAS, the subject premises includes two tax lots (lots 13 and 16), which have been historically used in conjunction with one another and are proposed to be merged; and

WHEREAS, the site is located on the south side of Luquer Street between Columbia Street and Hicks Street, has a width of 85'-0", a depth of 100'-0", and a lot area of 8,500 sq. ft.; and

WHEREAS, the site is currently occupied by two one-story garage structures, which are proposed to be demolished; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance applicant for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is located in the midblock on a narrow street; (2) the adjacency of residential uses to the site; and (3) the site's soil is contaminated; and

WHEREAS, as to the location of the site in the midblock along a functionally one-lane street, the applicant noted that although the street is mapped at 50 feet curb to curb, only 30 feet are paved, and there is parking on both sides of the street; and

WHEREAS, the applicant represents that the narrowness of the street constrains vehicle access to the site and truck loading for a conforming use; and

WHEREAS, in support of these representations, the applicant submitted a diagram depicting how a truck would be unable to access the site; and

WHEREAS, as to uniqueness, the applicant represents that there are no other vacant or substantially underutilized properties in the immediate vicinity on such a narrow street; and

WHEREAS, the applicant submitted a photograph of a DOT sign on the street which indicates that the street is closed to truck traffic, except for local deliveries; and

WHEREAS, additionally, the applicant asserts that the street is narrower than a number of the other streets in the subject M1-1 zoning district; and

WHEREAS, specifically, Coles Street only permits parking on one side of the street and, although West Ninth

Street permits parking on both sides of the street, it is wider and allows for ample room to maneuver vehicles; and

WHEREAS, the Board agrees that the midblock location, the curb to curb width, and the parking on both sides of the street all constrain truck access to the site; and

WHEREAS, as to the adjacent uses, the applicant represents that there are residential uses on the west side of and across the street from the subject site; and

WHEREAS, the applicant asserts that the adjacent residential uses compromise access to the site and its marketability for a conforming use; and

WHEREAS, the applicant represents that of the 21 properties on the subject blockfront, 13 are occupied by residential uses; and

WHEREAS, the Board agrees that the long-standing adjacent residential uses compound the hardship associated with the site's midblock location on a narrow street; and

WHEREAS, as to the soil contamination, the applicant represents that semi-volatile and organic compounds and heavy metal contamination are present at the site; and

WHEREAS, the applicant represents that there may be significant additional costs associated with the remediation of the noted soil conditions, which would follow costly supplemental sampling and periodic inspections at the site; and

WHEREAS, the Board notes that because the applicant has not provided specific information regarding purported soil contamination and the potential costs associated with it, the Board cannot consider it as a hardship of the site; and

WHEREAS, the Board observes that the merger of the two lots results in a sufficient lot size that would normally be able to accommodate conforming uses; however, given the above-noted constraints, the applicant would not be able to achieve a reasonable return if the site was developed with a conforming building; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial building; and

WHEREAS, the applicant concluded that the conforming scenario would not realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use

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or development of adjacent property, and will not be detrimental to the public welfare; and

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

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including adjacent residential buildings, those across the street, and others on the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of 12 dwelling units and 12 accessory parking spaces will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, further, the Board notes that the earlier iterations would not have been contextual with the surrounding neighborhood, which is characterized by two and three-story residential buildings; and

WHEREAS, specifically, at hearing, the Board directed the applicant to reduce the building height and FAR so that it would be within the R5 zoning district parameters for a predominantly built-up block (1.65 FAR); and

WHEREAS, the Board notes that the proposal has been reduced in terms of FAR and height, which makes it much more compatible with the surrounding context; and

WHEREAS, additionally, the Board notes that the proposal includes one parking space for each dwelling unit, which will help minimize any impact on on-street parking; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a four-story 18,700 sq. ft. (2.2 FAR) building with 16 dwelling units and eight parking spaces; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

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

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

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

and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA007K, dated July 28, 2005; and

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

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 2005 Environmental Assessment Statement and (2) a December 8, 2003 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential noise, air quality and hazardous materials impacts; and

WHEREAS, a Restrictive Declaration to address potential hazardous materials impacts was executed on December 15, 2006 and submitted for recordation on January 4, 2007; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a three-story and cellar residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 5, 2007" – ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: three stories, 14,025 sq. ft. of floor area (1.65 FAR), a street wall and total height of 34'-0", a rear yard of 30'-0", a front yard of 15'-0", 12 dwelling units, and 12 parking spaces, all as indicated on the BSA-approved plans;

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

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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, January 9, 2007.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated April 19, 2006 – Variance pursuant to Z.R. §72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 and 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95’ east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 301984342, reads in pertinent part:

“Proposed Catering Use (UG 9) is not permitted in an R5 Zone”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R5 zoning district, the use of the cellar of a three-story building for a Use Group (“UG”) 9 catering establishment, which is contrary to ZR § 22-00; and

WHEREAS, the appeal was brought on behalf of Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter “Applicant”), the owner of the building at the subject premises; and

WHEREAS, a public hearing was held on this application on June 13, 2006 after due notice by publication in *The City Record*; and

WHEREAS, a continued hearing was held on August 15, 2006, on which date the hearing was closed and decision was set for September 19, 2006; and

WHEREAS, at the request of Applicant, the decision date was deferred to September 26, 2006; and

WHEREAS, the Board reopened the hearing on this date, but Applicant’s counsel was unable to attend; and

WHEREAS, decision was deferred to October 24, 2006;

and

WHEREAS, the matter was again reopened on October 24, and a continued hearing date was set for November 21, 2006; and

WHEREAS, a continued hearing was held on November 21, and a decision was set for January 9, 2007; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the Board also notes that at the request of Applicant, the Board’s counsel and staff met with Applicant during the hearing process to provide suggestions on how to approach the application; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application, on condition that the catering use at the premises close by 1 am and that Applicant consult with elected officials and the Community Board to address traffic concerns on the subject block; and

WHEREAS, certain neighbors appeared and made submissions in opposition to this application; and

WHEREAS, many members of the broader Viznitz community appeared in support of the application; and

WHEREAS, in addition, Applicant provided letters from other individuals supporting the application; and

WHEREAS, the Board notes that while Applicant claimed to have the support of certain elected officials, no elected official appeared at hearing and no letters of support from elected officials were submitted; and

WHEREAS, the subject premises is located in an R5 residential zoning district on 53rd Street between 18th and 19th Avenues and is currently improved upon with a three-story with cellar building (the “Building”); and

WHEREAS, the Building is across the street from and adjacent to numerous two-story semi-detached dwellings; and

WHEREAS, Certificate of Occupancy No. 300131122, issued for the Building on May 26, 1999 (the “CO”), lists the following uses: (i) UG 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and

WHEREAS, this CO was the subject of a 2005 application by DOB, who sought to revoke or modify it pursuant to City Charter §§ 666.6(a) and 645(b)(3)(e), on the basis that the CO allows conditions at the referenced premises that are contrary to the Zoning Resolution and the Administrative Code; and

WHEREAS, DOB argued that the catering use did not possess lawful non-conforming UG 9 status and was therefore illegal; and

WHEREAS, specifically, DOB suggested that the prior UG 16 use on which the status of the UG 9 designation was predicated had been discontinued for more than two years and that the prior building housing this use had been demolished; DOB contended that this had not been revealed by the permit applicant; and

WHEREAS, under either circumstance, DOB alleged that there is no legal basis for a UG 9 catering establishment

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designation on the CO for the cellar of the Building; and

WHEREAS, a public hearing was held on DOB's application on May 17, 2005, but before the next continued hearing, Applicant obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings on it; and

WHEREAS, this court order also directs Applicant to file a variance application at the Board; and

WHEREAS, months later, Applicant filed the instant variance application; and

WHEREAS, Applicant also filed an appeal of a DOB determination that the UG 9 catering use in the cellar was not a UG 3 school or UG 4 synagogue accessory use, under BSA Cal. No. 60-06-A; and

WHEREAS, since the two matters were filed at the same time and both concerned the use of the Building's cellar for commercial catering purposes, the Board, with the consent of all parties, heard the cases together and the record is the same; and

WHEREAS, Applicant states that the Building currently contains a UG 3 religious school for approximately 625 boys (the "School"), a UG 4 synagogue space (the "Synagogue"), and a UG 9 catering establishment that serves the needs of the broader orthodox Jewish community in the vicinity of the site (the "Catering Establishment"); and

WHEREAS, the Synagogue is located on parts of the first and second floor mezzanine; and

WHEREAS, specifically, as illustrated on the plans for the first floor submitted by Applicant, stamped May 5, 2006, the first floor Synagogue space is for men, and adjoins a classroom with a removable partition; it is approximately 1,900 sq. ft.; and

WHEREAS, the second floor Synagogue space is for women, and is 1,380 sq. ft; and

WHEREAS, Applicant states that the Synagogue is attended by approximately 300 people on the Sabbath, and approximately 100 people and approximately 400 students on weekdays; and

WHEREAS, the remainder of the first and second floors, and the entirety of the third floor, appear to be occupied by the School's classrooms and other School-related spaces; and

WHEREAS, Applicant claims that the School serves many economically disadvantaged children, and that 85 percent of the children receive government-sponsored school lunch money; and

WHEREAS, both the School and Synagogue are permitted uses in the subject R5 zoning district; and

WHEREAS, the Catering Establishment, which is not a permitted use in the subject R5 zoning district, was listed on the CO on the alleged basis that it is a lawful non-conforming use, as discussed above; and

WHEREAS, the Catering Establishment is located in the cellar of the Building; the same cellar space is also apparently used for the School's cafeteria and assembly hall; and

WHEREAS, the Catering Establishment occupies approximately 18,000 sq. ft. of floor space in the cellar, with a

primary event space, two adjoining lobbies and bathroom areas (one for men and one for women), as well as two kitchens; and

WHEREAS, the record indicates that the Catering Establishment has separate management and staff from the School and separate entrances with awnings reflecting the business name, that the food for events is made on the premises, that a guard is provided from 6 pm to 12 pm to assist with guest parking, and that waiters and busboys are hired on an "as needed" basis; and

WHEREAS, Applicant alleges that most events are held from approximately 6 pm to 12 am, and that 90 percent of the guests leave the Building at 11:30 pm; and

WHEREAS, Applicant states that ceremonies (held under Chuppahs, which look like canopies) related to the catered events are often conducted outside; and

WHEREAS, Applicant alleges that attendance at each event ranges between 340 and 400 people, though evidence submitted by Applicant indicates that some events are scheduled to have at least 500 guests; and

WHEREAS, Applicant provided information revealing that 166 events were held in 2004, and 154 events were held in 2005; and

WHEREAS, Applicant states that the catered events are offered at reduced rates relative to other catering establishments, with weddings costing approximately 25 dollars per plate; and

WHEREAS, members of the broader Vitznits community stated that the reduced rates were attractive to members of the larger orthodox and Hasidic Jewish community in Brooklyn; and

WHEREAS, these same members stated that the Catering Establishment serves the needs of this community; and

WHEREAS, the Catering Establishment has a license from the Department of Consumer Affairs for a catering establishment; and

WHEREAS, the Board notes that the Catering Establishment advertises in the Verizon Yellow Pages (both on-line and in print) under the listing "Banquet Facilities" as "Ohr Hachaim Ladies" and "Ohr Hachaim Men", with the address and phone number listed; and

WHEREAS, Applicant does not address the Verizon Yellow Pages advertisement, but in its last submission alleges that it does not pay for similar advertising that apparently runs in the Borough Park Community Yellow Pages, does not desire this advertising, and has informed the publisher of the Borough Park Community Yellow Pages to stop running the advertisements; and

WHEREAS, the applicant, in sum and substance, represents that the finding set forth at ZR § 72-21(a) may be satisfied in the case of an applicant that is a non-profit religious entity solely with evidence that the requested waiver is necessary because of a programmatic need of the religious entity; and

WHEREAS, ZR § 72-21(a) requires that the Board find that the applicant has submitted substantial evidence of unique physical conditions related to the site that create practical

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difficulties or unnecessary hardship in using the site in strict conformance with the applicable use regulation; and

WHEREAS, Applicant claims that the Catering Establishment satisfies a religious duty on the part of the broader Viznitz community and also provides a funding stream for the costs of operating the Synagogue and School that cannot be offset by tuition and donations alone; and

WHEREAS, Applicant claims that the Viznitz community totals about 6,500 members, but the Board notes that there is nothing in the record specifying where these 6,500 members reside; and

WHEREAS, moreover, the Board notes that there is nothing in the record to suggest that all 6,500 members of the Viznitz community cited by Applicant are regular members of the Synagogue or students or family members of students of the School; and

WHEREAS, in fact, the Board observes that the Synagogue attendance figures and School enrollment figures provided by Applicant would belie any such claim; and

WHEREAS, nevertheless, Applicant claims that there is a direct relationship based upon programmatic need between the School and the Synagogue and the Catering Establishment; and

WHEREAS, the Board recognizes that many variances it has granted in the past to religious or educational institutions have been predicated, in part, on the programmatic needs of the institution; and

WHEREAS, further, the Board does not question the sincerity of Applicant's belief that the provision of space for weddings, receptions, and other life events in general fulfills a religious need, nor the veracity of the contention that the revenue raised from the catering function is used in part for School and Synagogue purposes; and

WHEREAS, however, the Board does not consider either of the two alleged programmatic needs to be the equivalent of the type of programmatic need that can justify a use variance at this location; and

WHEREAS, first, as to the question of fulfillment of religious duty, while Applicant has claimed that in the Jewish faith there is a custom of incorporating wedding festivities as part of the marriage ritual, no explanation has been given as to how such a custom justifies the location of a UG 9 commercial catering establishment in a zoning district where it is not allowed; and

WHEREAS, the Board observes that Applicant has not made any credible claim that the lawful existence or operation of the School or the Synagogue depends on the existence of a UG 9 catering establishment within the Building; and

WHEREAS, the Board further observes that both the Synagogue and the School are as of right uses, and no claim is made that the Building's square footage is somehow incapable of accommodating the current congregation and enrollment absent the presence of the Catering Establishment; and

WHEREAS, the Board notes that Applicant has not

claimed that the Synagogue is used during all catered events; and

WHEREAS, to the contrary, Applicant indicated during the hearing process that most of the celebrants prefer to have the ceremony outside in a Chuppah; and

WHEREAS, specifically, in its July 11, 2006 submission, Applicant notes that the usual schedule for a catered event features a Chuppah, which is held outdoors when possible; and

WHEREAS, further, Applicant has not provided any credible evidence that the School has any operational integration whatsoever with the Catering Establishment; and

WHEREAS, most importantly, the Board notes that it is not the School or Synagogue use that is generating the alleged programmatic need; rather, as conceded on multiple occasions by Applicant, the need appears to arise from general demand for low-cost catered events from the broader Hasidic and orthodox Jewish community in Brooklyn, regardless of any connection to the School or Synagogue; and

WHEREAS, a letter from another caterer, submitted to the Board by Applicant, confirms that the alleged programmatic need has nothing to do with the School or the Synagogue; this letter specifically states "[i]f the [Catering Establishment] would cease to function, it would cause much hardship to the Boro Park Community"; and

WHEREAS, the Board has never granted a variance based on such a broad-based need that is non-specific to the religious institution making the application and occupying the site; instead, the Board looks for a clear nexus between the requested variance and the specific programmatic needs of the institution on the site; and

WHEREAS, the Board observes that none of the cases cited by Applicant in its submission require the Board to grant the requested variance; and

WHEREAS, nor do any of the Board's prior decisions cited by Applicant in its initial submission; and

WHEREAS, three of these prior decisions were for bulk variances, needed by congregations in order to create a building with sufficient square footage to accommodate increased attendance; none of them were commercial use variances for a catering establishment; and

WHEREAS, the record also contains mention of two other occasions on which the Board has considered an application for a commercial catering variance: (1) BSA Cal. No. 194-03-BZ, concerning 739 East New York Avenue, Brooklyn, decided on December 14, 2004; and (2) BSA Cal. No. 136-96-BZ, concerning 129 Elmwood Avenue, Brooklyn, decided on June 3, 1997; and

WHEREAS, first, the Board notes that generally prior variances are not viewed as precedent for future applications; and

WHEREAS, instead, because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the

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part of the Board; and

WHEREAS, second, even assuming that past grants do function as binding precedent, the Board finds that both of these matters are distinguishable from the instant matter, and support the Board's rejection of it; and

WHEREAS, in the East New York Avenue matter, the applicant, a religious school, originally attempted to argue that the variance could be predicated on the alleged programmatic need of creation of a revenue stream for the school; and

WHEREAS, however, the Board rejected this argument, and instructed the applicant to approach the case as if it were a for-profit applicant, since the proposed use was UG 9 commercial catering that would serve the larger community; and

WHEREAS, thus, the applicant was required to establish that the site presented a unique physical condition and to submit a feasibility study in order to establish hardship; and

WHEREAS, as reflected in the resolution for that matter, the applicant was able to meet these requirements and the variance was granted; and

WHEREAS, as conceded by Applicant at the August 15, 2006 hearing, there is no such uniqueness present at the subject site or as to the Building; and

WHEREAS, accordingly, Applicant did not even attempt to make a similar argument in this proceeding, but instead attempted to argue the application based solely on programmatic needs; and

WHEREAS, in the Elmwood Avenue matter, the applicant, another religious school, applied to the Board for multiple bulk waivers related to the proposed construction of a religious school on a site split by M1-1, R3-1 and R5 zoning district boundaries; and

WHEREAS, the applicant applied for a use variance for the school in the M1-1 zoning district, and also for various height, setback and rear yard requirements; and

WHEREAS, as initially argued by the applicant, the site suffered a hardship due to irregular shape, substandard depth, grade condition and adjacency to a railroad cut; and

WHEREAS, a catering hall was also proposed, though initially the applicant did not request a use variance for it; and

WHEREAS, instead, the catering hall was proposed to be located entirely within the M-1 zoning district, on an as of right basis; and

WHEREAS, however, during the course of the hearing process, the applicant revealed that the kitchen for the catering facility (which was also the kitchen for the school) was partially within the residential zone; and

WHEREAS, accordingly, a use variance for this small portion of the catering facility was required; and

WHEREAS, the Board asked that the applicant attempt to isolate the catering use to the M1-1 zoning district through the erection of a wall in the cellar; and

WHEREAS, the applicant explained that the site was

split by a district boundary, and it was this unique physical condition that caused the need for the small use waiver for the catering establishment; and

WHEREAS, the Board observes that it was only the presence of the district boundary line that caused the need for a minor use variance for the kitchen; and

WHEREAS, the resolution for this matter also cites to the irregular shape and narrow depth of the site as the cause of the practical difficulties and unnecessary hardship; and

WHEREAS, as noted above, the subject site suffers no unique physical hardship, a fact conceded by Applicant; and

WHEREAS, in sum, neither of the two prior commercial catering variance applications require the Board to grant the requested variance here, since they were predicated on the site's actual physical uniqueness; and

WHEREAS, in addition to the guidance that these two cases provide, the Board notes that when it grants applications from religious and educational institutions for variances based upon programmatic need, it routinely places conditions in said grants to prohibit commercial catering within the schools or places of worship; and

WHEREAS, the applicants in such cases accept this condition without question, and agree to make only accessory use of the spaces within the buildings; rarely if ever do applicants argue, as has Applicant here, that unrestricted UG 9 commercial catering is a programmatic need; and

WHEREAS, the second claimed programmatic need is that income from the Catering Establishment is purportedly used to support the School and Synagogue and that the School and Synagogue would close without this income; and

WHEREAS, the Board again disagrees that this is the type of programmatic need that can be properly considered sufficient justification for the requested use variance; and

WHEREAS, while the Board recognizes that the Applicant believes that the School and Synagogue are important to the broader Jewish community in Brooklyn, it is not required on this basis to grant a use variance for a commercial use on the same site as the School and Synagogue; and

WHEREAS, were it to adopt Applicant's position and accept income-generation as a legitimate programmatic need sufficient to sustain a variance, then any religious institution could ask the Board for a commercial use variance in order to fund its schools, worship spaces, or other legitimate accessory uses; and

WHEREAS, again, none of the case law or prior Board determinations cited by Applicant stand for this proposition; and

WHEREAS, the Board observes, in fact, that the East New York Avenue case is a repudiation of Applicant's unfounded contention; and

WHEREAS, further, the Board observes that such a theory, if accepted, would subvert the intent of the ZR's distinction between community facility uses, which are allowed in residential districts, from commercial uses, which

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are not; and

WHEREAS, the Board notes that UG 9 catering establishments are only permitted in commercial zoning districts, and, pursuant to ZR § 32-18, is the type of commercial use that provides “primarily . . . business and other services that (1) serve a large area and are, therefore, appropriate in secondary, major or central commercial shopping areas, and (2) are also appropriate in local service districts, since these are typically located on the periphery of major secondary centers”; and

WHEREAS, the Board further observes that the goals of the commercial regulations in the ZR include the protection of nearby residences against congestion that can result from commercial uses; and

WHEREAS, Appellant has offered no justification for its blanket assertion that a primary commercial use should be permitted in a residential district anytime a religious institution desires to generate revenue by engaging in commercial activity; and

WHEREAS, based on the above, the Board finds that Applicant has failed to establish that it has a programmatic need that requires the requested variance; and

WHEREAS, in a later submission, Applicant also argued that it was entitled to the proposed use variance based upon its good faith reliance on the DOB-issued permit that precipitated the issuance of the CO; and

WHEREAS, Applicant claims that it spent “millions” of dollars constructing the Building and then “hundreds of thousands” more subsequent to the issuance of the CO; and

WHEREAS, the record is devoid of any evidence of these expenditures or the precise amount, but even if such had been established, the Board notes that the Building includes the School and the Synagogue, as well as a cellar that can lawfully be used as the School’s cafeteria and for other accessory uses; and

WHEREAS, thus, all such expenditures would not be wasted; and

WHEREAS, additionally, since Applicant has had the benefit of the Catering Establishment since the CO was issued, consideration of the cumulative financial gain over the last seven years would be a relevant consideration; Applicant did not engage in this analysis however; and

WHEREAS, even had expenditures been proven and discussed in any comprehensible manner by Applicant, the Board observes that the good faith reliance doctrine is not a categorical substitute for uniqueness or hardship; and

WHEREAS, rather, expenditure made in good faith reliance upon a permit is merely one of the factors that may be considered by the Board, and physical uniqueness is still relevant; and

WHEREAS, as noted above, Applicant concedes that the site and the Building present no unique physical features; instead, the site is regular in size and shape, and the Building is recently constructed and not obsolete as a school or synagogue building; and

WHEREAS, again, the site itself does not present any

hardship; and

WHEREAS, additionally, Applicant made no attempt to establish that the purported reliance was made in good faith; and

WHEREAS, the Board notes that it is Applicant’s responsibility to convince the Board that the permit and CO were obtained with all relevant facts being disclosed to DOB by the owner of the premises and the filing professional who obtains the permit; and

WHEREAS, here, the record contains no evidence that this responsibility was met; and

WHEREAS, in sum, the Board notes that Applicant failed to present any evidence as to alleged good faith reliance that would allow it to fully determine this claim, notwithstanding the fact that the Board stood ready to consider such evidence; and

WHEREAS, finally, Applicant suggests that the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), a federal law, requires that the Board issue the requested variance; and

WHEREAS, RLUIPA provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, first, the Board observes that whether the Board grants the variance or not, the School and the Synagogue are permitted uses under the R5 zoning district regulations and may remain legally on the site; and

WHEREAS, further, as expressed in the resolution for the companion appeal, Applicant is free to hold, and charge money for, events in the cellar to the extent that they are accessory to the School or Synagogue; and

WHEREAS, there is no evidence that would support the conclusion that the Board, in denying this variance application, is imposing a substantial burden on or even interfering with the exercise of religious freedom or religious practices of the School or the Synagogue; and

WHEREAS, Applicant’s contention that the School and the Synagogue would not be able to cover expenses without the on-site Catering Establishment, even if proved to be a fact, does not lead to a contrary conclusion; and

WHEREAS, additionally, it is difficult for the Board to understand why RLUIPA should function to support the granting of a commercial use variance in order to support a revenue stream for a religious entity that is unable to support its non-commercial uses through traditional means; and

WHEREAS, accordingly, the Board declines to apply RLUIPA in the novel way that Applicant suggests; and

WHEREAS, further, the Board notes that the court in Episcopal Student Foundation vs. City of Ann Arbor, 341 FSupp2d 691 (ED Michigan 2004) held that that zoning

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regulations that imposed financial burdens on a church do not constitute substantial burdens under RLUIPA; and

WHEREAS, thus, even if the Catering Establishment is required to be relocated at a cost, or if the activities conducted there are limited to events that are accessory, with a resulting decrease in revenue, this is not a substantial burden under RLUIPA; and

WHEREAS, in addition, the Episcopal Student Foundation court held that a zoning ordinance does not infringe on the free exercise of religion where religious activity can occur elsewhere in the municipality; and

WHEREAS, thus, even if the operation of the Catering Establishment can properly be characterized as religious in nature (despite its status under the ZR as a commercial use), since it is allowed in commercial zoning districts that are mapped liberally throughout the City, Applicant's alleged free exercise rights are not compromised; and

WHEREAS, in sum, the Board finds that all of Applicant's arguments as to why the finding set forth at ZR § 72-21(a) is met or why the request for the variance is otherwise justified are without merit; and

WHEREAS, because Applicant has failed to provide substantial evidence in support of this finding or persuade the Board as to why the finding should be overlooked, consideration of the remaining findings is unnecessary; and

WHEREAS, however, merely because this application was fundamentally flawed and poorly presented does not mean that the Board is blind to the concerns of Applicant; and

WHEREAS, the Board again observes that Applicant can use the cellar legally for accessory purposes; and

WHEREAS, further, if Applicant determines that it must engage in commercial catering activities, there is no reason why these activities may not occur on a site that is commercially zoned; the income that is generated can still be used to support the School and Synagogue; and

WHEREAS, the Board finds that these alternative measures will enable Applicant to pursue its proposed catering use in full compliance with the law without incurring excessive additional costs.

Therefore it is Resolved that the decision of the decision of the Brooklyn Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 301984342 is upheld and this variance application is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side,

127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

THE RESOLUTION1:

WHEREAS, this is an appeal of a Department of Buildings final determination dated March 31, 2006, issued by the Brooklyn Borough Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part: "Proposed Catering Use (UG 9) is not an Accessory use to the Synagogue and School (UG 4 & 3) in an R5 zone"; and

WHEREAS, the appeal was brought on behalf of Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter "Appellant"), the owner of the building at the subject premises; and

WHEREAS, a public hearing was held on this application on June 13, 2006 after due notice by publication in *The City Record*; and

WHEREAS, a continued hearing was held on August 15, 2006, on which date the hearing was closed and decision was set for September 19, 2006; and

WHEREAS, at the request of Appellant, the decision date was deferred to September 26, 2006; and

WHEREAS, the Board reopened the hearing on this date, but Appellant's counsel was unable to attend; and

WHEREAS, decision was deferred to October 24, 2006; and

WHEREAS, the matter was again reopened on October 24, and a continued hearing date was set for November 21, 2006; and

WHEREAS, a continued hearing was held on November 21, and a decision was set for January 9, 2007; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal, as did certain neighbors; and

WHEREAS, many members of the Viznitz community appeared in support of the appeal; and

WHEREAS, in addition, Appellant provided letters from other individuals supporting the appeal; and

WHEREAS, the Board notes that while Appellant claimed to have the support of certain elected officials, no elected official appeared at hearing and no letters of support from elected officials were submitted; and

THE PREMISES AND BUILDING

WHEREAS, the subject premises is located in an R5 residence zoning district on 53rd Street between 18th and 19th

1 Headings are utilized only in the interest of clarity and organization.

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Avenues and is currently improved upon with a three-story with cellar building (the "Building"); and

WHEREAS, the Building is across the street from and adjacent to numerous two-story semi-attached dwellings; and

WHEREAS, Certificate of Occupancy No. 300131122, issued for the Building on May 26, 1999 (the "CO"), lists the following uses: (i) Use Group ("UG") 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and

THE APPLICATION TO REVOKE THE CERTIFICATE OF OCCUPANCY

WHEREAS, this CO was the subject of a 2005 application by DOB, who sought to revoke or modify it pursuant to City Charter §§ 666.6(a) and 645(b)(3)(e), on the basis that the CO allows conditions at the referenced premises that are contrary to the Zoning Resolution and the Administrative Code; and

WHEREAS, DOB argued that the catering use did not possess lawful non-conforming UG 9 status and was therefore illegal; and

WHEREAS, specifically, DOB suggested that the prior UG 16 use on which the status of the UG 9 designation was predicated had been discontinued for more than two years and that the prior building housing this use had been demolished; DOB contended that this had not been revealed by the permit Appellant; and

WHEREAS, under either circumstance, DOB alleged that there is no legal basis for a UG 9 catering use designation on the CO for the cellar of the Building; and

WHEREAS, a public hearing was held on DOB's application on May 17, 2005, but before the next continued hearing, Appellant obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings on it; and

WHEREAS, this court order also directs Appellant to file a variance application at the Board; and

WHEREAS, months later, Appellant filed the variance application under BSA Cal. No. 290-05-BZ; and

WHEREAS, Appellant also filed the instant appeal; and

WHEREAS, since the two matters were filed at the same time and both concerned the use of the Building's cellar for commercial catering purposes, the Board, with the consent of all parties, heard the cases together and the record is the same; and

THE SUBJECT BUILDING

WHEREAS, Appellant states that the Building currently contains a UG 3 religious school for approximately 625 boys (the "School"), a UG 4 synagogue space (the "Synagogue"), and a UG 9 catering establishment that serves the needs of the orthodox Jewish community in the vicinity of the site (the "Catering Establishment"); and

WHEREAS, the Synagogue is located on parts of the first and second floors; and

WHEREAS, specifically, as illustrated on the plans for the first floor submitted by Appellant, stamped May 5, 2006,

the first floor Synagogue space is for men, and adjoins a classroom with a removable partition; it is approximately 1,900 sq. ft.; and

WHEREAS, the second floor Synagogue space is for women, and is 1,380 sq. ft; and

WHEREAS, Appellant states that the Synagogue is attended by approximately 300 people on the Sabbath, and approximately 100 people and approximately 400 students on weekdays; and

WHEREAS, the remainder of the first and second floors, and the entirety of the third floor, appear to be occupied by classrooms and other School-related spaces; and

WHEREAS, Appellant claims that the School serves many economically disadvantaged children, and that 85 percent of the children receive government-sponsored school lunch money; and

WHEREAS, both the School and Synagogue are permitted uses in the subject R5 zoning district; and

THE CATERING ESTABLISHMENT

WHEREAS, the Catering Establishment, which is not a permitted use in the subject R5 zoning district, was listed on the CO on the alleged basis that it is a lawful non-conforming use, as discussed above; and

WHEREAS, the Catering Establishment is located in the cellar of the Building; the same cellar space is also apparently used for the School's cafeteria and assembly hall; and

WHEREAS, the Catering Establishment occupies approximately 18,000 sq. ft. of floor space in the cellar, with a primary event space, two adjoining lobbies and bathroom areas (one for men and one for women), as well as two kitchens; and

WHEREAS, the record indicates that the Catering Establishment has separate management and staff from the School and separate entrances with awnings reflecting the business name, that the food for events is made on the premises, that a guard is provided from 6 pm to 12 pm to assist with guest parking, and that waiters and busboys are hired on an "as needed" basis; and

WHEREAS, Appellant alleges that most events are held from approximately 6 pm to 12 am, and that 90 percent of the guests leave the Building at 11:30 pm; and

WHEREAS, Appellant states that ceremonies (held under Chuppahs, which look like canopies) related to the catered events are often conducted outside; and

WHEREAS, Appellant alleges that attendance at each event ranges between 340 and 400 people, though evidence submitted by Appellant indicates that some events are scheduled to have at least 500 guests; and

WHEREAS, Appellant provided information revealing that 166 events were held in 2004, and 154 events were held in 2005; and

WHEREAS, Appellant states that the catered events are offered at reduced rates relative to other catering establishments, with weddings costing approximately 25 dollars per plate; and

WHEREAS, members of the broader Viznitz community stated that the reduced rates were attractive to members of the

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larger orthodox and Hasidic Jewish community in Brooklyn; and

WHEREAS, these same members stated that the Catering Establishment serves the needs of this community; and

WHEREAS, the Catering Establishment has a license from the Department of Consumer Affairs for a catering establishment; and

WHEREAS, the Board notes that the Catering Establishment advertises in the Verizon Yellow Pages (both on-line and in print) under the listing “Banquet Facilities” as “Ohr Hachaim Ladies” and “Ohr Hachaim Men”, with the address and phone number listed; and

WHEREAS, Appellant does not address the Verizon Yellow Pages advertisement, but in its last submission alleges that it does not pay for similar advertising that apparently runs in the Borough Park Community Yellow Pages, does not desire this advertising, and has asked the publisher of the Borough Park Community Yellow Pages to stop running the advertisements; and

THE ACCESSORY USE ISSUE

WHEREAS, this appeal requires the Board to consider whether the Catering Establishment – a use historically and currently operated pursuant to a primary commercial UG 9 designation on the CO (albeit a potentially unlawful one) – can nevertheless properly be characterized as a UG 3 school or UG 4 synagogue accessory use; and

WHEREAS, ZR § 12-10 “Accessory use” reads “An ‘accessory use’: (a) is a use conducted on the same zoning lot as the principal use to which it is related (whether located within the same or an accessory building or other structure, or as an accessory use of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, accessory docks, off-street parking or off-street loading need not be located on the same zoning lot; and (b) is a use which is clearly incidental to, and customarily found in connection with, such principal use; and (c) is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees.”; and

WHEREAS, there is no disagreement that the Catering Establishment is located on the same zoning lot as the School and Synagogue; and

WHEREAS, further, Appellant alleges that it owns all three uses; and

WHEREAS, thus, the primary issues in this appeal that require resolution are: (1) whether the catering establishment is clearly incidental to the School or Synagogue; and (2) whether such an establishment is customarily found in connection with religious schools or synagogues; and

WHEREAS, for the reasons set forth below, the Board disagrees that the Catering Establishment is an accessory use to either the School or the Synagogue; and

WHEREAS, moreover, all of Appellant’s arguments to the contrary, whether based on case law, DOB policy, or past Board decisions, are without merit; and

FACTORS IN DETERMINING ACCESSORY USE

WHEREAS, as a threshold matter, the Board notes that a determination of whether a particular use is accessory to another use requires a review of the specific facts of each situation; and

WHEREAS, as held by the Court of Appeals in New York Botanical Garden v. Board of Standards and Appeals, 91 N.Y.2d 413 (1998), “[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question . . . [t]his analysis is, to a great extent, fact-based . . .”; and

WHEREAS, thus, the Board finds that Appellant’s argument that information relating to the operation of the Catering Establishment has no bearing on whether it is an accessory use, as expressed at the first hearing, is contrary to law; and

WHEREAS, DOB, which must review questions of accessory use in the first instance, cites to various factors that it evaluates when it is determining whether a particular use is accessory to another use; and

WHEREAS, when the proposed accessory use is catering, DOB states that it looks to the intensity of the use and its impact, the frequency of the catered events, the hours of operation, parking availability, the management of the food operations, whether food prepared there was delivered off-site, whether events were confined to the interior catering space or also occurred outside, and whether the use was advertised as a catering hall or banquet facility; and

WHEREAS, DOB also examines the relationship between the size of the membership of the religious entity and the size of events; and

WHEREAS, the Board concurs that these are reasonable factors to examine; and

WHEREAS, however, it notes that the list should not be considered exhaustive; and

WHEREAS, the Board also notes that given the factually-driven nature of any accessory use inquiry, certain factors may be more pertinent depending on the types of uses in question and that other factors not mentioned might be pertinent if the uses are different; and

WHEREAS, as discussed at the first hearing, the Board considered the following items to be among the relevant considerations and asked for information as to each of them: (1) whether the Catering Establishment has separate entrances and lobbies from the School and Synagogue; (2) the hours of operation; (3) whether the Catering Establishment has separate garbage pick-up from the other uses; (4) the frequency of outdoor activities related to catered events; (5) the relationship of the events to Synagogue members or School students/staff/family members; and (6) traffic and parking impacts; and

DOB’S POSITION AS TO THE CATERING ESTABLISHMENT

WHEREAS, as noted above, DOB takes the position that Appellant has not established that the catering

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establishment is incidental to either the School or the Synagogue or that such an establishment is customarily found with such uses; and

WHEREAS, based upon its review of the record, the Board agrees with DOB, for the reasons set forth below; and

WHEREAS, as to the question of whether the catering is incidental, the Board notes at the outset that the Catering Establishment appears to have a more significant relationship with the broader Jewish community as opposed to the Synagogue or the School; and

WHEREAS, as discussed above, Appellant concedes that the catering establishment serves the broader community, and that at least 50 percent of all events are not related to the Synagogue or School; and

WHEREAS, the Board notes that Appellant has submitted no evidence that 50 percent of the catered events relate to the Synagogue or the School, even though Appellant committed to do so; and

WHEREAS, however, even assuming that this is true, it is clear that a substantial amount of the establishment's operation is entirely unrelated to either the School or the Synagogue; and

WHEREAS, further, the Board disagrees that merely because a student of the School is having a bar mitzvah or a member of the Synagogue is getting married and uses the Catering Establishment automatically renders the use of the Catering Establishment for such purposes accessory in all instances, given the other factors that must be weighed; and

WHEREAS, second, the Board notes that Appellant has not suggested to the Board that the Synagogue is used during all catered events; and

WHEREAS, to the contrary, Appellant has indicated on more than one occasion that most of the celebrants prefer to have the ceremony outside in a Chuppah; and

WHEREAS, specifically, in its July 11, 2006 submission, Appellant notes that the usual schedule for a catered event features a Chuppah, which is held outdoors when possible; and

WHEREAS, third, Appellant has not provided any credible evidence that the School has any integration whatsoever with the Catering Establishment; and

WHEREAS, the Catering Establishments has separate entrances, its own accessory rooms, hours of operation that do not relate correspond to the School, and its own set of parking and traffic impacts; and

WHEREAS, additionally, the fact that income generated by the Catering Establishment is used to support the operation of the School does not make the Catering Establishment incidental to the School; and

WHEREAS, the Catering Establishment can still be a primary use under such circumstances; and

WHEREAS, Appellant has not provided any precedent that establishes that a use is accessory to another merely based on the direction of the income stream; and

WHEREAS, even assuming *arguendo* that the direction of income flow is an important consideration as to whether a use is incidental, it is far from clear that the

Catering Establishment exclusively serves the School in this respect; and

WHEREAS, one could just as easily argue that it is the School's ability to obtain federal school lunch money that enables the Catering Establishment to offer reduced rates for its services and that it is the School, therefore, that subsidizes the Catering Establishment; and

WHEREAS, in sum, any argument based on income generation is unavailing; and

WHEREAS, fourth, the Board observes that the UG 9 designation for the Catering Establishment set forth on the CO was specifically sought by Appellant based on the alleged lawful non-conforming status and because of the proposed commercial operation of the establishment, an operation contemplated by Appellant to be primary rather than accessory; and

WHEREAS, presumably, absent the DOB application to modify the CO, Appellant would prefer to maintain this UG 9 designation, since the constraints of a UG 3 or UG 4 accessory designation would not exist; and

WHEREAS, Appellant has failed to explain why a UG 9 designation for the Catering Establishment was sought in 1999 if the use was actually operating as an accessory use to the Synagogue; and

WHEREAS, finally, the Board observes that the ZR does not anticipate that primary uses can normally qualify as accessory uses; and

WHEREAS, the Board notes that ZR § 12-10 "Accessory use" provides a list of examples of accessory uses; such uses include servants' quarters, caretaker apartments, the keeping of pets, swimming pools for guests of facilities, domestic or agricultural storage in barns, home occupations, a newsstand within a building, incinerators, storage of goods for commercial or manufacturing purposes, incidental repairs, the removal for sale of sod, clay, etc. for construction purposes, off-street parking and off-street loading berths related to the use of the site, signage, radio towers, railroad switching facilities, small sewage disposal facilities, or ambulance outposts connected with a fire or police station; and

WHEREAS, while certain of these uses (storage, for instance) could be primary uses, it is clear that the majority of them are ancillary uses that support the site's primary use (though they might not be necessary for the primary use to exist); and

WHEREAS, as established above, the record does not support a finding that the Catering Establishment is secondary to the School or Synagogue or supports in any direct manner the day to day function of these uses in a tangible manner comparable to the uses listed in ZR § 12-10; and

WHEREAS, accordingly, the Board concludes that Appellant has failed to provide evidence in support of its contention that the catering establishment is incidental to either the Synagogue or the School; and

WHEREAS, as to the "customarily found" issue, DOB notes that a catering establishment that has heretofore

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operated as a primary UG 9 catering establishment is not customarily found in connection with either religious schools or synagogues; and

WHEREAS, again, the Board agrees with DOB; and

WHEREAS, the Board acknowledges that churches, synagogues, schools, and other institutions on occasion use space within their buildings for events on an accessory basis; and

WHEREAS, however, the Board notes that a distinction must be made between an 18,000 sq. ft. catering establishment that operates on multiple consecutive days as opposed to the occasional use of a facility's space for events; and

WHEREAS, the Board observes that this distinction is made in the ZR, which carefully separates UG 3 and UG 4 accessory uses, lawful in residential districts, from UG 9 catering establishments, commercial in nature and lawful only in commercial districts; and

WHEREAS, Appellant cites to other non-profit institutions that use space in their facilities for the contention that DOB has allowed UG 9 catering establishments to be accessory uses in other instances; and

WHEREAS, the underlying but unfounded assumption is that catered events at such institutions occur at the same frequency and intensity as at the Catering Establishment; and

WHEREAS, however, Appellant has not produced any evidence that convinces this Board that establishments comparable to the Catering Establishment are customarily found in connection with such institutions; and

WHEREAS, in particular, Appellant has offered no proof that any of the cited institutions are offering services that approximate, in frequency and intensity, the catering establishment in question; and

WHEREAS, in fact, the materials (as well as Appellant's scant discussion of them) fail to establish how many events such facilities host, who attends, the type of event, or the hours of operation; and

WHEREAS, Appellant, in a July 26, 2006 submission, provides a list of community facilities alleged to provide commercial catering, and divides this list between six "religious institutions" and five museums, gardens or institutes; and

WHEREAS, the first religious institution is the 92nd Street "Y"; while this institution advertises the availability of its spaces on its web-site, it is not clear if the frequency of events or their intensity in terms of the amount of guests rises to the level of a primary commercial occupancy, as does the Catering Establishment; and

WHEREAS, further, this facility, which combines many different uses, including lecture hall, school, performance space and health center, to name a few, is a distinct use from a religious school and synagogue, given the very different nature of operations and mission; and

WHEREAS, thus, this example does not support the conclusion that a UG 9 catering establishment is customarily found in connection with a synagogue or religious school; and

WHEREAS, Appellant then cites to Saint Bartholomew's

Church; and

WHEREAS, the Board notes that this church is within a commercial zoning district where any commercial catering use would be permitted as of right; to the extent that such is offered at the church, it would be a legal primary use; and

WHEREAS, again, Appellant also fails to provide any information as to the frequency or intensity of the events held at this church; and

WHEREAS, Appellant then cites to Earl Hall of Columbia University, which like many churches makes its space available for rent for weddings and other events; and

WHEREAS, however, no evidence is provided in support of the contention that Columbia engages in catering, or as to the frequency or intensity of events; and

WHEREAS, Appellant next cites to the West Side Jewish Center, but only submits a web-site print-out describing a single mid-Summer Bar B-Q; and

WHEREAS, such evidence hardly supports the conclusion that the center is running a catering establishment; and

WHEREAS, further, as with Saint Bartholomew's Church, the center is located within a commercial zoning district where a UG 9 catering establishment would be allowed on a primary basis; and

WHEREAS, Appellant next cites to Congregation Ohab Zedek, and submits a web-site print-out describing the daily scheduled activities for a particular day; and

WHEREAS, nothing on this print-out indicates that the congregation is operating a catering establishment; and

WHEREAS, Appellant then cites to Landmark on the Park, a Universalist Church facility; and

WHEREAS, a print-out from the web-site indicates that this facility rents out its space for events; however, once again this does not mean it is running a catering establishment or that the frequency or intensity of events is comparable to the Catering Establishment; and

WHEREAS, Appellant cites next to Congregation Adereth El; and

WHEREAS, one of the many pages of web-site print-outs that Appellant submits indicates that this congregation recently added an in-house caterer; and

WHEREAS, the recent addition of the in-house caterer to this facility does not lead to the conclusion that such a use is customarily found with houses of worship; and

WHEREAS, further, Appellant once again fails to provide any information about the frequency and intensity of any catering events at this facility; and

WHEREAS, as noted above, Appellant also cites to five non-religious institutions: the City's Fire Museum, the Seaman's Institute, the American Museum of Natural History, the New York Botanical Garden, and the Museum of the City of New York; and

WHEREAS, Appellant submits web-site print-outs for the first three that indicates that they rent out space for events; and

WHEREAS, the Board observes that none of these

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institutions are houses of worship or religious schools; thus, whether they house a commercial catering establishment is not relevant; and

WHEREAS, further, the Fire Museum and the Seaman's Institute are in either commercial or manufacturing zoning districts, where catering is allowed; and

WHEREAS, finally, once again, Appellant fails to establish whether such facilities host events in manner comparable to what occurs at the Catering Establishment; and

WHEREAS, Appellant also cites to two other houses of worship; and

WHEREAS, first, at the initial hearing, Appellant mentioned the Temple Emmanuel at 4902 14th Avenue, Brooklyn, and claimed that the certificate of occupancy for this facility indicates that it has a catering hall; and

WHEREAS, the most recent certificate of occupancy for this facility indicates that it has a social hall and kitchen; and

WHEREAS, however, like the other facilities cited by Appellant, this does not mean that Temple Emmanuel is operating a catering establishment similar to the one at issue here; and

WHEREAS, second, Appellant cites to the Riverside Church, which, according to web-site print-outs, provides on-site catering; and

WHEREAS, as has already been stated repeatedly, Appellant failed to provide the Board with any evidence that the catering here rises to the level of a commercial catering establishment in terms of frequency and intensity and other relevant factors; and

WHEREAS, in sum, Appellant has cited to only a few houses of worship that provide on-site catering services in a district where a UG 9 catering establishment would not be permitted, and has failed to provide any evidence that such commercial catering occurs in these houses of worship; and

WHEREAS, the Board is personally aware that there are hundreds of houses of worship in the City, and many, many more in the State; and

WHEREAS, citation to only a few potentially comparable facilities to the Catering Establishment does not allow the Board to conclude that a catering facility operating at the intensity and frequency that the Catering Establishment does is a use customarily found in connection with houses of worship; and

WHEREAS, further, Appellant has not provided a single example of a religious school that has a comparable facility as an accessory use; and

WHEREAS, most importantly, the Board observes that all of the facilities mentioned by Appellant are not before this Board; and

WHEREAS, to the extent that any of the other institutions operate UG 9 catering establishments illegally, in violation of their certificates of occupancy or zoning, this would support enforcement action by DOB, rather than a determination that such an operation is always fundamentally accessory; and

WHEREAS, accordingly, the Board concludes that

Appellant has failed to provide evidence in support of its contention that catering establishments like the one in question here are customarily found in connection with schools or houses of worship; and

WHEREAS, that being said, the Board acknowledges that houses of worship often rent out their space for events; and

WHEREAS, however, the occasional use of such spaces for outside events should not be, in terms of frequency and intensity, the equivalent of the operation of a primary UG 9 commercial catering establishment; and

WHEREAS, while there admittedly may be some borderline cases where it is difficult to ascertain whether a particular house of worship is engaging in a primary commercial enterprise as opposed to the occasional accessory renting of space, such is not the case here: as noted above, the Catering Establishment is a primary use, the type of which is neither incidental to houses of worship or religious schools nor customarily found with such institutions; and

APPELLANT'S CITATION TO CASE LAW

WHEREAS, as noted above, Appellant cites to a variety of cases for the proposition that the UG 9 catering establishment may be considered an accessory use; and

WHEREAS, as a threshold matter, the Board finds that no prior determination as to what may or may not be an accessory use given a particular fact pattern will ever be perfect precedent as to a different set of facts; and

WHEREAS, however, the Board has reviewed all of these cases and finds that none of them dictate the outcome that Appellant desires; and

WHEREAS, many of the cases do nothing more than establish that generally municipalities must provide some deference in the implementation and enforcement of zoning schemes for religious and educational uses (*see generally Cornell v. Bagniard*, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board notes that the City's zoning scheme already allows both the School and the Synagogue to be located within the subject R5 district as of right; and

WHEREAS, further, Appellant can use the cellar space for religious events so long as the use of the space is accessory to the School and/or Synagogue; and

WHEREAS, thus, the required deference is already reflected in the existing text; and

WHEREAS, in sum, the Board does not dispute that religious and educational institutions are permitted to engage in social, recreational or athletic activities that are reasonably associated with the religious or education purposes; and

WHEREAS, nevertheless, nothing in the line of cases cited by Appellant requires the Board to rewrite the ZR § 12-10 definition of "accessory use" to include catering establishments that would otherwise qualify as UG 9 commercial uses based upon actual operation; and

WHEREAS, Appellant also cites to cases that address specific accessory uses in relation to either educational or

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religious uses, and attempts to analogize the facts in those cases to those present in this appeal; and

WHEREAS, specifically, Appellant cites to these cases in support of the proposition that courts are liberal when assessing whether a particular use is accessory to educational and religious institutions so long as the facts support an accessory use determination; and

WHEREAS, at hearing, the Board asked Appellant to explain in greater detail why these cases had any bearing on the instant appeal; Appellant failed to do so; and

WHEREAS, the Board notes that the instant matter was brought by Appellant and is the responsibility of Appellant to argue; thus, Appellant's failure to do more than merely cite to the cases with the inclusion of a very brief one sentence synopsis compels the Board to attempt to discern what Appellant's actual argument is; and

WHEREAS, accordingly, the Board conducted its own review of these cases and finds that all of them are distinguishable; and

WHEREAS, for instance, Town of Islip v. Dowling College, 275 A.D. 366 (2000) concerned a town declaration that "catering events" held at the educational institution in question were non-permitted uses under the town zoning code; and

WHEREAS, the court disagreed, stating that the catering events "are permitted educational uses"; and

WHEREAS, the opinion does not provide detail about the frequency or duration of the "catering events", but there is no indication that the court was reviewing the operation of a catering establishment comparable to Appellant's; and

WHEREAS, because the opinion does not specify with any precision what was being reviewed, Appellant's reliance on the case as justification for the argument that it requires the Board to find that the Catering Establishment is accessory to the School or Synagogue is misplaced; and

WHEREAS, moreover, the court did not hold that the catering events were in fact accessory uses; the court instead declared that the catering events were permitted uses under the town code; the exact nature of how the court arrived at this determination is not specified; and

WHEREAS, further, the Board notes that the ZR contains a very specific and well-crafted "Accessory use" definition, and the Town of Islip case does not consider this definition; and

WHEREAS, finally, the catered events considered by the court were for students of the college; here, Appellant concedes that not all catered events are related to School students or staff or to the Synagogue's congregants; and

WHEREAS, Appellant also cites to the New York Botanical Garden decision referenced above; and

WHEREAS, in this matter, the court upheld a Board determination that a university's radio station was permitted a 480-ft. radio tower as an accessory educational use; and

WHEREAS, the court upheld the Board's determination that high-power radio stations and towers were both incidental to, and customarily found in connection with, college campuses in New York and elsewhere in the United States; and

WHEREAS, as established above, Appellant did not provide any evidence that the Catering Establishment is an incidental use to the School or Synagogue, nor any evidence that such a catering establishment is customarily found in other religious schools or houses of worship, either in the City, New York State, or elsewhere in the United States; and

WHEREAS, the Board also notes that a radio tower has an inextricable accessory relationship to a college radio station, and therefore to the educational mission of the college; and

WHEREAS, the Catering Establishment has no such connection to the mission of the School or the Synagogue; and

WHEREAS, Appellant next cites to Greentree at Murray Hill Condominium v. Good Shepard Episcopal Church, 146 Misc. 2d 500 (1989); and

WHEREAS, in this case, the court found that a church-run shelter for ten homeless men could properly be characterized as an accessory use under ZR § 12-10; and

WHEREAS, the court cited to other cases where social and recreational activities of a religious institution were found to be accessory uses; and

WHEREAS, the Board understands that if the School or Synagogue were to shelter homeless individuals in the cellar of the Building, the Greentree case would have some applicability to a determination as to whether such use was accessory; and

WHEREAS, however, the temporary shelter of ten homeless men is not analogous to the approximately 150 catered events, with approximately 400 guests, that occur at the Catering Establishment on a yearly basis; and

WHEREAS, thus, the Board concludes that the Greentree case is distinguishable; and

WHEREAS, Appellant also cites to Flagg v. Murdock, 172 Misc. 1048 (1939); and

WHEREAS, in this case, the court found that a dancing school within a residential building in a residence zone was actually a school for purposes of the zoning code then in effect, and was thus permitted as a primary use; and

WHEREAS, ironically, the Flagg court also addressed six commercial uses present in the same residential building: a barbershop, a dress shop, a gift shop, a shoe repair shop, a tailor shop, a restaurant, and a beauty parlor; and

WHEREAS, such uses were not permitted in the residence district, so the operators of certain of these uses argued that they were accessory to the residential use since they served the occupants of the building; and

WHEREAS, the court rejected this argument, noting that such business uses were not permitted as an accessory use by the zoning code then in effect; and

WHEREAS, again, the Board finds that this case does not support Appellant's position; rather, it is contrary to it; and

WHEREAS, Appellant then cites to four out-of-state cases; and

WHEREAS, the Board finds that these cases are not particularly good precedent, since none of them concern ZR

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§ 12-10 (“Accessory use”) or the case law of this state; thus, it is unnecessary to examine them; and

WHEREAS, however, in passing, the Board observes that none of the cases concern a commercial catering establishment alleged to be operating at the intensity and frequency of the establishment in question; and

WHEREAS, in sum, the Board finds that none of the cases cited by Appellant require the Board to deem the Catering Establishment an accessory use to the School or Synagogue; and

APPELLANT’S REFERENCE TO “BINGO/LAS VEGAS NIGHT” EVENTS

WHEREAS, Appellant argues that since non-profit institutions can conduct bingo and “Las Vegas night” events on an accessory basis in order to raise money for charitable purposes, the Catering Establishment must also be deemed an accessory use; and

WHEREAS, despite repeated requests by the Board to provide a more detailed explanation, a review of Appellant’s submissions and statements made at hearing reveals that this argument was never substantiated; and

WHEREAS, instead, Appellant submitted documentation in purported support of the argument without explanation; and

WHEREAS, for example, Appellant submitted lists of entities that are authorized by the State of New York to conduct such activities; and

WHEREAS, what Appellant failed to submit was any information as to how many of these entities in fact engaged in bingo or Las Vegas nights, and if so, to what extent; and

WHEREAS, thus, at most, the lists do nothing more than establish that numerous entities throughout the State seek approval for bingo or Las Vegas night activities; and

WHEREAS, Appellant also cites to a DOB letter, dated September 28, 1978, which reads in pertinent part “[p]lace of Assembly permits have been issued for bingo only where premises can be lawfully occupied as meeting halls, whether as a primary use (Use Group 6 in the Zoning Resolution), or accessory to a primary use such as a church, synagogue, non-profit intuition, etc. on the same site. Games of chance may be substituted for bingo only when such use was clearly on the same site on, and accessory to, such primary uses as churches, synagogues, etc. When not accessory to such a primary use, a premises devoted exclusively to ‘games of chance’ as an alternate to bingo (meeting halls) can become indistinguishable from amusement arcades and the like, posing a problem for . . . communities in general . . . Obviously, in such instances, a new certificate of occupancy should be obtained (if the Zoning Resolution so permits) after the filing of an Alteration application, and a new P.A. permit obtained predicated on such new use.”; and

WHEREAS, while this letter indicates that bingo and gaming nights may be accessory to religious institutions, it does not state that they are always accessory to religious institutions; and

WHEREAS, instead, the letter indicates that such uses may not always be accessory, and if they are not, they must be

legalized if possible; and

WHEREAS, nothing in this letter suggests that DOB cannot or will not scrutinize each particular instance of bingo or gaming nights in order to determine if such use is accessory; and

WHEREAS, nonetheless, Appellant argues that because of this letter, the Catering Establishment must be recognized as accessory by DOB as well; and

WHEREAS, presumably, Appellant believes that there is no difference between hosting a bingo or Las Vegas night and the operation of a catering establishment; and

WHEREAS, however, DOB states, and the Board agrees, that the 1978 letter does not give non-profit institutions the ability to conduct bingo or Las Vegas nights to whatever degree is desired; and

WHEREAS, DOB states that it would allow occasional use of non-profit facilities for such activities provided that they were intended primarily for participation by members of the non-profit; and

WHEREAS, here, the information provided by Appellant indicates that the Catering Establishment is in operation on a daily or near-daily basis many times during the year, and serves not just individuals with a direct relation to the School and Synagogue, but members of the larger Jewish community, in New York City and elsewhere; and

WHEREAS, additionally, another relevant factor is the frequency of the activity; and

WHEREAS, DOB states that it would allow bingo or Las Vegas nights one to two nights per week, which means that a non-profit could engage in such nights a total of 52 to 104 times per year; and

WHEREAS, however, such activities would not occur every night for weeks at a time; and

WHEREAS, nor would such activities be the equivalent of a primary commercial use, as the Catering Establishment is; and

WHEREAS, finally, the Board notes that Appellant believes that bingo and Las Vegas nights are purely revenue producing events, and therefore are clearly not incidental to the principal use; and

WHEREAS, assuming that Appellant is correct, then analogy to such events provides no guidance, since such uses would not meet the definition of “accessory use”; and

WHEREAS, again, the Board reiterates that the categorization of a use as accessory is a fact-intensive inquiry that depends on a variety of factors specific to each institution and each proposed accessory use, as well as the surrounding neighborhood; and

WHEREAS, thus, the Board finds that DOB has no authority to predetermine whether a particular use is accessory in all circumstances, and further finds that the 1978 letter cannot be read in this manner; and

WHEREAS, instead, like the listing of accessory use examples set forth in ZR § 12-10, the 1978 letter is merely a guideline, useful to DOB in determining what should occur when a bingo or gaming night use fails to meet the test for

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accessory use; and

WHEREAS, in sum, the ability of institutions to engage in occasional bingo nights or other recreational activities on an accessory basis does not mandate that the Board find that the Catering Establishment is an accessory use; and
APPELLANT'S REFERENCE TO THE BOARD'S PRIOR DETERMINATION

WHEREAS, during the hearing process, Appellant discussed a prior Board decision made under BSA Cal. No. 121-00-A; and

WHEREAS, in this matter, the Board considered: (1) whether the construction of a 3,000 seat baseball facility for St. John's University (the "University") was an accessory use to the University; and (2) whether the time-limited use of the baseball facility by a professional baseball team negated the accessory use status; and

WHEREAS, as reflected in its resolution, dated June 27, 2000, the Board concluded that the facility was an accessory use and that the time-limited use of the facility by a professional team did not compromise the status of the field as an accessory use; and

WHEREAS, the Board based its conclusion as to the second issue, in part, on evidence that colleges and universities elsewhere rented out their athletic facilities to professional sports teams; and

WHEREAS, the Board also noted that the use of the facility by the professional team was part of an arrangement between the University, the professional team, and the City's Economic Development Corporation ("EDC"); and

WHEREAS, the Board's determination was subsequently upheld in court (*see Padavan v. City of New York*, Index No. 26763/98 (July 20, 2000)); and

WHEREAS, Appellant argues that the Board's decision as to the University compels a finding that the Catering Establishment is an accessory use to the School; and

WHEREAS, Appellant claims that since the baseball facility would be rented out to a professional team and apparently used by community groups and not just the University, the Board was in effect holding that not all use of accessory facility must relate directly to the primary uses; and

WHEREAS, as an initial matter, the Board must once again point out that prior accessory use determinations on a set of facts entirely different than those present here are not binding nor particularly helpful in determining whether the Catering Establishment is an accessory use; and

WHEREAS, the Board is not considering whether the School may create a field for its baseball team (presuming it has one) nor whether, if such a field was built, it could be rented out to a commercial sports league on a time-limited basis; and

WHEREAS, as noted above, the factors evaluated in a particular accessory use question will vary depending on the use; and

WHEREAS, here, the Board is presented with a catering facility that, by Appellant's own admission, hosts approximately 75 events per year, both historically and going

forward, that have no relation whatsoever to the School or Synagogue; and

WHEREAS, in the case involving the University, the use of the field by the professional team was limited to 38 home games, practices and perhaps some playoff games, only for a maximum two-year period, while the field would actually be in service for University purposes for at least seven years; and

WHEREAS, further, the Board was satisfied that such professional use of the field was customarily found in connection with institutions of higher learning; and

WHEREAS, here, Appellant has not established that other houses of worship customarily conduct catering activities unrelated to the institution to the extent that the Catering Establishment does; and

WHEREAS, Appellant also suggests that the Board's prior determination was unfounded because there is actually no basis to conclude that colleges and universities actually lease their facilities to professional sports teams such that it can be considered customary; and

WHEREAS, since the prior Board did make this finding and since this was upheld by a court, the Board declines to revisit the issue now; and

WHEREAS, in any event, Appellant has no standing to challenge this determination; and

WHEREAS, in sum, the Board does not find that its prior decision is determinative of the matter at hand; and
THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

WHEREAS, finally, Appellant appears to suggest that the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), a federal law, requires that the Board grant this appeal; and

WHEREAS, RLUIPA provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, first, the Board observes that regardless of whether the Board finds that the Catering Establishment is an accessory use, the School and the Synagogue are permitted uses under the R5 zoning district regulations, and may remain legally on the site; and

WHEREAS, further, Appellant is free to hold, and even charge money for events, in the cellar to the extent that they are accessory; and

WHEREAS, there is simply no evidence that would support the conclusion that the Board, in denying this appeal, is imposing a substantial burden on or even interfering with the exercise of religious freedom or religious practices of the School or the Synagogue; and

WHEREAS, Appellant's contention that the School and the Synagogue would not be able to cover expenses

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without the on-site Catering Establishment, even if proved to be a fact, does not lead to a contrary conclusion; and

WHEREAS, further, it is difficult for the Board to understand why RLUIPA should function to support an otherwise unsupportable accessory use determination in order to support a revenue stream for a religious entity that is unable to support its non-commercial uses through traditional means; and

WHEREAS, accordingly, the Board declines to apply RLUIPA in the novel way that Appellant suggests; and

WHEREAS, the Board observes that the court in Episcopal Student Foundation vs City of Ann Arbor, 341 FSupp2d 691 (ED Michigan 2004) held that zoning regulations that imposed financial burdens on a church do not constitute substantial burdens under RLUIPA; and

WHEREAS, thus, even if the Catering Establishment is required to be relocated at a cost, or if the activities conducted there are limited to events that are accessory to the School or Synagogue, with a resulting decrease in revenue, this is not a substantial burden under RLUIPA; and

WHEREAS, in addition, the Episcopal Student Foundation court held that a zoning ordinance does not infringe on the free exercise of religion where religious activity can occur elsewhere in the municipality; and

WHEREAS, thus, even if the operation of the Catering Establishment can properly be characterized as religious in nature (despite its status under the ZR as a commercial use), since it is allowed in certain commercial zoning districts that are mapped liberally throughout the City, including in the vicinity of the subject site, Appellant's alleged free exercise rights are not compromised; and

CONCLUSION

WHEREAS, in sum, the Board has reviewed the record and finds that the Catering Establishment as currently operating is not an accessory use to either the School or the Synagogue; and

WHEREAS, accordingly, the Final Determination must be upheld and this appeal must be denied; and

WHEREAS, in so concluding the Board notes the following: (1) this determination does not render the School or Synagogue illegal in any respect; (2) the cellar may still be used as a cafeteria in conjunction with the School; (3) events that are accessory to the School and/or Synagogue may be held in the cellar pursuant to the approval of DOB and in accordance with this decision.

Therefore it is Resolved that this appeal, which challenges a Department of Buildings final determination dated March 31, 2006 issued by the Brooklyn Borough Commissioner, is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

99-06-BZ

APPLICANT– Patrick W. Jones, P.C., for Norsel Realities c/o Steinberg & Pokoik, owners; Mothers Work, Inc., lessee.
SUBJECT – Application May 15, 2006 – Special Permit

§73-36 – to permit the legalization of an existing physical cultural establishment (Edamame Spa) located in the cellar portion of a 25 story commercial building located within a C5-3 (MID) Zoning District.

PREMISES AFFECTED – 575 Madison Avenue (a/k/a 53/57 East 56th Street, a/k/a 28/30 East 57th Street) East side of Madison Avenue, between East 56th and East 57th Streets, Block 1292, Lot 52, Borough of Manhattan.

COMMUNITY BOARD # 5M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 12, 2006, acting on Department of Buildings Application No. 104418621, reads in pertinent part:

“The proposed Physical Culture Establishment in the C5 zoning district requires a special permit from the Board of Standards and Appeals (ZR 32-31).”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district within the Special Midtown District, the legalization of a physical culture establishment (PCE) in the cellar of an existing 25-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 5, 2006 after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Madison Avenue, between East 56th and East 57th Streets; and

WHEREAS, the PCE currently occupies a total of 1,292 sq. ft. of space in the cellar of the building; and

WHEREAS, the applicant represents that the PCE will offer facilities for spa treatments and massages performed by licensed massage therapists; and

WHEREAS, the PCE will maintain the following hours of operation: : Monday through Wednesday, Friday, and Saturday, 10:00 a.m. to 7:00 p.m.; Thursday, 10:00 a.m. to 5:00 p.m.; and Sunday, 12:00 p.m. to 6:00 p.m.; and

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

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

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operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-089M, dated July 5, 2006; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district within the Special Midtown District the legalization of a PCE in the cellar of an existing 25-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 19, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on January 9, 2017;

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

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

THAT the hours of operation shall be limited to: Monday through Wednesday, Friday, and Saturday, 10:00 a.m. to 7:00 p.m.; Thursday, 10:00 a.m. to 5:00 p.m.; and

Sunday, 12:00 p.m. to 6:00 p.m.;

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 9, 2007.

124-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Nasanel Gold, owner.

SUBJECT – Application June 13, 2004 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and rear yard (§34-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1078 East 26th Street, East 26th Street between Avenue J and Avenue K, Block 7607, Lot 83, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 15, 2006, acting on Department of Buildings Application No. 302165403, reads in pertinent part:

“Proposed floor area contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-141.

Proposed side yard is contrary to ZR 23-48.

Proposed rear yard is contrary to ZR 23-47.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for open space, floor area, and rear and side yards, contrary to ZR §§

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23-141, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application on the condition that the enlargement not extend further into the rear yard; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject lot is located on the west side of East 26th Street, between Avenue J and Avenue K; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft., and is occupied by a 2,086.14 sq. ft. (0.83 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,086.14 sq. ft. (0.83 FAR) to 2,600.38 sq. ft. (1.04 FAR); the maximum floor area permitted is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-0 1/2" and reduce the other side yard to 5'-2" (side yards totaling 10'-0" are required with a minimum width of 5'-0" for each); and

WHEREAS, the proposed enlargement will provide a rear yard of 22'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will provide for an open space ratio of 54.28 percent (an open space ratio of 150 percent is the minimum required); and

WHEREAS, the proposed enlargement will be two stories with attic and will be located entirely at the rear of the existing home; and

WHEREAS, the Board notes that the enlargement will not be clearly visible from the street; and

WHEREAS, in response to the Community Board's comment about enlarging further into the rear yard, the Board notes that the special permit clearly contemplates enlargements at the rear of homes since they are deemed to have less impact on the character of the neighborhood and result in the least change to the streetscape as they are not visible from the street; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the FAR request is reasonable as it represents a modest increase to the existing FAR; and

WHEREAS, accordingly, 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 R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for open space, floor area, and rear and side yards, contrary to ZR §§ 23-141, 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 October 27, 2006"–(8) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT floor area in the attic shall not exceed 510.84 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,600.38 sq. ft., a total FAR of 1.04, one side yard of 5'-2", one side yard of 2'-0 1/2", a rear yard of 22'-0", and an open space ratio of 54.28 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s); 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; 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, January 9, 2007.

252-06-BZ

APPLICANT – Randolph Croxton, for Mount Hope Community Center, owner.

SUBJECT – Application September 15, 2006 – Variance

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pursuant to Z.R. §72-21 to permit the construction of a four-story Use Group 4 community center facility. The premises is located in an R8 zoning district and is currently a vacant lot. The proposal is seeking waivers of Z.R. §24-36 and §24-393 (proposed portion of the new building located in the rear yard is not a permitted obstruction per Z.R. §24-33 (b) paragraph (3)). A waiver of §24-382 is also requested relating to the proposed portion of the new building on a through lot exceeding 110 feet in depth which requires a rear yard equivalent.

PREMISES AFFECTED – 55 East 175th Street, between Townsend Avenue and Walton Avenues, Lot 2850, Lot 38, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 22, 2006, acting on Department of Buildings Application No. 200983301, reads in pertinent part:

- “1. In an R8 zoning district, the proposed portion of the new building located on a through lot exceeding 110’ in depth requires a rear yard equivalent per Section 24-382 ZR.
2. In an R8 zoning district, the proposed portion of the new building located in the rear yard required per Sections 24-36 and 24-393 ZR is not a permitted obstruction per Section 24-33(b) paragraph (3) ZR”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, the construction of a four-story community center facility (Use Group 4), which is contrary to ZR §§ 24-33 and 24-382; and

WHEREAS, the applicant proposes a multi-level building with one, two, three, and four story components (including a gymnasium) with a total floor area of 41,985 sq. ft. (1.58 FAR); and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, with a continued hearing on December 12, 2006, and then to decision on January 9, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Bronx, recommends approval of the application; and

WHEREAS, the Borough President provided testimony

in support of the application; and

WHEREAS, certain community members provided testimony in support of the application; and

WHEREAS, this application is brought on behalf of the Mount Hope Housing Company (the “Center”), a nonprofit institution; and

WHEREAS, the zoning lot, which comprises former tax lots 34, 38, and portions of lots 60 and 63, is located in the southern half of the block bounded by Townsend and Walton Avenues and 176th and 175th Streets; and

WHEREAS, the shape of the site is that of two adjacent rectangles – a 140 ft. by 100 ft. rectangle at the corner of East 175th Street and Townsend Avenue and a 125 ft. by 100 ft. rectangle at the interior of the block with frontage on Townsend Avenue and Walton Avenue - which abut at the center of the block for a distance of 40 feet; and

WHEREAS, because of the site’s unique shape, the zoning lot has three components: (1) a corner lot on the southeast corner of Townsend Avenue and East 175th Street (the “Corner Lot”), (2) a through lot with frontage on Townsend Avenue and Walton Avenue (the “Through Lot”), and (3) an interior lot with frontage on Walton Avenue, between East 175th Street and East 176th Street (the “Interior Lot”); and

WHEREAS, the Corner Lot is a 100 ft. by 100 ft. square, the Through Lot is a rectangle with 40 feet of frontage on both Townsend Avenue and Walton Avenue and a depth of 200 feet; and the Interior Lot is a rectangle with frontage on Walton Avenue, frontage of 85 feet on Walton Avenue, and a depth of 100 feet; and

WHEREAS, the subject site is within an R8 zoning district; and

WHEREAS, the subject site has a total lot area of 26,500 sq. ft. and is unimproved; and

WHEREAS, the Center proposes to construct a community facility building on the site, with a one-story gymnasium on the Interior Lot and a portion of the Through Lot, and a primary building with heights ranging from one to four stories on the Through Lot and the Corner Lot; and

WHEREAS, the primary building will be occupied by office space, meeting rooms and classrooms; and

WHEREAS, the Center purchased the site and designed its new building prior to a ZR text change affecting community facilities, noted below; and

WHEREAS, the applicant represents that due to budgetary constraints, the building was not constructed; and

WHEREAS, the applicant represents that the proposed community facility was designed to achieve efficient floor plates and to accommodate all of the Center’s services, which are currently located in several different locations; and

WHEREAS, the applicant notes that in 2004 there was a text amendment to ZR § 24-33 related to community facility use, which prohibits rear yard encroachments located beyond 100 feet of the intersection of a wide street except for certain uses such as schools, hospitals, and houses of worship; the proposed community facility is not among the enumerated

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exceptions; and

WHEREAS, the applicant proposes to encroach into the rear yard equivalent on the Through Lot for one story, and a small two-story portion, for a height of less than 23 feet; the applicant proposes to encroach into the rear yard of the Interior Lot for one story, for a height of less than 23 feet; and

WHEREAS, the portions of the building that require waivers would have been as-of-right under the former zoning as permitted obstructions of one story and less than 23 feet in height in the rear yard (and rear yard equivalent) of a community facility building; and

WHEREAS, the rear yard requirements for each portion of the lot are as follows: (1) no rear yard is required for the Corner Lot; (2) a 60 ft. rear yard or 60 ft. of rear yard equivalent is required for the Through Lot; and (3) a 30 ft. rear yard is required for the Interior Lot; and

WHEREAS, because the applicant proposes full lot coverage for the Through Lot and Interior Lot, waivers are required for rear yard equivalent and rear yard, respectively; and

WHEREAS, the Center currently occupies a small inadequate office with several smaller spaces in apartment buildings it manages; and

WHEREAS, the applicant states that the following are the programmatic needs of the Center: (1) a need to consolidate its community outreach facilities into one center; (2) a need to expand recreational programming for youth, including a large number of asthma sufferers, in a safe clean environment; (3) a need to expand the educational programs; (4) a need for community meeting space; and (5) a need to promote a commitment to the environment; and

WHEREAS, in addition, the applicant asserts that the irregular shape of the lot constrains a complying use; and

WHEREAS, in order to meet the programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the rear yard and rear yard equivalent waivers are necessary to provide an adequate gymnasium with regulation/standard sized facilities; and

WHEREAS, the applicant represents that without the waivers, the gymnasium would be too constrained to fit on the Interior Lot and that a feasible design could not be accommodated if the gymnasium were relocated on the Corner Lot due to the need for an entrance courtyard; and

WHEREAS, because providing a recreation space which can be used year round is an important goal of the Center, the accommodation of the gymnasium on the Interior Lot is necessary; and

WHEREAS, further, the applicant represents that the waivers are required in order to provide circulation within the building and access to all the required services; access would be cut off if encroachment into the rear yard and rear yard equivalent was not permitted; and

WHEREAS, the Board finds that the Center's programmatic needs are legitimate, and agrees that the proposed building is necessary to address the Center's needs,

given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site including its noted irregular shape and unique configuration, when considered in conjunction with the programmatic needs of the Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Center is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, specifically, the applicant states that the site is located in a primarily residential area and is surrounded by a number of five and six-story multi-dwelling buildings; there are also two schools to the north of the subject block; and

WHEREAS, additionally, the applicant states that there is a new seven-story residential building on the northeast corner of the block, with a grocery store and laundromat on the first floor; and

WHEREAS, further, the applicant states that the building has been designed so that its height respects the adjacent residential uses by providing setbacks and confining the tallest portions of the building to portions of the Corner Lot and Through Lot; and

WHEREAS, the applicant notes that the building also provides open space in the form of an entrance courtyard on 175th Street, which is compatible with the context for entrance courtyards in the surrounding area; and

WHEREAS, specifically, the applicant will limit the encroachments into the rear yard and rear yard equivalent to one story (except for a small two-story portion on the Through Lot) and heights ranging from 14 ft. to 23 ft. so as to minimize any impact; and

WHEREAS, additionally, the applicant states that the building design includes materials and landscaping which are compatible with that of nearby buildings; and

WHEREAS, the Center proposes to provide open space at the front of the East 175th Street frontage and additional terraces and open spaces at various levels to contribute to the open space of the area and to promote the environmental initiatives of the Center; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Center could occur on the

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existing lot given the existing conditions; and

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

WHEREAS, the applicant represents that the requested waivers for rear yard and rear yard equivalent are the minimum waivers necessary to accommodate the Center's current and projected programmatic needs; and

WHEREAS, the applicant notes that the proposed building will have a total floor area of 41,985 sq. ft. (1.58 FAR) which is less than one third of the permitted floor area for a community facility in the subject R8 zoning district (a maximum floor area of 172,250 sq. ft. (6.5 FAR) is permitted); and

WHEREAS, the Board notes that the applicant will limit the encroachments into the rear yard and rear yard equivalent, as discussed above, so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Center to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as a Type II action pursuant to Sections 617.13 of 6 NYCRR; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 zoning district, the construction of a four-story community center facility (Use Group 4), which is contrary to ZR §§ 24-33 and 24-382, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 15, 2006"-(3) sheets and "October 25, 2006"-(6) sheets and; and *on further condition*:

THAT the total floor area shall not exceed 41,985 sq. ft. (1.58 FAR), 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 objection(s);

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

THAT the Department of Buildings must ensure compliance with all 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, January 9, 2007.

87-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).

PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik, and Randy Peres, CB #7.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for continued hearing.

330-05-BZ

APPLICANT– Vito J. Fossella, P.E., for Frank Bennett, owner.

SUBJECT – Application November 16, 2005 – Special permit (§73-36). In a C2-2/R3-2 district, on a lot consisting of 5,670 SF, and improved with two one-story commercial buildings, permission sought to allow a physical culture establishment in the cellar of one existing building in 350 New Dorp Lane and in the enlarged cellar of an existing adjacent retail building at 346 New Dorp Lane.

PREMISES AFFECTED – 350 New Dorp Lane, Block 4221, Lot 53, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 30, 2007, at 1:30 P.M., for decision, hearing closed.

29-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Iliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR § 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§ 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.

PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Irving Minkin.

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ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking.

Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

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

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for continued hearing.

50-06-BZ

APPLICANT – Jeffrey A. Chester, Esq., for 461 Carool Strait, LLC, owner.

SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.

PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 30, 2007, at 1:30 P.M., for deferred decision.

54-06-BZ

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.

SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story and cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family

dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR §113-51 (Floor Area); §113-55 and §23-631 (Perimeter Wall Height, Total Height and Sky Exposure Plane); §113-542 and §23-45 (Front Yard and Setback); §113-543 and §23-461(a) (Side Yard); §113-544 (Rear Yard); §113-561 and §23-51 (Parking); and §113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, David Shteierman, Nisson Wolpin, Martin Katz and Rabbi Edgar Gluck.

For Opposition: Stuart Klein, Marin Pope, Eli Feit, Michael Gregorio, Pinny Sefir, Alfred Langner, Philip G. Kee, III, Rachel Fracnc, Pat Johnson, Barry Rosner, Farge Krausz and Renee Dweck.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for decision, hearing closed.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. §42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Laid over to January 30, 2007, at 1:30 P.M., for continued hearing.

75-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to §72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§23-142 and §35-22), open space ratio (§23-142, §35-22 and §35-33) and sky exposure plane (§23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast

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corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

79-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246’ east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Steven Sinacori.

For Opposition: Meredith Statone, CB #8 and Amyre Loomis.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for continued hearing.

82-06-BZ

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 – pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. §22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ).The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls and Eric Meyer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 6, 2007, at 1:30 P.M., for decision, hearing closed.

137-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.

SUBJECT – Application June 30, 2006 – Variance (§72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (§23-461) and does not line up with front yard line of adjacent lot (§23-45 (b)) in an R4A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, west side of Hering Avenue 325’ south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD # 11BX

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for continued hearing.

141-06-BZ

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo Ledovid, owner.

SUBJECT – Application July 6, 2006 – Variance pursuant to §72-21 to permit the proposed three-story synagogue. The Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (§24-11); front yards (§24-34); side yard (§24-35); wall height and sky exposure plane (§24-521); and parking (§25-31).

PREMISES AFFECTED – 2084 60th Street, southwest corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, Martin Katz.

For Opposition: Leo Weinberger, Vito Pictanza, Joseph Oliva, Lucille Catania, Barbara Pulice, Amadeo Zelferino and Shirl Basehore.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

181-06-BZ

APPLICANT – Greenberg Trarurig, LLP, by Jay Segal/Deirdre Carson, for 471 Washington Street Partners, owners.

SUBJECT – Application August 21, 2006 – Zoning variance pursuant to (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units and ground floor retail use in an M1-5 district (Area B-2 of the Special Tribeca Mixed Use District). The proposal is contrary to use regulations (§42-10 and §111-104(d)).

PREMISES AFFECTED – 471 Washington Street (a/k/a 510-520 Canal Street), Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal, Ben Hansen and Margo Fleug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

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ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for decision, hearing closed.

263-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area §23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to February 6, 2007, at 1:30 P.M., for continued hearing.

267-06-BZ

APPLICANT– Stadtmauer Bailkin, LLP, for Philip Zerillo and Peter Zuccarello, owners.

SUBJECT – Application September 29, 2006 – Variance (§72-21). On a lot consisting of 5,902 SF, and located in an R2 district, permission sought to construct a two-story plus cellar commercial building. The structure will contain 3,431 SF (FAR .58), and will have five accessory parking spaces. The uses therein will be UG6 professional offices. Currently the site is improved with a 1,507 SF two-story, one-family vacant residential structure with a detached garage.

DOB Objection: §22-00: Proposed use is contrary to district use regulations.

PREMISES AFFECTED – 148-29 Cross Island Parkway, Block 4486, Lots 34, 35, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Sinacori, Frank Macchio and Pat Carpentiere.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 30, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned:5:45 P.M.

BULLETIN

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239-04-BZ	225 Starr Street, Brooklyn
159-05-BZ	880 Annadale Road, Staten Island
427-05-BZ	133-47 39 th Avenue, Queens
25-06-BZ	2908 Nostrand Avenue, Brooklyn
36-06-BZ	2125 Utica Avenue, Brooklyn
67-06-BZ	2270 Clove Road, Staten Island
103-06-BZ	1324 East 23 rd Street, Brooklyn
107-06-BZ	140 East 63 rd Street, Manhattan
115-06-BZ	1820 East 28 th Street, Brooklyn
122-06-BZ	2671 86 th Street, Brooklyn
128-06-BZ	415 Washington Street, Manhattan
133-06-BZ	225 Varick Street, Manhattan
175-06-BZ	1653/9 Richmond Road, Staten Island
177-06-BZ	1840 Richmond Terrace, Staten Island
180-06-BZ	515 West 185 th Street, Manhattan
236-06-BZ	1500 East 21 st Street, Brooklyn
274-06-BZ	116-07 132 nd Street, Queens

CORRECTION.....78

Affected Calendar Number:

374-02-BZ	267-20 74 th Avenue, Queens
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DOCKETS

New Case Filed Up to January 23, 2007

12-07-A

25 Allegro Street, North side of Allegro Street, 101.33 southwest corner of Bertram Avenue & Allegro Street., Block 6462, Lot(s) 44 Borough of **Staten Island, Community Board: 3**. General City Law Section 36, Article 3-Proposed construction of a one family dwelling building. Was on as new for 3-6-07.

13-07-BZ

1120 East New York Avenue, Northeast corner of East New York Avenue and Rockaway Parkway., Block 4600, Lot(s) 1 & 7 Borough of **Brooklyn, Community Board: (SPECIAL PERMIT)11-413**-For a change in use from a parking and vehicle storage lot (UG8) to an accessory parking lot (UG6).

14-07-BZ

152 Franklin Street, The site contains 50.33 feet of frontage on Franklin Street., Block 189, Lot(s) 7506 Borough of **Manhattan, Community Board: 1**. (SPECIAL PERMIT)-73-36-Establishment is not in operation, due to financial hardship and contractual obligations, the facility opened for business on January 26, 2007. To legalize the Tribeca West Historic District.

15-07-BZ

199 Mount Eden Parkway, Mount Eden Parkway between Selwyn Avenue and Morris Avenue., Block 2824, Lot(s) 19 Borough of **Bronx, Community Board: 4**. Under 72-21-To permit the erection of a (UG4) ambulatory care facility.

17-07-BZY

421 West 250th Street, Located at the corner of Grosvenor Avenue and 250th Street., Block 5831, Lot(s) 10 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-To complete construction and /or obtain Certificate of Occupancy for a minor development.

18-07-BZY

5000 Iselin Avenue, Located at the corner of Grosvenor Avenue and 250th Street., Block 5831, Lot(s) 20 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-To complete construction and /or obtain Certificate of Occupancy for a minor development.

19-07-BZY

5020 Iselin Avenue, Located at the corner of Grosvenor Avenue and 250th Street., Block 5831, Lot(s) 30 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-To complete construction and /or obtain Certificate of Occupancy for a minor development.

20-07-BZY

5310 Grosvenor Avenue, The premises are part of an approximately 15-acre site known a Chapel Farm, Located in the Riverdale section of the Bronx, NY. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5839, Lot(s) 4018 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy for a major development.

21-07-BZY

5300 Grosvenor Avenue, The premises are part of an approximately 15-acre site known a Chapel Farm, Located in the Riverdale section of the Bronx, NY. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5839, Lot(s) 4025 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy for a major development.

22-07-BZY

5000 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5830, Lot(s) 3912 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

23-07-BZY

5020 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5830, Lot(s) 3920 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

DOCKET

24-07-BZY

5030 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5830, Lot(s) 3920 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

25-07-BZY

5041 Goodridge Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5830, Lot(s) 3940 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

26-07-BZY

5030 Goodridge Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5829, Lot(s) 3630 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

27-07-BZY

5040 Goodridge Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5829, Lot(s) 3635 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

28-07-BZY

5051 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5831, Lot(s) 40 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

29-07-BZY

5041 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5831, Lot(s) 50 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

30-07-BZY

5031 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5831, Lot(s) 60 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

31-07-BZY

5021 Grosvenor Avenue, The premises are part of an approximately 15-acre site known as Chapel Farm, located in the Riverdale section of the Bronx, New York. These parcel projects are located in an area that is zoned as Special Natural Area District number 2 ("SNAD")., Block 5831, Lot(s) 70 Borough of **Bronx, Community Board: 8**. Extension of Time-11-332-Time to complete construction and obtain a Certificate of Occupancy.

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

FEBRUARY 6, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 6, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

597-39-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Kings Parsons Car Care Inc., lessee.

SUBJECT – Application December 11, 2006 – 11-412 Amendment to a gasoline service station (Exxon Mobil) for the erection of a new steel canopy and to legalize the conversion from one pump island to two pump islands, conversion of a portion of the service building to a convenience store, the installation of a car vacuum and public telephone on site, four curb cuts and wood planters in a C1-4/R5D zoning district.

PREMISES AFFECTED – 84-04 Parsons Boulevard, aka 152-16 84th Avenue, southwest corner of 84th Avenue, Block 9751, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

166-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Kassiani Katos, owner; KPS Food Corporation, lessee.

SUBJECT – Application August 30, 2006 – Extension of Term and waiver of the rules for variance to permit an eating and drinking establishment (Burger King & Popeye's) which expired in January 6, 2006 in a C1-2(R3-2) and R3-2 zoning district; and an extension of Time to obtain a certificate of occupancy which expired on March 18, 1998.

PREMISES AFFECTED – 164-17 Union Turnpike, north side of Union Turnpike, 148.83' east of 164th Street, Block 6972, Lot 21, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

213-06-A

APPLICANT – Fredrick A. Becker, Esq., for 7217 Grand Avenue Corp., owner.

SUBJECT – Application August 23, 2006 – to permit the construction of three story mixed use commercial /residential structure within the bed of a mapped street (72nd Place), contrary to General City Law Section 35. Premises is located in an C1-2 (R6B) Zoning District.

PREMISES AFFECTED – 72-19 Grand Avenue, northwest corner of Grand Avenue and 72nd Place, Block 2506, Lot 96 (tent.), Borough of Queens.

COMMUNITY BOARD #5Q

238-06-A

APPLICANT – Kevin A. Finnegan, for Elizabeth Langwith, et al.

OWNER: Hudson 12th Development, LLC.

SUBJECT – Application September 12, 2006 – Appeal of the decision of the DOB refusal to revoke permits issued for a proposed dormitory (NYU) on a lot formerly occupied by St Anne's Church that allows the creation of a zoning lot under Section 12-10 (d) utilizing unused developmental rights from the United States Post Office, a government agency that is exempt from zoning regulations. C6-1 zoning district.

PREMISES AFFECTED – 110-124 East 12th Street, between Third and Fourth Avenue, Block 556, Lots 48 & 49, Borough of Manhattan.

COMMUNITY BOARD #3M

FEBRUARY 6, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 7, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

183-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Dimitrios Spanos.

SUBJECT – Application August 5, 2005 – Variance (§ 72-21) to allow the residential redevelopment and enlargement of an existing two-story commercial building. The proposed multiple dwelling building will be six (6) floors and will contain ground floor commercial space. Twenty (20) dwelling units and ten (10) accessory parking spaces are proposed. The proposal is contrary to use regulations (§ 42-00). M1-3D district.

PREMISES AFFECTED – 25-09 38th Avenue, north east corner of the intersection of Crescent Street and 38th Avenue, Block 368, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

118-06-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Cohn, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage, open space and floor area, ZR 23-141(a) and rear yard, ZR 23-47 in an R3-1 zoning district.

CALENDAR

PREMISES AFFECTED – 71 Beaumont Street, east side, 220' north of Hampton Avenue and Shore Boulevard, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

157-06-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for C & K Steinway, LLC, owner; TSI Astoria Inc. dba New York Sports Club, lessee.

SUBJECT – Application July 15, 2006 – Special Permit (§73-36) to legalize the enlargement of a previously approved physical culture establishment on the first and second floor of a three story commercial building. C4-2A, C2-2(R6) zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, northwest corner of Steinway Street and 30th Avenue, Block 662, Lot 41, Borough of Queens.

COMMUNITY BOARD #1Q

237-06-BZ

APPLICANT – Moshe M. Friedman, for Jonathan M. Schwartz, owner.

SUBJECT – Application September 12, 2006 – Special Permit (73-622) for the enlargement of a single family semi-detached residence. This application seeks to vary open space and floor area (23-141(a)); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1462 East 26th Street, west side 333'-7" north of the intersection formed by East 26th Street and Avenue O, Block 7679, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§ 72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§ 23-861). R6B district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

266-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Woodcutters Realty Corp., owner; Three on Third LLC,

lessee.

SUBJECT – Application September 29, 2006 – Special Permit (§ 73-52) to extend C6-1 zoning district use and bulk regulations twenty-five (25) feet into an adjacent R7-2 district to allow a mixed-use building containing Use Group 5 (transient hotel) on the residentially zoned portion of the subject zoning lot. C6-1 and R7-2.

PREMISES AFFECTED – 4 East 3rd Street, a/k/a 335-343 Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #3M

Jeff Mulligan, Executive Director

FEBRUARY 13, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 13, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner.

SUBJECT – Application October 23, 2006 - Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEALS CALENDAR

292-06-A

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6/M1-1. M1-2/R6A & Mx-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

CALENDAR

FEBRUARY 13, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 13, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

318-05-BZ

APPLICANT- Marc A. Chiffert, P.E., for 2040 MLK Realty, LLC, owner.

SUBJECT - Application November 1, 2005 - Zoning variance under §72-21 to allow a proposed horizontal enlargement of an existing one-story non-conforming commercial building in an R7-1 district. The proposal calls for Use Group 6 retail use and is contrary to §52-22.

PREMISES AFFECTED - 2040 Dr. MLK JR Boulevard f/k/a 2040 University Avenue, northeast corner of intersection of West Burnside Avenue and Dr. MLK Jr. Boulevard, Block 3210, Lot 2, Borough of Bronx.

COMMUNITY BOARD #5BX

73-06-BZ

APPLICANT- Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT - Application April 21, 2006 - Special Permit (§73-36) to allow the legalization of a PCE in a portion of the cellar and a portion of the first floor in a three-story building in a C2-3/R6 zoning district.

PREMISES AFFECTED - 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

96-06-BZ

APPLICANT - Stuart A. Klein, Esq., for West Properties, Inc., owner; Acqua Beauty Bar NY, Inc., lessee.

SUBJECT - Application May 15, 2006 - Special Permit (§73-36) to permit, in a C5-P zoning district located within the Midtown Special District and Preservation Subdistrict, the placement of a Spa within the cellar, first and second floors of an existing six (6) story commercial building. The proposal is contrary to section 32-10.

PREMISES AFFECTED - 39 West 56th Street, north side of 56th Street between 5th and 6th Avenues, Block 1272, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

97-06-BZ

APPLICANT - Stuart A. Klein, Esq., for BFB Partners, LLC, owner; Thai Privilege Spa Company (NY), Limited, lessee.

SUBJECT - Application May 15, 2006 - Special Permit (§73-36) to permit, in an M1-5A zoning district located within the Landmark's Preservation Commission's Shoh Cast Iron District, the placement of a physical culture establishment (PCE) within a portion of an existing six (6) story commercial building.

PREMISES AFFECTED - 153-155 Spring Street, aka 411 West Broadway, frontage east side of West Broadway, Block 501, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #2M

98-06-BZ & 284-06-A

APPLICANT- Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT - Applications May 16, 2006 and October 25, 2006 - Variance (72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (24-11); total height (24-521); front yard (2434); side yard (24-35); sky exposure plane (24-521); setback requirements (24-521); and level of yards (24-531).

Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED - 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 & 51, Borough of Queens.

COMMUNITY BOARD #14Q

136-06-BZ

APPLICANT- Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT - Application June 29, 2006 - Zoning variance under § 72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§ 42-00), FAR (§ 43-12), and rear yard (§ 43-26 and § 43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED - 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7,8,9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

290-06-BZ

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT - Application November 1, 2006 - Variance under §72-21 to allow a six (6) story residential building

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containing ground floor retail and eight (8) dwelling units.

The project site is located within an M1-5B district and is contrary to use regulations (§§ 42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 23, 2007
10:00 A.M.**

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, October 17, 2006 as printed in the bulletin of October 26, 2006, Vol. 91, Nos. 39 and 40. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

308-79-BZ

APPLICANT – Stuart A. Klein, Esq., for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Assoc. LLC; lessee.

SUBJECT – Application July 3, 2006 – Extension of Term/Amendment/Waiver – To allow the continuation of an existing Physical Culture Establishment, located in a R7-1 (LH-1) zoning district, which was granted pursuant to §73-36 of the zoning resolution. The amendment seeks to make minor interior modifications.

PREMISES AFFECTED – 43 Clark Street, a/k/a 111 Hicks Street, south west corner of Hicks and Clark Streets, Block 231, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Madeline Fletcher.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to legalize interior modifications, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on July 3, 2004; and

WHEREAS, a public hearing was held on this application on December 5, 2006 after due notice by publication in *The City Record*, to continued hearing on January 9, 2007, and then to decision on January 23, 2007; and

WHEREAS, the subject premises is located on the southwest corner of Hicks Street and Clark Street; and

WHEREAS, the site is located within an R7-1 zoning district within a Limited Height (LH-1) zoning district, and is occupied by a 29-story residential building with commercial uses on the ground floor; and

WHEREAS, the PCE is operated as Eastern Athletic Club

and occupies 23,406.19 sq. ft. on the cellar level, 26,155.63 sq. ft. in the basement, 14,291.73 sq. ft. on the first floor, 8,052.96 sq. ft. on the second floor, 3,035.39 sq. ft. on the fourth floor, and 895.4 sq. ft. on the fifth floor for a total floor space of approximately 75,837.4 sq. ft.; and

WHEREAS, on July 3, 1979, the Board granted a variance, pursuant to ZR § 72-21, to permit the continued operation of the PCE in the subject building; and

WHEREAS, on October 31, 1995, the Board extended the term of the variance and permitted the expansion of the PCE onto the second floor; and

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

WHEREAS, additionally, the applicant proposes to legalize a number of interior modifications; and

WHEREAS, the modifications include: reconfiguration of the cellar space; relocation of the basement level shop, offices, and child care area; enlargement and relocation of the stairs; reconfiguration of the first floor sports courts; and reconfiguration of the second floor spectator area; and

WHEREAS, the applicant does not propose any change to the approved bulk, egress, floor area, or occupancy; and

WHEREAS, at hearing, the Board asked the applicant to clearly indicate the exit paths and travel distances on the plans; and

WHEREAS, the applicant responded that the exits all complied with Building Code requirements and revised the plans to indicate the exit paths; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 3, 1979, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on July 3, 2014 and to legalize site modifications; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received December 26, 2006’– (5) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from July 3, 2004, expiring July 3, 2014;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

MINUTES

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 302185427)

Adopted by the Board of Standards and Appeals, January 23, 2007.

230-98-BZ

APPLICANT – Agusta & Ross, for John and Gaetano Iacono, owners.

SUBJECT – Application October 16, 2006 – Extension of Time to obtain a Certificate of Occupancy which expired on April 30, 2003 for an automotive repair shop and the sale of used cars (2) in an R5 zoning district.

PREMISES AFFECTED – 5810-5824 Bay Parkway, northeasterly corner of Bay Parkway and 59th Street, Block 5508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver, a reopening, and an extension of the time to obtain a Certificate of Occupancy for an automotive repair and sales business, which expired on April 30, 2003; and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in *The City Record*, and then to decision on January 23, 2007; and

WHEREAS, the subject premises is located on the northeast corner of Bay Parkway and 59th Street, within an R5 zoning district; and

WHEREAS, the site is occupied by a one-story garage building; and

WHEREAS, in 1948, under BSA Cal. No. 594-24-BZ, the Board granted a variance to permit automotive repair and sales at the site; and

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

WHEREAS, the grant was re-established in 1982, under BSA Cal. No. 736-82-BZ, which permitted additional automotive repair services; the Board denied the renewal of the grant in 1995; and

WHEREAS, on June 22, 1999, under the subject calendar number, the Board granted a variance to again legalize the existing automotive repair and sales business; the term of the variance was for one year, to expire on June 22, 2000; and

WHEREAS, on October 30, 2001, the Board extended the term of the variance for ten years to expire on June 22, 2010; and

WHEREAS, the Board also approved the sub-division of

the lot which resulted in an as of right use at 5810 Bay Parkway and the subject use at 5824 Bay Parkway; and

WHEREAS, one of the conditions of the most recent grant was that a new certificate of occupancy be obtained within 18 months of October 30, 2001; and

WHEREAS, the applicant states that, although almost all of the work is completed, a new certificate of occupancy has not been obtained; and

WHEREAS, the applicant now requests one year to obtain a new certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 22, 1999, so that as amended this portion of the resolution shall read: “to grant an extension time to obtain a certificate of occupancy for one year from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT a certificate of occupancy shall be obtained by January 23, 2008;

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.”

(Alt. 592/1981)

Adopted by the Board of Standards and Appeals, January 23, 2007.

105-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Elizabeth Iocovello.

SUBJECT – Application May 9, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3242 Reservoir Oval East, south side, approx. 240’ east of Bainbridge Avenue, west of Holt Place, Block 3343, Lot 28, Borough of The Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: John Saracco.

ACTION OF THE BOARD – Application dismissed.

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 12, 2005, acting on Department of Buildings Application No. 200944522, reads, in pertinent part:

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“Proposed construction is located within the bed of a mapped street contrary to Section 35 of the General City Law.”; and

WHEREAS, this is an application to permit, within an R7-1 zoning district, the construction of a multi-family residential building within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, the application was filed on May 9, 2005; and

WHEREAS, on June 8, 2005, Board staff sent notification about the application to the Department of Transportation (DOT), the Department of Environmental Protection (DEP), and Community Board 1, Queens; and

WHEREAS, on July 14, 2005, the Board received a letter from DEP requesting that a survey be performed since there was an Adopted Drainage Plan for a future sewer to be installed at Reservoir Oval East; Board staff sent the letter to the original applicant, David Vandor; and

WHEREAS, on August 9, 2005, the Board received a letter from the Fire Department stating that it had no objection to the application; and

WHEREAS, on August 22, 2005, the Board received a letter from DOT stating that it would require a 10 ft. sidewalk between the curb and the new structure; Board staff sent the letter to the original applicant, David Vandor; and

WHEREAS, in December 2005, Board staff contacted the applicant for a status update and was informed that the owner was investigating whether or not to proceed with the project; and

WHEREAS, on March 14, 2006, the original applicant, David Vandor, informed the Board that he was no longer representing the owner and that John Saracco, the architect for the project, would be prosecuting the application; and

WHEREAS, on July 31, 2006, Board staff sent John Saracco the DOT and DEP letters; and

WHEREAS, on August 1, 2006, the new applicant submitted a letter stating that the owner planned to proceed with the application and would respond to the DOT and DEP requests; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, at hearing, the Board asked the applicant about the status of the application; and

WHEREAS, the applicant responded that due to the owner needed additional time to determine whether or not the project was financially viable, given the expense of the sewer system; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and

WHEREAS, on November 16, 2006, the Board sent the applicant a notice stating that the case had been put on the January 23, 2007 dismissal calendar; and

WHEREAS, the applicant did not respond to this notice; and

WHEREAS, because of the applicant’s lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under

BSA Cal. No. 105-05-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, January 23, 2007.

287-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: 32-42 33 Street, LLC, owner.

SUBJECT – Application September 15, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None

ACTION OF THE BOARD – Application withdrawn from the dismissal calendar.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, January 23, 2007.

312-05-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Gladiator Gymnasium.

SUBJECT – Application October 19, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 82-24 Northern Boulevard, between 82nd and 83rd Streets, Block 1430, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 19, 2005, acting on Department of Buildings Application No. 401583087, reads in pertinent part:

“Zoning objection for proposed use on 2nd and 3rd floors. Physical Culture or Health Establishments, including gymnasiums are not permitted within a C1-2 in R4 zoning district as per Zoning Resolution Sections 32-00 and 22-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C1-2 zoning district, the legalization of a Physical Culture Establishment, which occupies the second floor and penthouse of an existing two-story and penthouse

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commercial building; and

WHEREAS, the PCE has occupied and operated within the building illegally since June 2000; and

WHEREAS, the variance application was filed on October 19, 2005; and

WHEREAS, on January 13, 2006, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, the Notice of Objections requested that the applicant submit the following: a revised BSA zoning analysis, an objection from DOB regarding the FAR and any other non-complying conditions, detailed building plans, plans reflecting the legal conditions, additional information on the physical characteristics of the site and existing building, and a revised feasibility analysis; and

WHEREAS, on July 12, 2006, the applicant requested additional time to reply to the Notice of Objections; an extension of time to respond was granted; and

WHEREAS, on November 1, 2006, the applicant requested to have until November 6, 2006 to notify the Board as to whether or not the PCE operator was prepared to proceed with the application; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and

WHEREAS, on November 16, 2006, the Board sent the applicant a notice stating that the case had been put on the January 23, 2007 dismissal calendar; and

WHEREAS, by letter dated January 17, 2007, the applicant requested a two-week postponement to allow additional time to respond to the Notice of Objections; and

WHEREAS, Board staff informed the applicant, by telephone, that the postponement would not be granted and that he should appear at the dismissal hearing with any submissions; and

WHEREAS, at the January 23, 2007 hearing, the applicant stated that there had been a fire on the roof of the subject building; and

WHEREAS, the applicant stated that the owner had taken more than a year to repair the roof and the related water damage in the PCE so that the PCE could re-open and serve its members; and

WHEREAS, the applicant did not provide any submissions in response to the Notice of Objections; and

WHEREAS, the Board asked the applicant why, after the fire and disruption of business, a variance was not sought before resuming operation of the PCE; and

WHEREAS, the applicant responded that the owner resumed operation without seeking to first legalize the PCE because of the financial hardship that would be incurred if the PCE were closed; and

WHEREAS, the Board is concerned about the willingness of the PCE operator to expend resources to reopen an illegal use while failing utterly to prosecute an existing legalization application before the Board; and

WHEREAS, the Board notes that the PCE use is not even

permitted on this site through a special permit, and that the operator has engaged in illegal use of the site for approximately six and one-half years; and

WHEREAS, accordingly, because of the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 312-05-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, January 23, 2007.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg and Karen Shalmoni.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for continued hearing.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

For Opposition: Terri Pouymari.

ACTION OF THE BOARD – Laid over to March 6 23, 2007, at 10 A.M., for continued hearing.

395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsorfer, lessee.

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SUBJECT – Application June 16, 2006 – Request for a re-opening and amendment to a previously-granted variance (§ 72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54th Street, southwest side 242’-6” southeast of the intersection formed by 54th and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moishe Friedman.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for continued hearing.

1053-88-BZ

APPLICANT – Freda Design Associates, Ltd., for Isidore Izzo, owner.

SUBJECT – Application August 23, 2006 – Extension of Term and waiver of the rules for a variance (§72-21) to allow a (UG6) pharmacy (Rite-Aid) in a R7-1 zoning district which expired on September 27, 2004.

PREMISES AFFECTED – 590/596 East 183rd Street, located between Arthur Avenue and Adams Avenue, Block 3071, Lots 16 & 17, Borough of The Bronx.

COMMUNITY BOARD #6BBX

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 6, 2007, at 10 A.M., for decision, hearing closed.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment-To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for continued hearing.

265-02-BZ

APPLICANT – Peter Hirshman, for Ramakrishna Vivekananda Center, owner.

SUBJECT – Application October 13, 2006 – Extension of time to complete construction and to obtain a Certificate of Occupancy which expires on August 12, 2007 for a community facility use (UG4) (Ramakrishna-Vivekananda Center of New York) located in an R8B and R10 zoning district.

PREMISES AFFECTED – 19 East 94th Street, south side 108’ west of the intersection of Madison Avenue, Block 1506, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 6, 2007, at 10 A.M., for decision, hearing closed.

383-04-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Israel Realty; lessee: Total Fitness & Karate Center.

SUBJECT – Application December 6, 2004 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 46-21 Greenpoint Avenue, 47th Street, Block 152, Lot 1, Borough of Queens.

COMMUNITY BOARD #2 Q

APPEARANCES –

For Applicant: Silvia Boscolo.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Harold Weinberg.

For Opposition: Mark J. Kurzman and Joel Cohen.

For Administration: Angelina Martinez, Department of Buildings.

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ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for continued hearing.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Sanford Sulny,, Harold Weinberg and Oscar Lehmann.

For Opposition: Bernard Weill and Sidney Stern.

For Administration: Narisa Sasitorn, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for decision, hearing closed.

182-06-A thru 211-06-A

APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront Community, LLC, owner.

SUBJECT – Application August 22, 2006 – An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. Premises is located in an R4-A Zoning district.

PREMISES AFFECTED – Beach 5th Street, Beach 6th Street and Seagirt Avenue, bound of Seagrit Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67 and 69 Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Richard Bowers, Mitch Korbey and Steven Sinacori.

For Opposition: Susan Wagner, Tracy A Conroy and Frantuuccio.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for decision, hearing closed.

77-06-A & 78-06-A

APPLICANT – Stephen J. Rizzo, Esq., for Block 7092 LLC, owner.

SUBJECT – Application April 27, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the zoning district regulations in effect as of March 1999. R3-2 Zoning District.

PREMISES AFFECTED – 96 Crabtree Avenue, Woodrow Road east of Turner Street, Block 7092, Lot 1, Block 7105, Lots 555 & 561, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Steve Rizzo.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for continued hearing.

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Inc., owner; Thomas Carroll, lessee.

SUBJECT – Application September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code, regarding access and fire safety. R4-Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Off Calendar.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 23, 2007
1:30 P.M.**

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

ZONING CALENDAR

151-04-BZ

APPLICANT – Philips Nizer, LLP, for Fred M. Schildwachter & Son, Inc., c/o Dan Schildwachter, owner; Adriana A. Salamone, lessee.

SUBJECT – Application April 9, 2004 – Special Permit (§73-36) to permit the legalization of an existing physical culture establishment (Star Fitness) in an M3-1 Zoning District.

PREMISES AFFECTED – 1385 Commerce Avenue, southwest corner of Butler Place, Block 1385, Lot 13, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Phillips Nizer and Kevin B. McGrath.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 8, 2004 and updated on October 5, 2006, acting on Department of Buildings Application No. 200801016, reads in pertinent part:

“The proposed Physical Culture Establishment or health establishment in an M3-1 zoning district requires a special permit by the Board of Standards and Appeals as per ZR Sec 73-36 and ZR Sec 42-31.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M3-1 zoning district, the legalization of a physical culture establishment (PCE) on the first floor and mezzanine of an existing commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in *The City Record*, and then to decision on January 23, 2007; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Commerce Avenue and Butler Place; and

WHEREAS, the PCE currently occupies 9,908 sq. ft. of floor area on the first floor and 2,612 sq. ft. of floor area on

the mezzanine for a total of 12,492 sq. ft.; and

WHEREAS, the applicant represents that the PCE offers facilities for physical fitness, including cardiovascular equipment and group exercise classes; and

WHEREAS, the PCE is operated as Star Fitness; and

WHEREAS, the PCE will maintain the following hours of operation: continuous 24-hour operation from Monday at 5:00 a.m. through Saturday at 7:00 p.m.; and Sunday from 7:00 a.m. to 5:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to clarify the ceiling height at the mezzanine level and to include the floor area of the mezzanine in the total floor area calculations; and

WHEREAS, in response, the applicant submitted revised plans and a zoning analysis reflecting the suggested changes; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.04-BSA-159X, dated November 21, 2006; and

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

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance

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with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M3-1 zoning district, the legalization of a PCE on the first floor and mezzanine of an existing commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 9, 2007”-(2) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date the PCE began operating at the site, expiring on July 14, 2014;

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

THAT the hours of operation shall be limited to: continuous 24-hour operation from Monday at 5:00 a.m. through Saturday at 7:00 p.m.; and Sunday from 7:00 a.m. to 5:00 p.m.;

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 23, 2007.

55-06-BZ

APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.

SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR §72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR §33-26 and §33-23. Special Permit is also proposed pursuant to ZR §73-44 to allow reduction in required accessory parking spaces.

PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla and Nora Curry.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 23, 2006, acting on Department of Buildings Application No. 500822844, reads in pertinent part:

- “1. 33-36, 33-23 ZR. The proposed portion of the professional office building Use Group 6 in C1-1 Zoning District within the required rear yard and that exceed[s] one story is contrary to Zoning Resolution . . .
2. 73-44 ZR. The proposed off-street parking spaces are contrary to . . . Section 36-21.
3. 33-431 ZR. The proposed professional office building . . . in excess of 2 stories is contrary to the Zoning Resolution”; and

WHEREAS, this is: (1) an application under ZR § 72-21, to permit, within a C1-1/R3-2 (NA-1) zoning district, the proposed construction of a three-story with cellar, 15,995 sq. ft. Use Group 6B office building that does not comply with zoning requirements concerning rear yard, wall height, and maximum number of stories, contrary to ZR §§ 33-26, 33-23 and 33-431; and (2) an application under ZR § 73-44, to permit a decrease in required off-street accessory parking spaces, contrary to ZR § 36-21; and

WHEREAS, the Board notes that when this application was originally filed, the applicant only requested the rear yard waiver and the parking reduction, but proposed a 16,968 sq. ft. four-story building; and

WHEREAS, during the course of the hearing process, the applicant identified the need for the maximum amount of stories and height waivers and modified the application accordingly; the proposal was also reduced in terms of floor area and proposed height and stories at the request of the Board; and

WHEREAS, the proposed building has the following parameters: a commercial and total floor area of 15,955 sq. ft., a commercial and total Floor Area Ratio (“FAR”) of 0.90, a lot coverage of 29 percent, a total height of 34 ft., three stories and a cellar, a front yard of 15 ft., no rear yard, and 40 accessory parking spaces; and

WHEREAS, the FAR and lot coverage are as of right; a commercial FAR of 1.0 and a lot coverage of 29 percent are the permitted maximums; and

WHEREAS, however, a rear yard of 20 ft. is required above the first floor, the maximum amount of stories allowed for an office building is two, the maximum wall height is 30 ft., and the required amount of accessory parking is 113 spaces; therefore, the requested waivers are required; and

WHEREAS, a public hearing was held on this application on July 25, 2006 after due notice by publication in *The City Record*, with continued hearings on September 12, 2006 and December 5, 2006, and then to decision on January 23, 2007; and

WHEREAS, Community Board 2, Staten Island,

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recommends approval of the application as initially presented to the Board (i.e. without the height waiver noted), on condition that the Board consult with the Department of Transportation about an alleged unsafe curb cut; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located in a C1-1/R3-2 zoning district, within the Special Natural Area District (NA-1), and has a lot area of 17,718 sq. ft.; the site is currently vacant; and

WHEREAS, as to the site's configuration, the applicant notes that it is five-sided, with two distinct rear lot lines that intersect but that are not parallel to one another; and

WHEREAS, the applicant notes that the site fronts on Nadine Street, which is a final mapped street that is unopened and not traveled; and

WHEREAS, the applicant also notes that the site is also adjacent to and across the street from the mapped but un-built Willowbrook Expressway, which is considered part of the "Greenbelt" (natural undisturbed woodland) on Staten Island; and

WHEREAS, the site is the subject of a variety of prior municipal actions made by this Board, the City Planning Commission, and other City agencies, summarized in a submission dated December 26, 2006; and

WHEREAS, in sum and substance, the various municipal actions concerned a proposed two-story office building with accessory parking for 25 cars; the applicant represents that all of these actions have expired by limitation and that the proposed two-story building was not constructed; and

WHEREAS, the proposed building will be located at the rear of the site, at the point where the rear lot lines intersect, and the site will also be developed with a retaining wall around its rear perimeter; and

WHEREAS, the applicant (an architectural firm) proposes to occupy the building in part as its own offices; other proposed occupancies include law firms and offices for engineers and surveyors; and

WHEREAS, because of the need for the above-mentioned waivers, the instant applications were filed; and

WHEREAS, as to the variance application, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: 1) the afore-mentioned site configuration prevents the provision of a standard 20 ft. rear yard, in that the two rear lot lines are at an oblique angle to one another; 2) the varying and shallow lot depths that arise due the site's configuration; (3) the site's poor soil conditions, to a depth of 12 feet, which necessitates the installation of structural piles; (4) the site is surrounded by streets (both built and un-built) that are at a much higher elevation than the site, which causes excessive storm water overflow on the site, necessitating increased drywell construction costs; and (5) Nadine Street must be paved to its full width and otherwise improved by the owner beyond the property line pursuant to DOT requirements, thereby increasing

construction costs; and

WHEREAS, the Board notes that the applicant submitted evidence that establishes that each of these site conditions exists on the site; and

WHEREAS, specifically, the applicant has submitted: (1) a site plan that shows the irregular configuration and varying shallow depths of the site (77.90 ft. and 84.16 ft., and 114 ft. at the deepest point); (2) soil boring reports that establish the poor soil condition (specifically, moist, silty soil at a depth of 12 ft.); (2) evidence of the elevation discrepancies between the site and surrounding streets (specifically, a change of approximately 10 ft.), the resulting excessive storm water run-off, and the specific oversized drywell requirements; and (3) evidence of the DOT-imposed requirements to pave Nadine Street, extend its bed, repair and replace existing sidewalk, and install other improvements; and

WHEREAS, the Board also notes that the applicant has established that this particular convergence of factors is sufficiently unique to this site and creates hardship; and

WHEREAS, the Board observes that the threshold difficulty that any viable commercial development on the site faces are the costs associated with the soil conditions, the DOT-required roadway improvements, and the storm water disposal (drywell) improvements; and

WHEREAS, accordingly, the costs associated with these conditions necessitate first that the commercial FAR be maximized to the extent proposed; and

WHEREAS, once a building of a certain bulk must be developed, such a building must be configured and located in such a way so as to avoid further increased construction costs; and

WHEREAS, thus, instead of creating a wider but shorter building with the same proposed FAR, which would increase the number of piles and therefore constructions costs related to the soil condition, it is more reasonable to construct a taller building that will limit the number of structural columns (and therefore piles) and avoid excessive cellar construction costs; and

WHEREAS, further, a taller building is also needed because the soil and slope conditions make it infeasible to provide a deeper cellar, which would lower the height of the building; and

WHEREAS, however, a taller building necessitates the height waiver; and

WHEREAS, the rear yard waiver results from the need to locate a tall building on the site at a location that avoids excessive piles costs, as well as from the afore-mentioned site configuration and limited depths; and

WHEREAS, specifically, due to the grade change from rear of the site to the street frontage, as well as the grade change from the adjacent sites, a retaining wall is required along the rear lot lines; and

WHEREAS, the location of the building at the rear lot lines also allows the utilization of the retaining walls as the rear building walls, which further avoids excessive and duplicative construction costs; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties

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in developing the site in strict compliance with the applicable height and rear yard regulations; and

WHEREAS, the applicant asserts that because of these unique physical conditions, there is no reasonable possibility that the development of the property in compliance with the applicable regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a complying commercial building, a complying community facility medical building, and a complying residential development; and

WHEREAS, the applicant concluded that these complying scenarios would not realize a reasonable return; and

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

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

WHEREAS, the applicant notes first that the proposed office building is as of right in terms of use, and is compatible with other uses on the block, including other office buildings and retail uses; and

WHEREAS, the applicant also notes that the proposed height of the building is compatible with existing adjacent adjoining properties, as indicated on the submitted land use map and in a computer generated photograph of the proposed office building superimposed in context with the surrounding conditions; and

WHEREAS, specifically, the applicant notes that the photograph shows that because of the above-mentioned grade change, surrounding properties are at a higher elevation than the subject site and the proposed building is not higher than the adjoining properties to the rear; and

WHEREAS, the Board also observes that the height of the building has been reduced from the original proposal, and is now three stories and 34 ft. high; and

WHEREAS, the applicant notes that while no rear yard will be provided, because of the yards of the adjacent properties to the rear and the grade change between the properties, no negative impact will occur; and

WHEREAS, the applicant also notes that the opening and improvement of Nadine Street allows for the provision of a reasonable amount of accessory parking spaces, and will provide a new street for general use within the existing street network; and

WHEREAS, finally, the Board observes that it has reviewed the proposed curb cuts and finds that there is no evidence that any of them will create an unsafe condition; and

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

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

WHEREAS, as noted above, at the Board's request, the applicant reduced the proposed height of the building and the amount of stories, thereby decreasing the degree of waiver as to these parameters; and

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

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

WHEREAS, as to the special permit application, the Board notes that pursuant to ZR § 73-44, it may, in the subject C1-1 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for Use Group 6 uses in the B1 parking category; and

WHEREAS, for the C1-1 zoning district and the subject UG 6B use (which is in parking category B1), the Board may reduce the required parking from 1 space per 150 sq. ft. of floor area to 1 space per 400 sq. ft. of floor area; and

WHEREAS, the applicant represents that assuming a special permit is obtained, the site will be developed with a 40 space accessory parking lot (as opposed to a 106 space lot, which would be required absent the special permit); and

WHEREAS, ZR § 73-44 requires that the Board must determine that the proposed UG 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of the good faith of the owner in pursuing the proposed UG 6 office use; in particular, the Board observes that the owner has previously sought municipal approvals to develop the site with a UG 6 use, and plans on using it, in part, for its own offices; and

WHEREAS, the applicant also notes that the proposed offices will be occupied primarily by professionals (architects, attorneys, engineers, or surveyors); and

WHEREAS, the applicant claims that the proposed occupancies will generate less overall vehicle trips than a retail business or other types of offices; and

WHEREAS, at hearing, the Board suggested that if parking were to be located in the cellar of the building below grade, then perhaps more parking spaces could be provided; and

WHEREAS, the applicant responded that extensive construction below grade would not be viable, due to the afore-mentioned soil conditions; and

WHEREAS, finally, the Board notes that the applicant prepared an Environmental Assessment Statement that analyzed the potential impacts from the parking reduction and concluded that no significant impacts would occur; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently met the requirements set forth at ZR § 73-44; and

WHEREAS, further, the Board finds that, under the

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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, in sum, the Board has determined that the evidence in the record supports the findings set forth at Z.R. §§ 72-21, 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA070R dated June 9, 2006; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings for: (1) an application under ZR § 72-21, to permit, within a C1-1/R3-2 (NA-1) zoning district, the proposed construction of a three-story with cellar, 15,995 sq. ft. Use Group 6B office building that does not comply with zoning requirements concerning rear yard, wall height, and maximum number of stories, contrary to ZR §§ 33-26, 33-23 and 33-431; and (2) an application under ZR § 73-44 and 73-30, to permit a decrease in required off-street accessory parking spaces, contrary to ZR § 36-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 8, 2007" – twelve (12) sheets; and *on further condition*:

THAT the only permitted uses within the building shall be UG 6B professional offices;

THAT a total of 40 accessory parking spaces shall be provided;

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

THAT the parameters of the proposed building shall be as follows: a total and commercial floor area of 15,955 sq. ft., a total and commercial Floor Area Ratio ("FAR") of 0.90, a lot coverage of 29 percent, a total height of 34 ft., three stories and a

cellar, a front yard of 15 ft., and no rear yard;

THAT the parking layout shall be as reviewed and approved by the Department of Buildings;

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

THAT all landscaping and fencing shall be installed and maintained as indicated on the BSA-approved plans;

THAT prior to the issuance of any building permit, authorization for proposed tree removal will be obtained from City Planning Commission;

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

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

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

Adopted by the Board of Standards and Appeals, January 30, 2007.

239-04-BZ

APPLICANT – Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for an adjournment.

159-05-BZ

APPLICANT – Vito J. Fossella, P.E., for Antonio Ciccotto, owner.

SUBJECT – Application July 7, 2006 – Variance under ZR §72-21 to allow a three (3) story mixed-use building containing residential use on the upper floors and retail use (UG 6) on the ground and cellar levels on a site zoned R3X and R3X/C2-1; contrary to ZR §22-00.

PREMISES AFFECTED – 880 Annadale Road, located on the west of the corner formed by the intersection of Annadale Road and South Railroad Avenue, Block 6249, Lot 436T, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: SamehEI Meniawy.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for an adjourned hearing.

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427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail, community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for continued hearing.

25-06-BZ

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§ 72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§ 23-22), street wall height (§ 23-631 & § 24-521), maximum building height (§ 23-631), front yard (§ 24-34), side yards (§ 24-35 & §24-551), FAR (§ 24-11, 24-162 & 23-141) and lot coverage (§ 23-141 & § 24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman.

For Opposition: Alice Loubaton and Mitchell Fruchter.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for continued hearing.

36-06-BZ

APPLICANT – Sheldon Lobel, P.C., for The RNR Group Ltd., owner.

SUBJECT – Application March 1, 2006 – Special Permit pursuant to Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor’s establishment (Use Group 16) by 2,485 square feet.

PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for adjourned hearing.

67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of ZR §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 6, 2007, at 1:30 P.M., for an adjourned hearing.

103-06-BZ

APPLICANT– Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)) and rear yard (23-47) in R-2 zoning district.

PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

107-06-BZ

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Barbizon Hotel Associates, L.L.P.

SUBJECT – Application May 25, 2006 – Special Permit (§ 73-36) to allow a physical culture establishment use (Equinox) in the cellar, subcellar, first floor and second floor of a 22 story mixed use building. C1-8X/R8B zoning district.

PREMISES AFFECTED – 140 East 63rd Street, northwest corner block bounded by Lexington and Third Avenues, Block 1397, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: James Power and Deirdre Carson.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February
27, 2007, at 1:30 P.M., for decision, hearing closed.

115-06-BZ

APPLICANT– Harold Weinberg, for Saul Mazor, owner.
SUBJECT – Application June 7, 2006 – Special Permit (73-
622) for the enlargement of a single family detached
residence. This application seeks to vary open space, floor
area and lot coverage (23-141); side yard (23-461) and rear
yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1820 East 28th Street, west side
140’ south of Avenue R, between Avenue R and S, Block
6833, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

For Opposition: Councilmember Fiddler and Ed Jaworski

ACTION OF THE BOARD – Laid over to February
27, 2007, at 1:30 P.M., for continued hearing.

122-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Revelation
Development, Inc., owner.

SUBJECT – Application June 12, 2006 – Variance (§72-21)
to permit the proposed enlargement of an existing medical
office building and construction of residences without the
required front and side yard. The Premise is located in a
portion of an R5 and a portion of a C2-3/R5 zoning district.
The proposal is seeking waivers relating to §23-45 and §24-
34 (Front yard) and §23-462 and §24-35 (Side Yard).

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Curry.

ACTION OF THE BOARD – Laid over to February
6, 2007, at 1:30 P.M., for deferred decision.

128-06-BZ

APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk,
LLC, owner.

SUBJECT – Application June 16, 2006 – Zoning variance
pursuant to ZR §72-21 to allow a nine-story residential
building in an M1-5 district (Area B-2 of Special Tribeca
Mixed Use District). Twenty Six (26) dwelling units and
twenty six (26) parking spaces are proposed. The
development would be contrary to use (Z.R. §111-104(d) and
§42-10), height and setback (Z.R. §43-43), and floor area
ratio regulations (Z.R. §111-104(d) and §43-12). The number
of parking spaces exceeds the maximum allowed is contrary
to Z.R. §13-12.

PREMISES AFFECTED – 415 Washington Street, west side
of Washington Street, corner formed by Vestry Street and

Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Juan Reyes and John Strauss.

For Opposition: Jack Lester, Mark Stern, Sean Turner,
Richard Herschlagg, P.E. and Bess Natassa (A/M Glick).

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 13,
2007, at 1:30 P.M., for decision, hearing closed.

133-06-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for
Parish of Trinity Church, owner; TSI Varick Street dba New
York Sports Club; lessee.

SUBJECT – Application June 23, 2006 – Special Permit
(§73-36) Proposed physical culture establishment to be
located on the second floor of an existing 12 story
commercial building. M1-5 Zoning District.

PREMISES AFFECTED – 225 Varick Street, westerly side
of Varick Street between West Houston Street and Clarkson
Street, Block 581, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lyra Altman and Doris Diether.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February
6, 2007, at 1:30 P.M., for decision, hearing closed.

175-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, for Sal
Calcagno & Family Realty, LLC, owner.

SUBJECT – Application August 14, 2006 – Special Permits
(Sections 73-243 and 73-44) to allow, within C1-1 (R1-2)
(NA-1) zoning districts, the development of an eating and
drinking establishment (UG 6) with an accessory drive-
through facility and to permit a reduction in the amount of
required off-street parking for UG 6 parking category B-1
uses. The proposal is contrary to Sections 32-15 and 36-21
respectively.

PREMISES AFFECTED – 1653/9 Richmond Road, west side
of Richmond Road, 417.06’ south of intersection with Four
Corners Road, Block 883, Lot Tentative 27, Borough of
Staten Island.

COMMUNITY BOARD # 2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug and Vincent McDermott.

For Opposition: Dr. Mohammad Khalid, Michael Marotta,
Lilian M. Popp, William Tanzush, F.D.N.Y., Helen Phinney
and Charles LaGanga.

ACTION OF THE BOARD – Laid over to March 13,

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2007, at 1:30 P.M., for continued hearing.

177-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 1840 EMAB LLC, owner.

SUBJECT – Application August 16, 2006 – Special permit (§§ 11-411, 11-413). On a lot consisting of 9,700 SF, in a C2-2 in R3A district, permission sought to legalize auto repair and sale of used cars (UG 16). The existing and proposed FAR is .14 for the one-story commercial building. DOB Objection: Section 32-25: Auto repair and auto sales (UG16) not permitted in C2-2 district.

PREMISES AFFECTED – 1840 Richmond Terrace, Clove Road and Bodine Street, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

180-06-BZ

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Yeshiva University, owner.

SUBJECT – Application August 18, 2006 – Zoning variance to allow a new six (6) story academic building (UG3) for Yeshiva University that would violate applicable lot coverage (§24-11), rear yard (§24-36 and §24-391) and height and setback requirements (§24-522).

PREMISES AFFECTED – 515 West 185th Street, northwest corner of Amsterdam Avenue and West 185th Street, Block 2156, Lots 46, 61, 64, 146, 147, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Al Fredericks.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for deferred decision.

236-06-BZ

APPLICANT– Moshe M. Friedman, for Michael Dalezman, owner.

SUBJECT – Application September 12, 2006 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space, floor area (23-141) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1500 East 21st Street aka Kenmore Place, 115’ north of intersection formed by East 21st Street and Avenue N, Block 7656, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for decision, hearing closed.

274-06-BZ

APPLICANT– Stadtmauer Bailkin, LLP, for Rockaway Homes, Inc., owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) for the construction of a two-story one family residence on a vacant lot which seeks to vary the required front yards (§23-45) and minimum lot width (§23-32) in an R3-2 zoning district.

PREMISES AFFECTED – 116-07 132nd Street, vacant triangular lot with Lincoln Street to the east 132nd Street to the west and 116th Avenue to the north, Block 11688, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 5:45P.M.

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CORRECTION

This resolution adopted on December 9, 2003, under Calendar No. 374-02-BZ and printed in Volume 88, Bulletin Nos. 48-50, is hereby corrected to read as follows:

374-02-BZ

CEQR #03-BSA-114Q

APPLICANT – Salans, for Long Island Jewish Medical Center, owner.

SUBJECT – Application December 30, 2002 – under Z.R. §§73-481 and 73-49 to permit in an R3-2 zoning district, a proposed 1,660 space parking garage and the creation of rooftop parking, which are contrary to Z.R. §§ 25-11, 25-12 and 25-13.

PREMISES AFFECTED – 267-20 74th Avenue, block bounded by 74th and 76th Avenues, also 263rd Street and the Queens/Nassau Border, Block 8520, Lot 2, and Block 8489, Lots 50, 95, 100 and 120, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Martin Baker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chairman Chin, Vice-Chair Babbar, and Commissioner Miele.....3

Negative:0

Abstaining: Commissioner Caliendo1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated December 20, 2002, acting on NB Application No. 401573784, reads:

“The proposed parking structure is contrary to the following section of the NYC ZR:

- 1) “ZR 25-11, General Provisions, Permitted Accessory Off Street Parking Spaces. Open parking is not permitted above a story other than above a basement. and
- 2) ZR 25-12, 25-13, Maximum Size of Accessory Group Parking Facilities and Modification of Maximum Size Group Parking Facilities. Total number of proposed parking spaces exceed 150-space maximum of §25-12 and 225-space maximum of §25-13.”; and

WHEREAS, a public hearing was held on this application on June 3, 2003 after due notice by publication in The City Record, laid over to July 15, 2003 and September 30, 2003 and then to October 21, 2003 for decision; and then the decision was deferred on October 21, 2003, deferred again on November 18, 2003, and then to December 9 for decision; and

WHEREAS, Community Board No. 13 in Queens recommends conditional approval of the subject application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board

consisting of Chairman James Chin, Vice Chairman Satish Babbar, Commissioner Joel Miele, and Commissioner Peter Caliendo; and

WHEREAS, this is an application for two special permits under Z.R. §§73-03, 73-481 and 73-49, to allow, in an R3-2 zoning district, a proposed 1,660 space parking garage and the creation of rooftop parking, which are contrary to Z.R. §§25-11, 25-12 and 25-13; and

WHEREAS, the subject lot is a 48 acre, 1,926,213 square foot parcel, that is roughly rectangular, with “out-parcels” at the northeasterly and northwesterly corners, bounded by 76th Avenue and 263rd Street; and

WHEREAS, the Long Island Jewish Hospital, Schneider Children’s Hospital and Zucker Hillside Hospital comprise the subject medical center, a 829 bed voluntary, non-profit tertiary care teaching medical center serving the greater Metropolitan New York area; and

WHEREAS, in the northeasterly corner of the block, the zoning lot is notched to accommodate an approximately 130,000 square “out-parcel” (Lot 175) which is occupied by a non-affiliated healthcare institution; and

WHEREAS, in the northwesterly corner of the block, a rectangular parcel is occupied by a medical center that is affiliated with the applicant; and

WHEREAS, the record indicates that the proposed attended parking is needed to meet the programmatic requirements of the subject medical center; and

WHEREAS, the proposed parking garage will contain 307,345 square feet of floor area housing seven levels above grade, two levels below grade and parking on the roof and provide spaces for 1,660 cars ; and

WHEREAS, the lower levels will be operated as attended parking and the upper levels will be self-park, and the applicant anticipates that the upper levels will be used by hospital staff and the lower levels by patients and visitors to the medical center; and

WHEREAS, the main entrance to the proposed garage will be from the North, adjacent to the Emergency Department and will be configured to permit easy pedestrian access; and

WHEREAS, the proposal will also provide an entrance on the West face of the subject garage, across an internal roadway from Hillside Hospital and another entrance on the South face to serve the patients and visitors to Schneider Children’s Hospital; and

WHEREAS, the record indicates that changes in the needs of the medical center’s patients and visitors including changes in the nature of patient visits make the existing parking resources inadequate; and

WHEREAS, the applicant represents that the length of in-patient hospital stays have decreased and ambulatory patient visits have increased; and

WHEREAS, moreover, the reconfiguration of the internal roadway system within the campus to accommodate the route for emergency vehicles and several other modernization projects have increased patient visits and parking needs; and

WHEREAS, the subject campus contains 1,789 parking

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spaces; additionally, the medical center leases 800 parking spaces on the eastside of Lakeville Road across from the main entrance located in Nassau County; and

WHEREAS, the applicant represents that many visitors and staff have been displaced from 350 parking spaces that are not available on the south side of the campus due to an ongoing road construction project; and

WHEREAS, the Board notes that the entrance to the proposed parking garage is approximately one-half a mile along interior campus roads and far from neighborhood streets; and

WHEREAS, the record indicates that vehicles proceeding to the proposed garage will turn into the campus at the main entrance and proceed west on a four-lane private roadway; and

WHEREAS, the Zoning Resolution requires the medical center to provide one accessory parking space per five beds, for a total of 166 parking spaces, but it exceeds this number based on its programmatic need and its pledge to the community that the facility would minimize parking impacts in the neighborhood; and

WHEREAS, the existing garage is on the major entrance way, entirely within the applicant's campus, from a four-lane roadway running westerly from its interchange with Lakeville Road; and

WHEREAS, the record indicates that there is reservoir space inside the entrances to the proposed garage and on the private roadway on the campus that exceeds the minimums required by Z.R. §73-481(b); and

WHEREAS, the Board notes that the instant application will not generate any new traffic as the proposed attended parking will only serve staff, patients, and visitors to the medical center complex; and

WHEREAS, the record indicates that the proposed rooftop parking is not visible from adjacent streets and is will not impair the essential character or the future use or development of adjacent areas; and

WHEREAS, therefore, the Board finds that the proposed use will not impair the character or the future use or development of the surrounding residential or mixed use neighborhood; and

WHEREAS, therefore, the Board finds that the subject proposal meets the findings required to be made under Z.R. §§73-03, 73-481 and 73-49; and

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

WHEREAS, therefore, the Board has determined that the proposed action will not result in any significant environmental effects.

Therefore, it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the

required findings and grants two special permits pursuant to Z.R. §§73-03, 73-481 and 73-49 to allow, in an R3-2 zoning district, a proposed 1,660 space parking garage and the creation of rooftop parking, which are contrary to Z.R. §§ 25-11, 25-12 and 25-13, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received October 27, 2003"--(9) sheets; and on further condition;

THAT there shall be no loitering on the premises;

THAT lighting shall be directed down and away from residential uses, and in accordance with BSA approved plans;

THAT substantial construction shall be completed in accordance with Z.R. §73-70;

THAT prior to filing plans with the Department of Buildings, the Applicant shall submit to Community Board Number 13 for its information, a landscaping plan for the frontage of its property along 74th Avenue and 76th Avenue.

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

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

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

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

Adopted by the Board of Standards and Appeals December 9, 2003.

***The resolution has been corrected in the part of the plans date, which read: "October 27, 2002..." now reads: "October 27, 2003...". Corrected in Bulletin Nos. 4-5, Vol. 92, dated February 1, 2007.**

BULLETIN

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February 8, 2007

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32-07-BZ

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33-07-BZ

25 Carroll Street, North side of Carroll Street, 200 feet east of intersection with Van Brunt Street., Block 347, Lot(s) 54 Borough of **Brooklyn, Community Board: 6.** Uner 72-21-To permit conversion of floors 2 (two) through 5 (five) of the existing manufacturing building, and addition of partial 6th (sixth) story (no increase in total floor area), to permit permit residential use, contrary to M1-1 Z.D. regulations.

34-07-A

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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

FEBRUARY 27, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 27, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1038-80-BZ

APPLICANT – Davidoff & Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corp., lessee.

SUBJECT – Application February 6, 2007 – Extension of Term of a Special Permit for an amusement arcade (UG15 in an M2-1 zoning district.

PREMISES AFFECTED – 31-07/09 11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125' east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #1SI

200-01-BZ

APPLICANT – Davidoff Malito & Hutcher by Howard S. Weiss, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 9, 2007 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for the enlargement of a community use facility (Hillside Manor) in a C2-2/R-5 zoning district which expired on January 11, 2007.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

124-02-BZ

APPLICANT – Law Office of Howard Goldman, for St. John's University, owner.

SUBJECT – Application January 9, 2007 – Reopening of a previously approved variance to grant an extension of time to complete substantial construction of two parking facilities for St. John's University. R4 zoning district.

PREMISES AFFECTED – 8000 Utopia Parkway, bounded by Union Turnpike, 82nd Street and 180th Street, Block 7021, Lots 1 and 50, Borough of Queens.

COMMUNITY BOARD #8Q

FEBRUARY 27, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 27, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

100-06-BZ

APPLICANT– Francis R. Angelino, for Old Gowanus Road, LLC, owner.

SUBJECT – Application May 23, 2006 – Variance (§ 72-21) to allow a proposed residential building to violate regulations for maximum height (§ 23-633), minimum dimensions of inner court (§ 23-851) and permitted obstructions in courts (§ 23-87). The proposed building will contain five (5) dwelling units and three (3) parking spaces. Site is located in an R6B district.

PREMISES AFFECTED – 638-640 President Street, between 4th and 5th Avenues, Block 958, Lots 35 and 36, Borough of Brooklyn.

COMMUNITY BOARD #6BK

110-06-BZ

APPLICANT – Moshe M. Friedman, for Rochelle Grossman, owner.

SUBJECT – Application June 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district. This application also proposes to convert from a two family to a one family residence.

PREMISES AFFECTED – 1473 East 21st Street, a/k/a Kenmore Place, 325' north of intersection formed by East 21st Street and Avenue N, Block 7657, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

123-06-BZ

APPLICANT – Rampulla Associates Architects, for Dr. Ronald Avis, owner.

SUBJECT – Application June 13, 2006 – Variance (72-21) to permit the legalization of the existing one room, one-story addition which encroaches upon the required 30' rear yard of the existing single-family detached house. The Premise is located in an R3X SHPD/LOGMA zoning district. The proposal is contrary to rear yard (23-47).

PREMISES AFFECTED – 21 Cheshire Place, north side 905.04' to Victory Boulevard, Block 240, Lot 77, Borough of Staten Island.

COMMUNITY BOARD #1SI

152-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to Section 22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

272-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for The Media Realty Group, owner; Evolution Sports Club, LLC, lessee.

SUBJECT – Application October 10, 2006 – Special permit (§73-36) to legalize a Physical Culture Establishment on the second floor in a three-story building. The proposal is contrary to Section 42-31. M1-5 zoning district.

PREMISES AFFECTED – 37-11 35th Avenue, between 37th and 38th Streets, Block 645, Lot 1, Borough of Queens.

COMMUNITY BOARD # 1Q

285-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 531 Central Park Avenue Associates, LLC, owner; Serenity Wellbeing Inc., lessee.

SUBJECT – Application October 25, 2006 – Special Permit (§73-36) to permit the operation of a physical culture establishment on the third floor of an existing commercial building located in a C6-4.5 zoning district.

PREMISES AFFECTED – 23 West 45th Street, north side of West 45th Street, between Fifth and Sixth Avenues, Block 1261, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

318-06-BZ

APPLICANT– Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49th Street, Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 30, 2007
10:00 A.M.**

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, October 31, 2006 as printed in the bulletin of November 9, 2006, Vol. 91, No. 42. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

733-56-BZ

APPLICANT – Cozen O’Connor, Attorneys, for S & B Bronx Realty Associates, owner.

SUBJECT – Application October 26, 2006 – Extension of Term and a waiver of the rules to a previously granted variance to allow a parking lot (UG8) in an R7-1 residential zoning district which expired on December 6, 1997.

PREMISES AFFECTED – 283 East 164th Street, northwest corner of East 164th Street, and College Avenue, Block 2432, Lot 19, Borough of The Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a parking lot, which expired on December 6, 1997; and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in *The City Record*, and then to decision on January 30, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on the northwest corner of East 164th Street and College Avenue; and

WHEREAS, the site is located within an R7-1 zoning district and is occupied by a 16,182 sq. ft. parking lot; and

WHEREAS, on March 26, 1957, the Board granted a variance to allow parking and storage of more than five motor vehicles at the site; and

WHEREAS, at various times, the term has been

extended; and

WHEREAS, most recently, the term was extended for a period of ten years, which expired on December 6, 1997; and

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

WHEREAS, the applicant represents that the term had not been extended since 1997 due to a change in ownership and an administrative oversight; and

WHEREAS, the applicant represents that there are approximately 80 spaces for motor vehicle parking and storage at the site and that this condition will be maintained; and

WHEREAS, the Board observed that there was barbed wire along the top of the fence at the site and noted that it may not be compatible with the nearby residential uses; and

WHEREAS, at hearing, the Board asked the applicant if the barbed wire along the top of the fence could be removed; and

WHEREAS, in response, the applicant removed the barbed wire and submitted photographs and revised plans reflecting its removal; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 26, 1957, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the date of this grant; *on condition* that the use and operation of the parking lot shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received January 19, 2007’–(2) sheets; and *on condition*:

THAT this grant shall be limited to a term of ten years from January 30, 2007, expiring January 30, 2017;

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

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

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

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

(DOB Application No. 200994898)

Adopted by the Board of Standards and Appeals,
January 30, 2007.

52-55-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bouck Oil Corp.,

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owner.

SUBJECT – Application November 28, 2006 – Amendment, filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.

PREMISES AFFECTED – 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for continued hearing.

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC, owner; Helm Bros., lessee.

SUBJECT – Application November 16, 2006 – Extension of Time/Waiver to complete construction to permit the erection of a second story (5,000 sq. ft.) to the existing (UG6) commercial building (auto repair shop, sales and exchange of vehicles and products) which expired on April 29, 2005, located in a C2-2(R6B) and R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for decision, hearing closed.

258-90-BZ

APPLICANT – Sheldon Lobel, P.C., for John Isikli, owner.

SUBJECT – Application December 13, 2006 – Extension of Time to obtain a Certificate of Occupancy for the operation of a restaurant and banquet hall (UG9) in an R5 zoning district which expired on December 7, 2006.

PREMISES AFFECTED – 2337 Coney Island Avenue, east side, between Avenue T and Avenue U, Block 7315, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for adjourned hearing.

30-00-BZ

APPLICANT– Sheldon Lobel, P.C., for Sand Realty Group, Inc., owner.

SUBJECT – Application October 13, 2006 – Extension of term/Waiver of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) within an R7-2 zoning district.

PREMISES AFFECTED – 458 West 166th Street, north side of West 166th Street, between Amsterdam Avenue and Edgecomb Avenue, Block 2111, Lot 57 (a/k/a 53-55, 57, 71-73), Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for decision, hearing closed.

104-02-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC., owner; Helms Brothers, lessee.

SUBJECT – Application November 16, 2006 – Extension of Time to complete construction and waiver of the rules which expired on August 13, 2006 for the construction of a new car preparation building (Use Group 16B) at an existing automobile storage facility in a C-3 zoning district.

PREMISES AFFECTED – 23-40 120th Street, west side of 120th Street, between 25th Avenue and 23rd Avenue, Block 4223, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for decision, hearing closed.

44-06-BZ, Vol. II

APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215' east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

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For Opposition: Maria Beneventano, Madelene Benincasa and Ronald J. Dillon.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

68-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Incorporated, owner; Janet Fox, lessee.

SUBJECT – Application April 19, 2007 – Proposal to reconstruct and enlarge a one family dwelling locate within the bed of a mapped street which is contrary to General City Law Section 35 and the upgrade of an existing disposal system in the bed of a mapped street is contrary to Department of Buildings policy .Premises is located within an R4 Zoning District.

PREMISES AFFECTED – 612 Harmony Road, West of Harmony Road (unmapped street) south of 12th Avenue Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Valentino Pompeo.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 15, 2006, acting on Department of Buildings Application No. 402285692, reads in pertinent part:

“A- The building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.

A-2 The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, the Fire Department is on the record stating that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated October 12, 2006 the

Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated January 19, 2007, the Department of Transportation states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 15, 2006, acting on Department of Buildings Application No. 402285692, 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 April 19, 2006”–(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 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, January 30, 2007.

172-06-A

APPLICANT – Adam Rothkrug, Esq., for Paul F. DeMarinis, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of a two family dwelling located within the bed of mapped streets (20th Ave.) which is contrary to Section 35 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 157-05 20th Avenue, south side of 20th Avenue, east of Clintonville Street, Block 4750, Lot 10, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough

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Commissioner, dated July 12, 2006, acting on Department of Buildings Application No. 402379500, reads in pertinent part:

“A-1 The proposed NB construction is located within the bed of mapped street contrary to Section 35 of the General City Law.”; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 16, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated December 18, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated January 22, 2007, the Department of Transportation (DOT) states that it has reviewed the above project and has notified the Board that it would require the applicant to provide for a sidewalk and curb in alignment with the existing sidewalk and curb on the south side of 20th Avenue for the entire length of the lot; and

WHEREAS, by letter dated January 29, 2007, the applicant agrees to DOT conditions and has submitted a revised site plan; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 12, 2006, acting on Department of Buildings Application No. 402379500, 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 January 29, 2007”-(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 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, January 30, 2007.

166-06-BZY

APPLICANT – Eric Palatnik, P.C., for Mujahid Mian, owner.

SUBJECT – Application July 28, 2006 – Proposed extension of time (§11-331) to complete construction of a minor

development for a multi-family building. Prior zoning was R4 zoning district and new zoning is R4-A as of June 29, 2006.

PREMISES AFFECTED – 84-59 162nd Street, south of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik, Zannis Angelidakis and Paul Mok.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 30, 2007

1:30 P.M.

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

ZONING CALENDAR

330-05-BZ

CEQR #06-BSA-032R

APPLICANT – Vito J. Fossella, P.E., for Frank Bennett, owner.

SUBJECT – Application November 16, 2005 – Special permit (§73-36). In a C2-2/R3-2 district, on a lot consisting of 5,670 SF, and improved with two one-story commercial buildings, permission sought to allow a physical culture establishment in the cellar of one existing building in 350 New Dorp Lane and in the enlarged cellar of an existing adjacent retail building at 346 New Dorp Lane.

PREMISES AFFECTED – 350 New Dorp Lane, Block 4221, Lot 53, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Application granted on condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated November 15, 2005, acting on Department of Buildings Application No. 500809084, reads in pertinent part:

“The proposed application for . . . a physical culture or health establishment is referred to the Board of Standards and Appeals for consideration”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C4-2 zoning district, the legalization and expansion of a physical culture establishment (PCE), to be located on the first floor and in the cellar of existing commercial buildings at the site, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in *The City Record*, and then to decision on January 30, 2007; and

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

WHEREAS, the subject site is located on the south side of New Dorp Lane, 260 ft. east of the corner formed by the intersection of New Dorp Lane and Clawson Street; and

WHEREAS, the site encompasses two single-story with cellar buildings, one at 346 New Dorp Lane (the “346 Building”) and one at 350 New Dorp Lane (the “350 Building”); and

WHEREAS, combined, the two buildings have a gross floor space of 8,548 sq. ft. (the 350 Building has 5,926 sq. ft. and the 346 Building has 2,622 sq. ft.); and

WHEREAS, the applicant represents that currently there is a salon on the first floor of 350 Building and an unrelated clothing store on the first floor of the 346 Building; and

WHEREAS, the applicant also represents that the salon has expanded its services to include massage, which necessitates the instant application for a PCE special permit; and

WHEREAS, the massage services are offered in the cellar of the 350 Building, but the entirety of the existing salon is considered PCE use since it is the same establishment; thus, this application is, in part, for a legalization of the PCE uses in the 350 Building; and

WHEREAS, specifically, the total PCE floor space in the 350 Building sought to be legalized is 5,926 sq. ft. (i.e. all of its gross square footage); and

WHEREAS, the applicant also proposes the expansion of this PCE use to the existing cellar of the 346 Building, as well as an expansion of the PCE use into a cellar area to be created in the 346 Building; and

WHEREAS, the total proposed PCE gross floor space in the 346 Building is 1,284 sq. ft.; and

WHEREAS, the cellar PCE spaces in the two Buildings will be connected, creating an integrated cellar PCE space; and

WHEREAS, the clothing store on the first floor of the 346 Building is a separate establishment and will remain as it currently exists; and

WHEREAS, in sum, upon legalization and completion of the expansion, the PCE will occupy a total of 7,210 sq. ft. of floor space within the two Buildings; and

WHEREAS, the PCE will be operated as the AF Bennet Salon and Wellness Spa; and

WHEREAS, the PCE will maintain the following hours of operation: Monday 9:30 am to 6:00 pm; Tuesday and Friday 7:30 am to 9:00 pm, Saturday 7:30 am to 8:00 pm, and Sunday 8:30 am to 5:00 pm; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-032R, dated January 16, 2007; and

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

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance

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with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C4-2 zoning district, the legalization and expansion of a physical culture establishment, to be located on the first floor and in the cellar of existing commercial buildings at the site, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 25, 2007"-(4) sheets; and *on further condition*:

THAT the term of this grant shall be from January 30, 2007 to January 30, 2012;

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

THAT the hours of operation shall be limited to: Monday 9:30 am to 6:00 pm; Tuesday and Friday 7:30 am to 9:00 pm, Saturday 7:30 am to 8:00 pm, and Sunday 8:30 am to 5:00 pm;

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 30, 2007.

50-06-BZ

CEQR #06-BSA-067K

APPLICANT – Jeffrey A. Chester, Esq., for 461 Carool Strait, LLC, owner.

SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.

PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 23, 2006, acting on Department of Buildings Application No. 302003099, reads in pertinent part:

“Residence (UG 2) is not permitted as of right use in a M1-2 district as per Section 42-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the conversion and enlargement of a former industrial/commercial building to a two-family residence, which is contrary to ZR § 42-00; and

WHEREAS, the proposed three-story building will have a total floor area of 4,248 sq. ft. (2.0 FAR), a street wall and total height of 38’-2 3/8”, a rear yard of 33’-5”, and two dwelling units (the “Proposed Building”); and

WHEREAS, the applicant initially proposed a three-story building with 3,893 sq. ft. of floor area (1.83 FAR), and no rear yard; and

WHEREAS, the Board expressed concern about this proposal, noting that although the existing building does not provide a rear yard, residential use requires access to light and air which would be limited by a full lot coverage building; and

WHEREAS, the Board directed the applicant to revise the plans in order to ensure that both dwelling units have access to light and air either from a complying rear yard or through complying interior court yards, as per residential standards; and

WHEREAS, subsequently, the applicant submitted a revised proposal that reflects the provision of a 33’-5” rear yard; and

WHEREAS, the revised proposal also reflects variations on the interior layouts and locations of skylights; and

WHEREAS, while the Board agrees that the current version resolves concerns about access to light and air for both dwelling units, it asked the applicant to confirm that the access to light and air met Building Code requirements; and

WHEREAS, the applicant responded that the current proposal provides the required access to light and air; and

WHEREAS, additionally, the Board asked the applicant to design a building which would allow for the floor area that would be removed by the inclusion of a required rear yard to be recaptured, but that the total floor area would not exceed that of the existing building (1.4 FAR); and

WHEREAS, in response, the applicant submitted an iteration that provided the required rear yard and an FAR of 1.4; and

WHEREAS, the applicant represented that such a

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scenario would not provide a sufficient return; and

WHEREAS, the Board notes that the M1-2 zoning district permits a maximum FAR of 2.0, and that the final proposal, providing for the conversion and enlargement of the original building, is compatible as to the scale and context of the surrounding land uses and streetscape while providing feasible units; and

WHEREAS, further, the Board notes that the modest enlargement is a result of increased floor sizes on the second and third floors at the rear and does not impact the street; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in the *City Record*, with continued hearings on October 31, 2006 and December 5, 2006, and then to decision on January 30, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board including Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject premises is located on the north side of Carroll Street between Nevins Street and Third Avenue; and

WHEREAS, the site has a lot area of 2,125 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story building, which was previously occupied by commercial uses; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance application was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformity with applicable regulations: (1) the existing building has narrow and irregularly shaped floors; (2) the narrow staircase and the absence of an elevator; (3) the historic use of the site as accessory space to a former manufacturing use next door; (4) constraints on vehicle access to the site; and (5) the adjacency of residential use on both sides of the site; and

WHEREAS, as to the building's configuration, the applicant notes that the building is only 21 feet wide and the second and third floors only have a depth of 32 feet, making it difficult to accommodate modern manufacturing equipment; and

WHEREAS, the small size and building design limitations also do not allow for accessory storage space; and

WHEREAS, as to the internal circulation, the applicant represents that the narrow staircase does not accommodate the efficient transfer of materials and machinery between floors; and

WHEREAS, as to the historic use of the building, the applicant represents that the building served as an accessory storage space and was occupied by offices for a neighboring tool manufacturing business, which has since relocated; and

WHEREAS, additionally, the applicant represents that

the first floor was used primarily for storing machinery and equipment as well as a staging and loading area for shipping goods manufactured next door; and

WHEREAS, the applicant represents that the upper floors were used as office space for the business for the past several decades; and

WHEREAS, as to vehicle access, the applicant notes that the street is one-way with one lane of traffic and parking on both sides of the street; and

WHEREAS, the applicant asserts that the narrowness of the street and the absence of a driveway or loading dock constrain vehicle access to the site and truck loading for a conforming use; and

WHEREAS, finally, as to the adjacent uses, the applicant represents that there are three-story multi-dwelling buildings to the east and west of the subject site; and

WHEREAS, the applicant asserts that the adjacent residential uses compromise access to the site and limit its marketability for a conforming use; and

WHEREAS, as to uniqueness, the applicant represents that within a 400 ft. radius of the block, only two lots out of 33 located completely within the radius are occupied by industrial uses; and

WHEREAS, in support of these representations, the applicant submitted a land use study which included all sites within a 400-ft. radius of the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, specifically the obsolescence of the building and the narrowness of the lot, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the development of the property in conformance with applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing both the existing 2,998 sq. ft. building and a complying, fully built-out 4,463 sq. ft. building for a conforming use; and

WHEREAS, the applicant concluded that neither scenario would realize a reasonable return; and

WHEREAS, the applicant submitted evidence that the owner had unsuccessfully attempted to market the building for a conforming use; and

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

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

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WHEREAS, the applicant states that the buildings surrounding the property are predominantly residential, and that while the property is within an M1-2 district, there is an R6 zoning district directly across Carroll Street; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including the adjacent residential buildings and others on the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its site inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of two dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the Board also notes that the first iteration of the Proposed Building, which included full lot coverage for the first floor, would not have been compatible with the surrounding neighborhood, which is characterized by residential buildings with rear yards; and

WHEREAS, the Board notes that by maintaining the building's existing height and number of stories, the design is compatible with the adjacent three-story residential buildings, and the block, which is characterized by two- and three-story residential buildings; and

WHEREAS, at hearing, the Board directed the applicant to limit the height of the wall at the rear of the property and at the rear lot line to six feet; and

WHEREAS, in response, the applicant submitted revised plans reflecting a height of six feet for the wall around the perimeter of the rear yard; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a nearly full lot coverage building; and

WHEREAS, in response to the Board's concerns about compatibility and sufficient access to light and air, the applicant proposed the current version of the building, which the Board finds acceptable; and

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

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

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

and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA067K, dated March 15, 2006; and

WHEREAS, the EAS documents indicate that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: March 15, 2006 EAS and the January 2004 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on December 12, 2006 and submitted for proof of recording on January 4, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-2 zoning district, the conversion and enlargement of a former industrial/commercial building to a two-family residence, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 19, 2007"-(10) sheets; and *on further condition*:

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial

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measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the following are the bulk parameters of the building: three stories, 4,248 sq. ft. of floor area (2.0 FAR), a street wall and total height of 33'-2 3/8", a rear yard of 33'-5", and two dwelling units, all as indicated on the BSA-approved plans;

THAT all stairways and means of egress shall be as approved by DOB;

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, January 30, 2007.

267-06-BZ

CEQR #07-BSA-024Q

APPLICANT– Stadtmauer Bailkin, LLP, for Philip Zerillo and Peter Zuccarello, owners.

SUBJECT – Application September 29, 2006 – Variance (§72-21). On a lot consisting of 5,902 SF, and located in an R2 district, permission sought to construct a two-story plus cellar commercial building. The structure will contain 3,431 SF (FAR .58), and will have five accessory parking spaces. The uses therein will be UG6 professional offices. Currently the site is improved with a 1,507 SF two-story, one-family vacant residential structure with a detached garage.

DOB Objection: §22-00: Proposed use is contrary to district use regulations.

PREMISES AFFECTED – 148-29 Cross Island Parkway, Block 4486, Lots 34, 35, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 31, 2006, acting on Department of Buildings Application No. 402416587, reads, in pertinent part:

“The proposed NB construction is contrary to section 22-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R2 zoning district, the construction of a two-story commercial building, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to decision on January 30, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of the application on the condition that the parking lot lighting be directed down and away from nearby residences, that landscaping be provided, and that any graffiti be removed immediately; and

WHEREAS, the Queens Borough President Helen Marshall recommends approval of the application; and

WHEREAS, State Senator Frank Padavan, Assemblywoman Ann-Margaret Carrozza, City Councilmember Tony Avella, and Queens County Clerk Gloria D’Amico all submitted letters in support of this application; and

WHEREAS, the Greater Whitestone Taxpayers Civic Association submitted a letter in support of this application; and

WHEREAS, additionally, a neighbor submitted a letter in support of this application; and

WHEREAS, certain neighbors submitted objections to the application citing concerns about introducing a commercial use at the site and increased traffic; and

WHEREAS, the site is located on the southeast corner of Cross Island Parkway and 149th Street; and

WHEREAS, the site is triangular-shaped with a lot area of 5,902.6 sq. ft.; and

WHEREAS, the site is occupied by a two-story single-family home and a one-story garage; and

WHEREAS, the applicant proposes to demolish the existing home and garage; and

WHEREAS, the applicant proposes to build a two-story commercial building to be occupied by office use; and

WHEREAS, the new building will have approximately 3,431.48 sq. ft. of floor area (0.58 FAR); the R2 zoning district regulations permit a maximum floor area of 2,951.4 sq. ft. (0.5 FAR) for a residential use; and

WHEREAS, additionally, the applicant proposes to provide five accessory off-street parking spaces; and

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WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lot has an irregular triangular shape and (2) the site is located at a heavily trafficked three-way intersection and is not marketable for residential use; and

WHEREAS, as to the lot's irregular shape, the applicant represents that the irregular triangular shape of the lot results in a wide range of lot depths across the site; and

WHEREAS, specifically, the applicant represents that in 1941, when the Cross Island Parkway and its service road were constructed, the lot, which was formerly rectangular, was cut approximately in half across a 45 degree angle; and

WHEREAS, accordingly, the applicant represents that half of the lot was claimed for the parkway and the remainder was left with a triangular shape; and

WHEREAS, the applicant represents that due to the shape of the lot, it is difficult to accommodate the three yards which would be required for a residential use at the site – two 15'-0" front yards and one 5'-0" side yard and still create a viable residential floorplate; and

WHEREAS, as to the uniqueness of the shape, the applicant represents that there are only two other triangular-shaped lots within the 400 ft. radius of the site; and

WHEREAS, the Board notes that neither of the other triangular lots is both within the R2 zoning district and on a corner; and

WHEREAS, as to the marketability of the site for a residential use, the applicant represents that the site has remained vacant for almost two years as the owner made unsuccessful attempts to secure a conforming use; and

WHEREAS, the applicant notes that there is a C2-2 zoning district overlay directly across 149th Street and that there are several commercial uses and a firehouse located there; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that no other residentially-zoned sites have frontage directly on the Cross Island Expressway at a three-way intersection within the 400 ft. radius; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of the cited unique physical conditions, there is no reasonable possibility that the development of the property in strict conformance with zoning district regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming residential use; and

WHEREAS, the applicant concluded that the conforming scenario would not be financially viable; and

WHEREAS, based upon its review of this study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that

development in strict conformance with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that the site is located in a mixed-use area characterized by local commercial uses and residential uses ranging in height from one to three stories; and

WHEREAS, the Board notes that the only adjacent building is a two-story single-family residence; and

WHEREAS, accordingly, the applicant represents that the new building has been designed to resemble a residential building; and

WHEREAS, the applicant proposes to provide yards, that are comparable with those within the vicinity; and

WHEREAS, specifically, the applicant states that the proposed building will provide for two ten ft. front yards on 149th Street and Cross Island Parkway (two 15 ft. front yards are required for residential uses in the R2 zoning district) and a 9.82 ft. side yard along the northern side of the site; and

WHEREAS, the Board notes that the proposed side yard is more than twice the width of the current side yard, and almost twice the width of the side yard required for a residential use; and

WHEREAS, the applicant notes that the proposed building complies with the bulk regulations of the C2-2 zoning district adjacent to the site; and

WHEREAS, additionally, the applicant proposes to provide a row of shrubbery along the lot line adjacent to the residential use and additional landscaping surrounding two sides of the building; and

WHEREAS, the applicant notes that the proposed building is oriented towards 149th Street at the request of the Community Board, which stated that this site design is compatible with the context of 149th Street; and

WHEREAS, the applicant notes that front yards are not required for the lots within the C2-2 zoning district overlay across 149th Street and that many of the residential and commercial uses do not provide complying front yards along 149th Street; and

WHEREAS, accordingly, the Board finds that the proposed front yard along 149th Street is consistent with the context of this blockfront; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above, particularly the introduction of the Cross Island Expressway which re-shaped the original lot; and

WHEREAS, the applicant represents that the requested

MINUTES

use change is the minimum required to realize a reasonable rate of return; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-24Q, dated September 29, 2006; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R2 zoning district, the construction of a two-story commercial building, which is contrary to ZR § 22-00; and *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 29, 2006"-(6) sheets and "January 26, 2007"-(1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the new building: two stories, a total floor area of 3,431.48 sq. ft. (0.58 FAR), a street wall height of 21'-0", a total height of 28'-0", two front yards of 10'-0", one side yard of 9.82 ft., and five parking spaces, all as indicated on the BSA-approved plans;

THAT all parking lot lighting shall be directed towards the ground and away from adjacent residential uses;

THAT landscaping be provided as indicated on the BSA-approved plans;

THAT the premises shall be maintained free of debris

and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 30, 2007.

425-05-BZ

APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§23-141c and §24-162), front yard (§24-34), side yards (§24-35), lot coverage (§23-141 and §24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 and 104, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Steven M. Sinacori and Calvin Wong.

For Opposition: Fred Madler and Kai Chan.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel, Joyce Kevelson, Karen Ginnis, Anna Ralinkina and Rabbi Shlomo Nisarov.

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ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

31-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00.

PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Jordon Most, Robert Pauls and Jim Heineman.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. §42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Melorey McMurry and Doris Diether, CB #2.
For Opposition: Caroline Harris.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for continued hearing.

83-06-BZ

APPLICANT– Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application May 2, 2006 – Variance (§72-21) to allow the conversion and two (2) story enlargement of an existing four story industrial building. The proposed multi-family building will contain six (6) floors, ground floor retail use, and fourteen (14) dwelling units. No parking spaces are proposed. The proposal would exceed the maximum floor area ratio (123-64 (a)) and applicable height and setback requirements (123-662). The project site is located within the Hunters Point Subdistrict of the Special Long Island City Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lot 26, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik, Mark Mancuso and Robert Pauls.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

111-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application June 5, 2005 – Special Permit (73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-48) and perimeter wall height (23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

138-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for RH Realty LLC NY by Ralph Herzka, owner.

SUBJECT – Application July 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3447 Bedford Avenue, between Avenue M and N, Block 7661, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman, R.A.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for continued hearing.

178-06-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for Zurich Holding, Co., LLC, owner; Samson International Inc. d/b/a Nao Spa, lessee.

SUBJECT – Application August 16, 2006 – Special Permit (§73-36) to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.

PREMISES AFFECTED – 609 Madison Avenue, southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for decision, hearing closed.

214-06-BZ

APPLICANT– Walter T. Gorman, P.E., for Sidney Esikoff & Norman Fieber, owners.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1953. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, northwest corner of 197th Street, Block 10509, Lot 265, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

216-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 and §11-412) for the re-establishment and extension of term for an existing automotive service station, which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

218-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tower Plaza Associates, Inc., owner; TSI East 48 Inc. d/b/a New York Sports Club, lessee.

SUBJECT – Application August 30, 2006 – Special Permit pursuant to Z.R. §73-36 to allow the operation of an existing PCE located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building. The Premises is located in C1-9 (TA), R8B, and R10 zoning districts. The proposal is contrary to Z.R. §32-01(a).

PREMISES AFFECTED – 885 Second Avenue, westerly side of Second Avenue between East 47th Street and 48th Street, Block 1321, Lot 22, Borough of Manhattan.

COMMUNITY BOARD # 6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for decision, hearing closed.

268-06-BZ

APPLICANT – Omnipoint Communications Inc., for Mokom Sholom Cemetery Assoc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application October 2, 2006 – Special Permit for non-accessory radio tower under (§73-30). In an R-4 district, on a lot consisting of 714,600 SF, and located in a portion of Mokom Sholom Cemetery, permission sought to erect an 80' stealth flagpole disguised as a radio tower for public utility wireless communications.

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150 east of the intersection of Pitkin Avenue and 80th Street, Block 9141, Lot 20, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Robert Gaudio.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for decision, hearing closed.

275-06-BZ

APPLICANT– Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.

PREMISES AFFECTED – 408-414 West 13th Street and 13-15 Little West 12th Street, south side of West 13th Street, 124.16' west of the corner formed by the intersection of Ninth Avenue and West 13th Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Shelly Friedman and Doris Diether, CB #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2007, at 1:30 P.M., for decision, hearing closed.

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Jeff Mulligan, Executive Director

Adjourned: 5:00 P.M.

BULLETIN

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AND APPEALS

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Volume 92, No. 7

February 15, 2007

DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

Commissioners

Jeffrey Mulligan, *Executive Director*

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36-07-A

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37-07-A (

56-50 thr 56-56 Main Street, Northwest corner of Main Street and Booth Memorial Avenue., Block 5133, Lot(s) 10 & 25 Borough of **Queens, Community Board: 7**. General City Law Section 35-Request to build in the mapped portion of Booth Memorial Avenue.

38-07-BZ

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39-07-A

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40-07-A

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41-07-BZ

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42-07-BZ

203 Avenue F, Northeast corner of Avenue F & East 2nd Street., Block 5396, Lot(s) 50 Borough of **Brooklyn, Community Board: 12**. Under 72-21-Proposed extension of Synagogue.

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

CALENDAR

MARCH 6, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 6, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

741-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Hillside Auto Center S.S., Inc., owner.

SUBJECT – Application January 8, 2007 – §11-411 and §11-412 to extend the term of a variance for a gasoline service station with accessory uses for an additional period of ten years from September 23, 2005 and to amend the resolution to permit a portion of the building to be used as an accessory convenience store and to permit a metal canopy and new fuel pump. The site is located in an R-2 zoning district.

PREMISES AFFECTED – 241-15 Hillside Avenue, northwest corner of 242nd Street, Block 7909, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

98-05-BZII

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for Lauto Group, Limited c/o Anthony Lauto, owner; 48 Bonhaus Corporation c/o Dac Bon LLC, lessee.

SUBJECT – Application December 1, 2006 – To reopen and amend a previously-approved zoning variance which allowed a residential multiple dwelling (UG 2) with ground floor retail use (UG 6) in an M1-5B district; contrary to use regulations (§ 42-10). Proposed modifications include: (1) minor reduction of the ground floor commercial floor area and (2) increase in mechanical space on the ground floor; and (3) the creation of a 143 sq. ft. rooftop "storage cabin."

PREMISES AFFECTED – 46-48 Bond Street, north side of Bond Street 163/5' west of the corner formed by the intersection of Bond Street and Bowery, Block 530, Lots 44 & 31, Borough of Manhattan.

COMMUNITY BOARD #2M

MARCH 6, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 6, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

327-05-BZ

APPLICANT– Rothkrug Rothkrug Weinberg & Spector, for John Damiano, owner.

SUBJECT – Application November 11, 2005 – Special Permit (§ 73-125) to allow a proposed ambulatory diagnostic treatment care facility (Use Group 4) limited to less than 10,000 sf of floor area to locate in an R3X district. The proposal calls for a one-story and cellar building and fourteen (14) accessory parking spaces.

PREMISES AFFECTED – 5135 Hylan Boulevard, between Wendy Drive and Bertram Avenue, Block 6499, Lot 95, Borough of Staten Island.

COMMUNITY BOARD #3SI

86-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Emil Moshkovich, owner.

SUBJECT – Application May 5, 2006 – Variance (§ 72-21) to allow Use Group 7 (tire sales with installation services) and Use Group 16 (automotive repair) in an R3-2/C1-2 district; contrary to use regulations (§ 32-10). An as-of-right eating and drinking establishment (Use Group 6) is also proposed. Additionally, a Special Permit under § 73-44 is requested to allow the reduction of required off-street parking requirements.

PREMISES AFFECTED – 145-70 Guy R. Brewer Boulevard, northwestern corner of the intersection between Guy Brewer and Farmers Boulevards, Block 13309, Lots 36, 42, 44, Borough of Queens.

COMMUNITY BOARD #13Q

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.

SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of

CALENDAR

Queens.

COMMUNITY BOARD #13Q

260-06-BZ

APPLICANT – J Owen Zurhellen, III, for Charlton Cooperative Corp., owner; TRI IPPON, LLC, lessee.

SUBJECT – Application September 26, 2006 – Special Permit (§73-36) to allow the proposed PCE on the first floor in a six-story (plus basement) building located in a M1-6 zoning district. The proposal is contrary to Sections 42-00 and 42-31.

PREMISES AFFECTED – 547 Greenwich Street, a/k/a 112 Charlton Street, southeast corner of Greenwich and Charlton Streets, Block 597, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #2M

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

283-06-BZ

APPLICANT – Moshe M. Friedman, for Tammy Hirsch, owner.

SUBJECT – Application October 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1372 East 29th Street, for 190' north of intersection formed by East 29th Street and Avenue N, Block 7664, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 6, 2007
10:00 A.M.**

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon November 14, 2006, as printed in the bulletin of, Vol. 91, Nos. 43-44. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

1053-88-BZ

APPLICANT – Freda Design Associates, Ltd., for Isidore Izzo, owner.

SUBJECT – Application August 23, 2006 – Extension of Term and waiver of the rules for a variance (§72-21) to allow a (UG6) pharmacy (Rite-Aid) in a R7-1 zoning district which expired on September 27, 2004.

PREMISES AFFECTED – 590/596 East 183rd Street, located between Arthur Avenue and Adams Avenue, Block 3071, Lots 16 & 17, Borough of The Bronx.

COMMUNITY BOARD #6BBX

APPEARANCES –

For Applicant: Peter Caliendo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted variance for a pharmacy, which expired on September 27, 2004; and

WHEREAS, a public hearing was held on this application on January 23, 2007 after due notice by publication in *The City Record*, and then to decision on February 6, 2007; and

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

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

WHEREAS, the subject premises is located on the southeast corner of East 183rd Street and Arthur Avenue; and

WHEREAS, the site is located within an R7-1 zoning district and is occupied by a one-story commercial building; and

WHEREAS, the pharmacy is currently operated as a Rite Aid and occupies the entire building; and

WHEREAS, on January 29, 1957, under BSA Cal. No. 912-55-BZ, the Board granted a variance to permit the reconstruction of an existing automobile repair shop; and

WHEREAS, on December 16, 1969, under BSA Cal. No. 555-69-BZ, the Board granted a variance to permit the reconstruction of the existing commercial buildings into a supermarket; and

WHEREAS, on July 11, 1989, under the subject calendar number, the Board granted a variance to re-establish the supermarket, which expired on December 16, 1984; and

WHEREAS, finally, on September 27, 1994, under the subject calendar number, the Board granted a variance to permit the conversion of the supermarket (UG 6) to the subject pharmacy for a term of ten years; and

WHEREAS, the applicant now requests a ten-year extension of term; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 11, 1989, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on September 27, 2014; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on further condition* that all work shall substantially conform to drawings filed with this application marked “Received December 14, 2006”-(4) sheets; and *on further condition*:

THAT this grant shall expire on September 27, 2014;

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

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

THAT 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. 201058498)

Adopted by the Board of Standards and Appeals, February 6, 2007.

265-02-BZ

APPLICANT – Peter Hirshman, for Ramakrishna Vivekananda Center, owner.

SUBJECT – Application October 13, 2006 – Extension of time to complete construction and to obtain a Certificate of Occupancy which expires on August 12, 2007 for a community facility use (UG4) (Ramakrishna-Vivekananda Center of New York) located in an R8B and R10 zoning

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district.

PREMISES AFFECTED – 19 East 94th Street, south side 108’ west of the intersection of Madison Avenue, Block 1506, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction and obtain a certificate of occupancy for a community facility, which expires on August 12, 2007; and

WHEREAS, a public hearing was held on this application on January 23, 2007 after due notice by publication in *The City Record*, and then to decision on February 6, 2007; and

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

WHEREAS, the subject premises is located on the north side of East 94th Street, between Fifth Avenue and Madison Avenue, partially within an R8B zoning district and partially within an R10 zoning district; and

WHEREAS, the site is occupied by a four-story community facility building; and

WHEREAS, the application is brought on behalf of Ramakrishna-Vivekananda Center of New York, a non-profit universal temple; and

WHEREAS, on August 12, 2003, under the subject calendar number, the Board granted a variance to permit the enlargement of the existing building; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed in accordance with § 72-23, which allows for four years from the date of the grant; and

WHEREAS, the applicant states that, construction, pursuant to the 2003 grant was postponed as other renovations at the site were completed so as to lessen any disturbance to the congregation; and

WHEREAS, additionally, the applicant represents that additional time is necessary to implement and fund the project; and

WHEREAS, thus, the applicant now requests four years to complete construction and obtain a new certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and

Appeals *reopens* and *amends* the resolution, dated August 12, 2003, so that as amended this portion of the resolution shall read: “to grant an extension time to complete construction and obtain a certificate of occupancy for four years from the expiration of the prior grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT a certificate of occupancy shall be obtained by February 6, 2011;

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. 102824678)

Adopted by the Board of Standards and Appeals, February 6, 2007.

244-01-BZ

APPLICANT– Sheldon Lobel, P.C., for Gregory Pasternak, owner.

SUBJECT – Application October 24, 2006 – Extension of Time to complete construction which expired on September 24, 2006 for the legalization of residential units in an existing building located in an M1-2/R6A zoning district.

PREMISES AFFECTED – 325 South 1st Street, a/k/a 398/404 Rodney Street, northeast corner of intersection formed by Rodney Street and South First Street, Block 2398, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for continued hearing.

597-39-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Kings Parsons Car Care Inc., lessee.

SUBJECT – Application December 11, 2006 – 11-412 Amendment to a gasoline service station (Exxon Mobil) for the erection of a new steel canopy and to legalize the conversion from one pump island to two pump islands, conversion of a portion of the service building to a convenience store, the installation of a car vacuum and public telephone on site, four curb cuts and wood planters in a C1-4/R5D zoning district.

PREMISES AFFECTED – 84-04 Parsons Boulevard, aka 152-16 84th Avenue, southwest corner of 84th Avenue, Block 9751, Lot 1, Borough of Queens.

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COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for continued hearing.

166-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Kassiani Katos, owner; KPS Food Corporation, lessee.

SUBJECT – Application August 30, 2006 – Extension of Term and waiver of the rules for variance to permit an eating and drinking establishment (Burger King & Popeye's) which expired in January 6, 2006 in a C1-2(R3-2) and R3-2 zoning district; and an extension of Time to obtain a certificate of occupancy which expired on March 18, 1998.

PREMISES AFFECTED – 164-17 Union Turnpike, north side of Union Turnpike, 148.83' east of 164th Street, Block 6972, Lot 21, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for decision, hearing closed.

213-06-A

APPLICANT – Fredrick A. Becker, Esq., for 7217 Grand Avenue Corp., owner.

SUBJECT – Application August 23, 2006 – to permit the construction of three story mixed use commercial/residential structure within the bed of a mapped street (72nd Place), contrary to General City Law Section 35. Premises is located in an C1-2 (R6B) Zoning District.

PREMISES AFFECTED – 72-19 Grand Avenue, northwest corner of Grand Avenue and 72nd Place, Block 2506, Lot 96 (tent.), Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for decision, hearing closed.

238-06-A

APPLICANT – Kevin A. Finnegan, for Elizabeth Langwith, et al.

OWNER: Hudson 12th Development, LLC.

SUBJECT – Application September 12, 2006 – Appeal of the decision of the DOB refusal to revoke permits issued for a proposed dormitory (NYU) on a lot formerly occupied by St Anne's Church that allows the creation of a zoning lot under Section 12-10 (d) utilizing unused developmental rights from the United States Post Office, a government agency that is exempt from zoning regulations. C6-1 zoning district.

PREMISES AFFECTED – 110-124 East 12th Street, between Third and Fourth Avenue, Block 556, Lots 48 and 49, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Off Calendar.

Jeffrey Mulligan, Executive Director

Adjourned: 10:30 A.M.

REGULAR MEETING

**TUESDAY AFTERNOON, FEBRUARY 6, 2007
1:30 P.M.**

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

ZONING CALENDAR

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

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COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, February 6, 2007.

122-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Revelation Development, Inc., owner.

SUBJECT – Application June 12, 2006 – Variance (§72-21) to permit the proposed enlargement of an existing medical office building and construction of residences without the required front and side yard. The Premise is located in a portion of an R5 and a portion of a C2-3/R5 zoning district. The proposal is seeking waivers relating to §23-45 and §24-34 (Front yard) and §23-462 and §24-35 (Side Yard).

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 18, 2006, acting on Department of Buildings Application No. 301373305, reads, in pertinent part:

- “1. No front yard has been provided in the R5 portion of the lot, contrary to Sections 23-45 and 24-34, Zoning Resolution.
2. Only one side yard of 8 feet, 6 inches has been provided, contrary to Sections 23-462 and 24-35, Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C2-3 (R5) zoning district and partially within an R5 zoning district, the enlargement of a one-story commercial building to be occupied by additional medical office space and two residential dwelling units, which is contrary to ZR §§ 23-34, 23-35, 23-45, and 23-462; and

WHEREAS, a public hearing was held on this application on December 5, 2006, after due notice by publication in the *City Record*, with a continued hearing on January 23, 2007, and then to decision on February 6, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

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

WHEREAS, the site is located on the east side of 86th Street near the intersection with West 12th Street and between Avenue U and Avenue V; and

WHEREAS, the lot is triangular-shaped with a total lot area of 4,486.129 sq. ft.; and

WHEREAS, the portion of the lot within the C2-3 (R5) zoning district has a lot area of approximately 3,433 sq. ft.; and

WHEREAS, the portion of the lot within the R5 zoning district has a lot area of approximately 1,064.48 sq. ft.; and

WHEREAS, the majority of the portion of the lot within the C2-3 (R5) zoning district is occupied by a one-story medical office building (UG 4) with a floor area of 2,809 sq. ft.; and

WHEREAS, the remainder of the lot, which includes the portion of the lot within the R5 zoning district and a sliver of the portion of the lot within the C2-3 (R5) zoning district is unimproved; and

WHEREAS, the applicant proposes to build a three-story and cellar mixed use commercial/residential building adjacent to the existing building on the lot; and

WHEREAS, the applicant proposes to provide additional medical offices/services on the first floor of the enlargement, which will be connected to the existing building at the first floor; and

WHEREAS, the proposed enlargement provides for an 1,109 sq. ft. cellar, an 1,109 sq. ft. first floor to be occupied by medical office space, and one 1,109 sq. ft. dwelling unit on each of the second and third floors; and

WHEREAS, the combined floor area for the existing building and the proposed enlargement is 6,136.3 sq. ft. and the proposed FAR is 1.12, both of which comply with zoning district regulations; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the lot has an irregular triangular shape, (2) the lot is divided by a district boundary line and the unimproved portion of the lot where the district boundary is located is small and irregularly-shaped, (3) the majority of the portion of the lot within the C2-3 (R5) zoning district is occupied by a commercial building for which no front yards or side yards are required, and (4) the two required 8 ft. side yards for the irregularly-shaped portion of the lot within the R5 zoning district cannot be accommodated; and

WHEREAS, as to the lot’s irregular shape, the applicant represents that the irregular triangular shape of the lot results in a wide range of lot depths across the site; and

WHEREAS, specifically, due to the location of the district boundary line, which results in the larger, more regularly shape portion of the lot being within the C2-3 (R5) zoning district, the portion of the site within the R5 zoning district is smaller and more angular; and

WHEREAS, the result is that the portion of the lot within the C2-3 (R5) zoning district occupied by the commercial

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building and the undeveloped sliver do not have front and side yard requirements, yet the small portion of the lot does; and

WHEREAS, the applicant submitted plans reflecting complying development, which reflects an irregularly-shaped enlargement with a total floor plate of approximately 680 sq. ft.; and

WHEREAS, specifically, an as of right enlargement would consist of a trapezoidal-shaped sliver in the C2-3 (R5) portion of the lot, with a width of ten feet and a maximum depth of 45'-9 1/2" due to the required side yard, and a small triangular portion on the R5 portion of the lot; and

WHEREAS, because of the required setback and side yards, the triangular portion of the enlargement within the R5 zoning district would have a floor plate of only approximately 280 sq. ft.; and

WHEREAS, accordingly, the applicant asserts that this enlargement could not feasibly accommodate residential or commercial use; and

WHEREAS, the applicant notes that neither the as of right scenario nor the proposed enlargement provides for all the available floor area; a maximum floor area of 8,972 sq. ft. (2.0 FAR) is permitted; and

WHEREAS, as to uniqueness, there are no other irregularly shaped lots divided by a district boundary line within a 400-ft. radius; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in strict compliance with zoning district regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a complying horizontal enlargement of the existing medical services building; and

WHEREAS, the applicant concluded that the complying scenario would result in an enlargement that would be significantly underdeveloped and too small to provide any efficient use for the medical office use; and

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

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

WHEREAS, the applicant states that the site is located in an area characterized by buildings with ground floor commercial use and residential use on the upper floors,

particularly along Avenue U and portions of 86th Street; and

WHEREAS, the applicant represents that the majority of buildings in the immediate vicinity are two and three-stories, with one adjacent four-story building; and

WHEREAS, the applicant submitted photographs and a land use map indicating heights of neighboring buildings; and

WHEREAS, the applicant notes that neither the adjacent building on the lot within the C2-3 (R5) zoning district nor the adjacent building on the neighboring lot within the R5 zoning district has a front yard; and

WHEREAS, additionally, the applicant notes that a side yard is proposed within the R5 zoning district; and

WHEREAS, at hearing, the Board asked the applicant to clearly identify the property line since the Board observed that there is a fence on the unimproved portion of the site, which appears to extend onto the sidewalk; and

WHEREAS, specifically, the Board asked to establish the property line and to ensure that the proposed enlargement lines up with the existing building on the site and the adjacent two-story residential buildings; and

WHEREAS, in response, the applicant performed a survey, which indicated that the fence and front landscaping is within the street/sidewalk and is beyond the property line; and

WHEREAS, the applicant represents that the fence will be removed and the street wall of the proposed enlargement will be aligned with both adjacent buildings and will not extend beyond the property line; and

WHEREAS, the Board notes that the proposed building will line up with both adjacent buildings to form a consistent streetwall; and

WHEREAS, accordingly, the Board finds that the requested front yard waiver is consistent with the context of the block; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board notes that the applicant proposes to provide a complying side yard on the portion of the site within the R5 zoning district; and

WHEREAS, accordingly, the Board finds that the yard waiver requests are the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

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Assessment Statement (EAS) CEQR No. 06-BSA-98K, dated October 10, 2006; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C2-3 (R5) zoning district and partially within an R5 zoning district, the enlargement of a one-story commercial building to be occupied by additional medical office space and two residential dwelling units, which is contrary to ZR §§ 23-34, 23-35, 23-45, and 23-462, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 25, 2007"- (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the new building: three stories, a total floor area of 6,136.30 sq. ft. (1.12 FAR), a street wall and total height of 30'-0", one side yard of 8'-6", two dwelling units, and two parking spaces, all as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 6, 2007.

133-06-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for

Parish of Trinity Church, owner; TSI Varick Street dba New York Sports Club; lessee.

SUBJECT – Application June 23, 2006 – Special Permit (§73-36) Proposed physical culture establishment to be located on the second floor of an existing 12 story commercial building. M1-5 Zoning District.

PREMISES AFFECTED – 225 Varick Street, westerly side of Varick Street between West Houston Street and Clarkson Street, Block 581, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker and Doris Diether.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 104443345, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as of right in M1-5 zoning district and it is contrary to ZR 42-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-5 zoning district, the legalization of a physical culture establishment (PCE) on portions of the first and second floors of an existing mixed-use commercial and industrial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 23, 2007 after due notice by publication in *The City Record*, and then to decision on February 6, 2007; and

WHEREAS, the site was inspected by a committee of the Board consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Varick Street between Clarkson Street and West Houston Street; and

WHEREAS, the site is occupied by a twelve-story mixed-use commercial and industrial building; and

WHEREAS, the PCE currently occupies a total of 16,741 sq. ft. of floor area on the first and second floors; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

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

WHEREAS, the Board notes that the PCE began operating at the site on July 1, 2006; and

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WHEREAS, the PCE will maintain the following hours of operation: Monday through Thursday, 6 a.m. to 11 p.m.; Friday, 6 a.m. to 9 p.m.; and Saturday and Sunday, 9 a.m. to 7 p.m.; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.06-BSA-103M, dated September 22, 2006; and

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

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-5 zoning district, the legalization of a PCE on portions of the first and second floors of an existing mixed use commercial and industrial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed

with this application marked "Received February 1, 2007"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 1, 2016;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 6, 2007.

378-04-BZ

APPLICANT– Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to Section 42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

183-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Dimitrios Spanos.

SUBJECT – Application August 5, 2005 – Variance (§ 72-21) to allow the residential redevelopment and enlargement of an existing two-story commercial building. The proposed multiple dwelling building will be six (6) floors and will contain ground floor commercial space. Twenty (20) dwelling units and ten (10) accessory parking spaces are proposed. The proposal is contrary to use regulations (§ 42-00). M1-3D district.

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PREMISES AFFECTED – 25-09 38th Avenue, north east corner of the intersection of Crescent Street and 38th Avenue, Block 368, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Joseph Morsellino and Eric Palatnik.

For Opposition: Virginia Lupoli

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR sections 32-14 (use), 33-121 (FAR), 101-721 and 101-41(b) (street wall height), 101-351 (curb cut), and 35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100’ east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of ZR §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

82-06-BZ

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 – pursuant to Z.R.

§72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. §22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ).The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls and Eric Meyer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for decision, hearing closed.

118-06-BZ

APPLICANT– Harold Weinberg, P.E., for Moshe Cohn, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage, open space and floor area, ZR 23-141(a) and rear yard, ZR 23-47 in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beaumont Street, east side, 220’ north of Hampton Avenue and Shore Boulevard, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant Harold Weinberg.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

157-06-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for C & K Steinway, LLC, owner; TSI Astoria Inc. dba New York Sports Club, lessee.

SUBJECT – Application July 15, 2006 – Special Permit (§73-36) to legalize the enlargement of a previously approved physical culture establishment on the first and second floor of a three story commercial building. C4-2A, C2-2(R6) zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, northwest corner of Steinway Street and 30th Avenue, Block 662, Lot 41, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for decision, hearing closed.

237-06-BZ

APPLICANT – Moshe M. Friedman, for Jonathan M. Schwartz, owner.

SUBJECT – Application September 12, 2006 – Special Permit (73-622) for the enlargement of a single family semi-detached residence. This application seeks to vary open space and floor area (23-141(a)); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1462 East 26th Street, west side 333'-7" north of the intersection formed by East 26th Street and Avenue O, Block 7679, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for continued hearing.

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§ 72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§ 23-861). R6B district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright.

For Opposition: Gary Giordano, CB#5.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

263-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area §23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Fredrick Becker and Lyra Altman.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

266-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Woodcutters Realty Corp., owner; Three on Third LLC, lessee.

SUBJECT – Application September 29, 2006 – Special Permit (§ 73-52) to extend C6-1 zoning district use and bulk regulations twenty-five (25) feet into an adjacent R7-2 district to allow a mixed-use building containing Use Group 5 (transient hotel) on the residentially zoned portion of the subject zoning lot. C6-1 and R7-2.

PREMISES AFFECTED – 4 East 3rd Street, a/k/a 335-343 Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Shelly Friedman, Matt Markowitz, Robert Pauls, Gleen O'Brien, Allan Buchman and Cautney.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:00 P.M.

BULLETIN

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Volume 92, No. 8

February 22, 2007

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97-06-BZ	153-155 Spring Street, a/k/a 411 West Broadway, Manhattan
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290-06-BZ	372 Lafayette Street, Manhattan

DOCKETS

New Case Filed Up to February 13, 2007

43-07-BZ

346-360 West 17th Street, Through lot fronting West 16th and West 17th Streets on the block between 8th and 9th Avenues, Block 740, Lot(s) 55 Borough of **Manhattan, Community Board: 4**. Under 72-21-Transient hotel.

44-07-BZ

171-173 East 83rd Street, Northwest corner of East 83rd Street & Third Avenues., Block 1512, Lot(s) 33 Borough of **Manhattan, Community Board: 8**. (SPECIAL PERMIT)-73-36-To legalize a Physical Culture Establishment for Bikram Yogaa NYC, on the second floor in a six story mixed-use building.

45-07-A

1472 East 19th Street, Between Avenue N and Avenue O., Block 6756, Lot(s) 36 Borough of **Brooklyn, Community Board: 14**. Appeals-Seeks a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

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

CALENDAR

MARCH 13, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 13, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

854-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Company, Inc. R & M, owner.

SUBJECT – Application January 22, 2007 – Extension of Time to obtain a Certificate of Occupancy and waiver of the Rules of Practice and Procedure which expired on September 21, 2000 in a C2-2/R3-2 zoning district.

PREMISES AFFECTED – 188-02 to 188-10 Hillside Avenue, 88-01 to 88-09 188th Street, Block 10453, Lot 19, Borough of Queens.

COMMUNITY BOARD #12Q

58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 277 Park Avenue, LLC, owner; Manhattan Athletic Club, LLC, lessee.

SUBJECT – Application December 8, 2006 – Extension of Term/Amendment-For the operation of a Physical Culture or Health Establishment for an additional ten (10) years, and to add 479 square feet to the club for the purposes of a boxing room. The site is located in a C5-3(SMD) &C6-6 zoning district.

PREMISES AFFECTED – 277 Park Avenue, east side of Park Avenue and 47th Street, Block 1302, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

97-97-BZII

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

SUBJECT – Application February 12, 2007 – Extension of Time and a waiver of the rules, to obtain a Certificate of Occupancy for a previously granted variance to allow in an R-5 zoning district; the construction and maintenance of a gasoline service station with an accessory convenience store which expired April 19, 2006.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, aka 1419/21 Rosedale Avenue, Block 3894, Lot 28, Borough of The Bronx.

COMMUNITY BOARD #9BX

346-98-BZ

APPLICANT – Vito J. Fossella, P.E., for Amboy Service Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an expired amendment granted on October 12, 1999 to permit the proposed conversion of an existing building accessory to a gasoline service station, into a convenience store, by enlarging the existing building and eliminating the use of the lubritorium, car wash, motor adjustments and minor repairs, as well as the relocation and increase in the number of pump islands from two to four, with a metal canopy over the new pump islands; an extension of Time to obtain a Certificate of Occupancy and a waiver of the rules in an R3-2 (South Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #3SI

150-00-BZIII

APPLICANT – Eric Palatnik, P.C., for Yeshiva of Far Rockaway, owner.

SUBJECT – Application February 15, 2007 – Extension of Time to complete construction and obtain a certificate of occupancy for a variance for additional floor area on the second floor to an existing two story synagogue and yeshiva which expired January 25, 2007 in an R-2 zoning district.

PREMISES AFFECTED – 802 Hicksville Road, corner of Beach 9th Street, Block 15583, Lot 16, Borough of Queens.

COMMUNITY BOARD #14Q

APPEALS CALENDAR

6-07-A thru 9-07-A

APPLICANT – Sheldon Lobel, P.C., for College Point Holding, LLC, owner.

SUBJECT – Application January 8, 2007 – Proposed construction of four two family homes not fronting on mapped street which is contrary to Article 3, Section 36 of the General City Law. R4A Zoning District.

PREMISES AFFECTED – 127-09, 127-11, 127-15 and 127-17 Gurino Drive, (*Former 25th Road*) between 127th Street and Ulmer Street, Block 4269, Lots 1 & 27 (*to be known as New Tax Lots 1, 2, 3 & 4*), Borough of Queens.

COMMUNITY BOARD #7Q

150-06-A & 151-06-A

APPLICANT – Kathleen R. Bradshaw, for Frank Gallo, owner.

SUBJECT – Application July 7, 2006 – Proposed construction of two, two – family dwellings located within the bed of a mapped street contrary to General City Law Section 35. R4A Zoning District .

CALENDAR

PREMISES AFFECTED – 2550 & 2552 Kingsland Avenue, between Mace Avenue and Allerton Avenue, Block 4488, Lots 30 & 32, Borough of Bronx.

COMMUNITY BOARD #11BX

MARCH 13, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 13, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

10-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Samuel Benitez, owner.

SUBJECT – Application January 20, 2005 – Variance under (§ 72-21) to allow a five (5) story residential building containing eighteen (18) dwelling units and thirteen (13) parking spaces in an M1-2 zoning district; contrary to use regulations (§ 42-00).

PREMISES AFFECTED – 443 39th Street, a/k/a 459 39th Street, between 4th and 5th Avenues, Block 705, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #7BK

163-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3) story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (23-141c), front yard (23-45), side yards (23-462), and off-street parking (25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43rd Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

COMMUNITY BOARD #4Q

278-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to Section 42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #8BK

294-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for John and Steven, Inc., owner; Club Fitness NY, lessee. SUBJECT – Application November 8, 2006 – Special Permit (§73-36) to allow the proposed PCE on the second and third floors in a three-story building. The Premises is located in a C2-2 zoning district. The proposal is contrary to Section 32-31.

PREMISES AFFECTED – 31-11 Broadway, between 31st and 32nd Street, Block 613, Lots 1 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

301-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111’ north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

303-06-BZ

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications, Inc., for Verrazano Garden Apartments, Inc., owner.

SUBJECT – Application November 14, 2006 – Special Permit 73-30: Install non-accessory 75' radio tower, with related equipment, on a portion of the property (Block 3107, Lot 12), a lot consisting of 51,458 SF, located in an R3-2 zoning district.

PREMISES AFFECTED – 1081 Tompkins Avenue, 220’ north of Tompkins Avenue and Richmond Avenue, Block 3107, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, FEBRUARY 13, 2007 10:00 A.M.

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, November 14, 2006 as printed in the bulletin of November 23, 2006, Vol. 91, Nos. 43 & 44. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC, owner; Helm Bros., lessee.

SUBJECT – Application November 16, 2006 – Extension of Time/Waiver to complete construction to permit the erection of a second story (5,000 sq. ft.) to the existing (UG6) commercial building (auto repair shop, sales and exchange of vehicles and products) which expired on April 29, 2005, located in a C2-2(R6B) and R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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, which expired on April 29, 2005; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the subject premises is located on the south side of Northern Boulevard between 208th Street and Oceania Street; and

WHEREAS, the site is located partially within a C2-2 (R6B) zoning district and partially within an R4 zoning district; and

WHEREAS, the site is improved upon with a 5,000 sq. ft. one-story commercial building occupied by an automotive repair shop and a sales area; and

WHEREAS, on December 13, 1955, the Board granted a variance to permit the reconstruction of an automotive repair

facility in a residential zoning district; and

WHEREAS, at various times, the grant was amended and extended; and

WHEREAS, on March 6, 2001, the Board granted a special permit to allow the construction of a second floor to the existing commercial building to be occupied by office and storage space; the term to complete construction expired on March 6, 2003; and

WHEREAS, on April 29, 2003, the Board granted an extension of time to complete construction and obtain a certificate of occupancy for an additional two years to expire on April 29, 2005; and

WHEREAS, the applicant represents that the addition has not been constructed and the certificate of occupancy has not been obtained due, in part, to an administrative delay; and

WHEREAS, the applicant states that the construction is projected to be completed in the summer of 2008; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 13, 1955, so that as amended this portion of the resolution shall read: “to grant an extension of time for two years from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT substantial construction shall be completed by February 13, 2009;

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. 401113816)

Adopted by the Board of Standards and Appeals, February 13, 2007.

104-02-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC., owner; Helms Brothers, lessee.

SUBJECT – Application November 16, 2006 – Extension of Time to complete construction and waiver of the rules which expired on August 13, 2006 for the construction of a new car preparation building (Use Group 16B) at an existing automobile storage facility in a C-3 zoning district.

PREMISES AFFECTED – 23-40 120th Street, west side of 120th Street, between 25th Avenue and 23rd Avenue, Block 4223, Lot 21, Borough of Queens.

MINUTES

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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, which expired on August 13, 2006; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the subject premises is located on the west side of 120th Street between 25th Avenue and 23rd Avenue; and

WHEREAS, the site is occupied by a small one-story shed and an outdoor automobile storage facility, located within a C3 zoning district; and

WHEREAS, on August 13, 2002, the Board granted a variance to permit the construction of a new car preparation building (UG 16B) at an existing automobile storage facility; and

WHEREAS, the applicant represents that the new building has not been constructed and the certificate of occupancy has not been obtained due, in part, to an administrative delay; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 13, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time for four years from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT substantial construction shall be completed by February 13, 2011;

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. 401420020)

Adopted by the Board of Standards and Appeals, February 13, 2007.

717-60-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.

PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for continued hearing.

27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner.

SUBJECT – Application October 23, 2006 – Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 27, 2007, at 10 A.M., for decision, hearing closed.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Opposition: Kathy Grove, Larry List, Marilyn Stern, Nicholas Lecakes and Jonathan Gouldner.

MINUTES

ACTION OF THE BOARD – Laid over to March 6, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

337-05-A

APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.

SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district.

Premises is located in a R4-A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed two-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 24, 2005, after due notice by publication in *The City Record*, with continued hearings on December 5, 2006 and January 9, 2007, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, State Senator Jeffrey D. Klein and the Morris Park Community Association provided letters in support of the appeal; and

WHEREAS, certain neighbors also submitted letters in support of the appeal; and

WHEREAS, however, the adjacent neighbors at 1719 Hering Avenue and their counsel appeared in opposition to the appeal; and

WHEREAS, the applicant states that the subject premises consists of a 2,500 sq. ft. lot on the east side of Hering Avenue, between Morris Park Avenue and Van Nest Avenue; and

WHEREAS, the applicant proposes to develop the site with a two-story two-family semi-detached residential building, which will occupy a total of 1,870 sq. ft. of floor area (0.75 FAR) (hereinafter, the “Building”); and

WHEREAS, the site was formerly located within an R4 zoning district; and

WHEREAS, the Building complies with the former R4 zoning district parameters; and

WHEREAS, however, on October 11, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Morris Park Rezoning, which rezoned the site to R4A; and

WHEREAS, the Building does not comply with the R4A zoning district parameters as to side and front yards; and

WHEREAS, specifically, as to side yards, R4A zoning district regulations require two side yards with a total width of 10 ft. and a minimum of 8 ft. between buildings on adjacent lots; a single 8 ft. side yard is proposed; and

WHEREAS, as to the front yard, R4A zoning district regulations require that the front yard be as deep as that provided on the adjacent lot; a 10 ft. front yard that is not as deep as the adjacent front yard is proposed; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the record indicates that New Building Permit No. 200821968 (hereinafter, the “New Building Permit”) was lawfully issued to the owner by DOB prior to the Rezoning Date, on June 20, 2005; and

WHEREAS, the Opposition did not contest the validity of the New Building Permit, nor did DOB inform the Board that the New Building Permit was invalid; and

WHEREAS, thus, the Board accepts that the permits were validly issued by DOB to the owner of the subject premises and were in effect until the Rezoning Date; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date, the owner completed site preparation, excavation, the installation of footing forms and rebar, and poured 14.5 cubic yards of concrete out of a total of approximately 44.5 cubic yards of

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concrete required for foundation work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site; affidavits from the general contractor and concrete contractor, stating the amount of work completed; and copies of pour tickets, a rebar invoice, cancelled checks, and accounting summaries; and

WHEREAS, the general contractor states that excavation and site clearing were completed on September 27 and 28, 2005 and that a portion of the footings were poured on September 29, 2005; and

WHEREAS, the concrete contractor, by his affidavit, agrees that concrete was poured on September 29, 2005; and

WHEREAS, however, the Board notes that there is a conflict about what transpired at the site on September 29, 2005; and

WHEREAS, specifically, one of the neighbors who appeared in opposition submitted an affidavit stating that she observed the commencement of the excavation on September 29, 2005 and, that on that date, she called DOB to report unsafe conditions; and

WHEREAS, this neighbor states that a DOB inspector was dispatched to the site for an inspection on that date; and

WHEREAS, DOB records show that the call requesting an inspection of the site was placed at 10:09 a.m. on September 29, 2005; and

WHEREAS, DOB records do not indicate what time the inspection was made, but the contractor states that the inspection occurred between noon and 1:00 p.m.; and

WHEREAS, the DOB inspector filed a report of the inspection on October 3, 2005, which stated that excavation was in progress at the site and that no forms or footings were installed; and

WHEREAS, additionally, former Councilwoman Madeline Provenzano, whose property abuts 1715 and 1717 Hering Avenue at the rear, also submitted an affidavit in opposition and

WHEREAS, former Councilwoman Provenzano represents that on September 29, 2005, she observed construction activity at the site, but did not see any concrete poured on that day or any day until November 1, 2005; and

WHEREAS, in contrast to this testimony, a tenant of the other adjacent property stated that she observed concrete being poured on September 29, 2005; and

WHEREAS, the concrete pour tickets reflect the contractor's claim that concrete deliveries were made to the site on September 29, 2005 at 2:45 p.m. and 3:51 p.m.; and

WHEREAS, the applicant also notes that since the subject site is small, it is possible to complete excavation and begin foundation work on the same day, as the contractor purports; and

WHEREAS, the Board has considered the submitted evidence and the conflicting affidavits and testimony as to the activities at the site on September 29, 2005; and

WHEREAS, the Board first notes that no neighbor who appeared in opposition claims to have observed the site continuously for the entire day; and

WHEREAS, accordingly, the claim that concrete was

poured in the afternoon has not been specifically refuted; and

WHEREAS, further, the Board notes that adjacent property owners are interested parties and, as such, their statements may appropriately be given less weight than the tenant who recalled that she saw concrete being poured, since she has no stake in the outcome of this application; and

WHEREAS, the neighbors in opposition also submitted photographs of the site taken on October 13 and 14, 2005 in support of the assertion that no foundation work had been performed prior the Rezoning Date; and

WHEREAS, however, these photographs are not dispositive; and

WHEREAS, the Board observes that these photographs do not dispel the possibility that footings may be submerged in the earth as is typical of this kind of construction, or that they otherwise may not be visible due to the opaqueness of the water present at the site; and

WHEREAS, notwithstanding the above-mentioned observations about the conflicting versions of what transpired on the site on September 29, 2005 and the photographs, the Board finds it unnecessary to resolve this dispute for purposes of resolving this appeal; and

WHEREAS, instead, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site prior to the rezoning even if the alleged concrete pour on September 29 is excluded from the analysis; and

WHEREAS, the Board has reviewed the cases cited in the applicant's November 29, 2005, November 6, 2006, and January 4, 2007 submissions, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, specifically, the applicant cites to Ageloff v. Young, 282 A.D. 707 (2d Dept. 1953) where the court found vested rights were established by staking, clearing, and excavating the site, and contracting for architectural services, and Hasco Electric Corp. v. Dassler, 144 N.Y.S.2d 857 (Sup. Ct. Westchester County 1955) where the court found vested rights were established by clearing trees and billboards in anticipation of construction work; and

WHEREAS, the Board notes that the courts in Ageloff and Hasco accepted site preparation work, the losses associated with it, and the expended soft costs to be sufficient to establish the right to vest under the common law; and

WHEREAS, in light of these cases, even assuming that the footings had not been installed as of the Rezoning Date, the Board still characterizes the work performed at the site as substantial; and

WHEREAS, the Board also notes that the site preparation and excavation at the site indisputably occurred prior to the Rezoning Date; and

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

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

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$99,113.81, including hard and soft costs and financing (but not the cost of the concrete pour for the footings), out of \$413,500.00 budgeted for the entire project; and

WHEREAS, the Board observes that the expenditures on hard costs alone prior to the Rezoning Date are \$31,000.00 out of a total \$295,000.00 required for the project; and

WHEREAS, the applicant documents additional hard costs incurred after the Rezoning Date, but the Board does not credit these expenses; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices (including a rebar invoice, dated September 26, 2005), cancelled checks, and accounting reports; and

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

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

WHEREAS, the Opposition contends that the applicant provided conflicting records in support of the claims about the completed concrete pouring; and

WHEREAS, the applicant acknowledged that there was a discrepancy about the amount of concrete poured and its expense, which occurred because the concrete contractor initially submitted records for progress payments rather than an accurate reflection of the timeline of construction; and

WHEREAS, however, because the Board finds it unnecessary to include the concrete costs into the analysis, this contention is irrelevant; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$99,113.81 associated with pre-Rezoning Date project costs that would result if this appeal was denied is significant; and

WHEREAS, additionally, the applicant explained the diminution in income that would occur if front and side yard limitations of the new zoning were imposed; and

WHEREAS, specifically, the inability to develop the proposed home would require the owner to clear the site, re-design the Building, and re-pour the foundation; and

WHEREAS, the applicant represents that a complying home would have a floor plate with a usable width of only 12'-4", due to the R4A zoning district's required side yards

and distance between buildings on adjacent lots, and would be uninhabitable; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying home, and the \$99,113.81 of actual expenditures that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, the Opposition expressed the following additional concerns about various other aspects of this application: (1) the Building will be attached to one of the adjacent homes, resulting in a semi-detached condition, (2) work was performed on the site after the Rezoning Date, (3) the time to appeal had expired, and (4) the standards to vest under ZR § 11-311 had not been met; and

WHEREAS, as to the semi-detached condition, the Board observes that the R4 zoning permits a semi-detached home with one side yard, as proposed; and

WHEREAS, as to the continued work at the site, the Board acknowledges that work continued after the change in zoning, but the Board only considered work performed prior to the Rezoning Date and costs associated with that work and disregarded any illegal work and costs associated with work performed after this date; and

WHEREAS, as to the timeliness of the appeal, the Board notes that the Opposition cites to the incorrect standard for bringing an appeal to vest under the common law; and

WHEREAS, specifically, the Opposition claims that the owner had 30 days to appeal from the date of the rezoning; and

WHEREAS, the Board notes that the appropriate standard for a common law vesting case is 30 days from a final determination from the DOB; and

WHEREAS, in this case, the applicant filed the appeal within 30 days of the November 1, 2005 stop work order; and

WHEREAS, the Board also notes that the standards required for a vesting under ZR § 11-311 are different than those required for a vesting under the common law; and

WHEREAS, specifically, there is no absolute requirement that substantial work be completed on the foundation under the common law; and

WHEREAS, additionally, under a common law vesting case, the Board may consider expenditures (including soft costs) and predicted economic loss should vesting not be granted; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of

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DOB Permit No. 200821968, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, February 13, 2007.

85-06-BZY

APPLICANT – Sanford Solny, for Menachem Realty, Inc., owner.

SUBJECT – Application May 5, 2006 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. § 11-331 for a mixed use building under the prior R6 zoning district. New zoning district is R4-1.

PREMISES AFFECTED – 1623 Avenue “P”, northwest corner of Avenue “P” and East 17th Street, Block 6763, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

THE RESOLUTION:

WHEREAS, this is an application under Z.R. § 11-331 to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in *The City Record*, with continued hearings on October 24, 2006, November 14, 2006, December 12, 2006 and January 23, 2007, and then to decision on February 13, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommended disapproval of the instant application; and

WHEREAS, the site had a site examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, the subject site is located on the northwest corner of Avenue P and East 17th Street; and

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

WHEREAS, on February 8, 2006, the developer of the site (the “Developer”) obtained, though professional certification, approval for plans for a six-story residential condominium building; and

WHEREAS, the applicant further states that a building permit (NB Permit No. 302073681, hereinafter, the “Permit”) was issued on March 7, 2006, based upon these plans; and

WHEREAS, the applicant represents that work commenced thereafter until March 10, 2006, when DOB issued

a stop-work order for failure to provide shoring on the northern side of the development site; and

WHEREAS, the Developer apparently obtained a court order that facilitated this shoring work on March 17, 2006; and

WHEREAS, the shoring work was allegedly completed on April 4, 2006, and the stop-work order as to further development on the site was rescinded; and

WHEREAS, on April 5, 2006 (the “Rezoning Date”), the City Planning Commission approved the Midwood Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, under the R4-1 zoning district regulations, only detached and semi-detached one-or-two family homes are permitted; thus, the proposed six-story condominium would not be permitted; and

WHEREAS, pursuant to Z.R. § 11-331, the Board may renew a building permit that lapsed due to a rezoning for a period of six months, thus allowing construction to continue under the prior zoning, so long as the Board finds that on the date the permit lapsed, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, a pre-requisite for a renewal under 11-331 is the issuance of a building permit, lawfully issued as set forth in Z.R. § 11-31; and

WHEREAS, specifically, Z.R. § 11-31 (a) provides: “A lawfully issued building permit shall be a building permit which is based upon an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to the [Zoning Resolution]. In case of dispute as to whether an application includes ‘complete plans and specifications’ as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, during the hearing on this application, the applicant claimed that the Permit was valid and that it should be credited by the Board for purposes of finding that a right to continue construction existed pursuant to ZR § 11-331; and

WHEREAS, however, the Department of Buildings made numerous submission as to whether the application for the Permit included “complete plans and specifications”; and

WHEREAS, in a submission dated December 20, 2006, DOB stated, in sum and substance, that two outstanding objections remained as to the professionally certified plans associated with the NB Permit, which were not resolved prior to the Rezoning Date: (1) the failure to demonstrate compliance with the Quality Housing Program standards and requirements set forth in ZR Article II, Chapter 8 and (2); the failure to provide accessibility to individuals with disabilities through the provision of an entrance ramp, as required by Building Code § 27-292.5(a); and

WHEREAS, as to the Quality Housing issue, DOB states that the plans fail to illustrate tree plantings, as required by ZR § 28-12, and planting areas, as required by ZR § 28-33; and

WHEREAS, DOB contends that these failures are significant, given that the Quality Housing Program presumes compliance with all applicable requirements in order to gain the

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additional floor area and make use of additional mechanical floor area deductions that the Program allows; and

WHEREAS, further, if the required plantings were properly reflected on the plans, the building footprint would change, as illustrated on revised plans submitted by the Developer to DOB after the Rezoning Date; and

WHEREAS, as to the entrance ramp, DOB states that the objection is significant, given that the proposed building would need to be redesigned in order to provide the ramp; and

WHEREAS, in its January 29, 2007 submission, the applicant included an affidavit from a consulting engineer, which reveals that the two objections were not remedied until well after the Rezoning Date; and

WHEREAS, DOB maintains that these non-compliances with applicable laws cannot be cured after the Rezoning Date; and

WHEREAS, in sum, DOB has concluded that the approved plans do not demonstrate compliance with all applicable laws, and therefore are not “complete plans and specifications” per ZR § 11-31(a); and

WHEREAS, it follows that the Permit is not a “lawfully issued permit” as defined by ZR § 11-31(a) and as required pursuant to ZR § 11-311 for a renewal; and

WHEREAS, under ZR § 11-31 et seq., the Board must defer to DOB’s authority under 11-31(a) to make a determination as to whether the permit was lawful and based upon complete plans and specifications; and

WHEREAS, arguments in opposition to this determination are not properly before the Board in this application; and

WHEREAS, nevertheless, the applicant expressed its disagreement with DOB’s conclusion as to the Permit during the public hearing process for this application; and

WHEREAS, first, the applicant contends that the Permit was not revoked officially by DOB until April 19, 2006, and that prior to that date, the objections had been cured; and

WHEREAS, however, the Board observes that DOB’s revocation of the Permit after the Rezoning Date is not relevant; and

WHEREAS, the right to continue construction under ZR § 11-31 et seq. may only be obtained when the work performed prior to the Rezoning Date was constructed pursuant to a legal permit; and

WHEREAS, on the Rezoning Date, the illegalities reflected on the plans underlying the Permit had not been cured; and

WHEREAS, the subsequent cure of these illegalities after the Rezoning Date is of no import; and

WHEREAS, a review of ZR § 11-311 illuminates why this is the case; and

WHEREAS, this provision reads in pertinent part: “If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31, paragraph (a) . . .” (*emphasis added*); and

WHEREAS, the relevant date is plainly stated, and that

date is the effective date of the rezoning; and

WHEREAS, a permit made lawful through plan amendments made subsequent to the date of a rezoning does not meet the standard set forth at ZR § 11-331; and

WHEREAS, further, the Board observes that if DOB allowed permit holders to bring the permits into compliance with all applicable laws after a rezoning for purposes of vesting, there would be no need for a lawfully issued permit at any point; and

WHEREAS, instead, a permit applicant could file plans that do not comply with law, with the expectation that if DOB discovered the unlawfulness after the rezoning, it would not matter for vesting purposes; and

WHEREAS, second, the applicant alleges that DOB has, in the context of other statutory vesting applications before the Board, resolved outstanding objections to plans after the date of the rezoning; and

WHEREAS, specifically, the applicant cites to two statutory vesting applications (BSA Cal. Nos. 324-05-BZY and 326-05-BZY), where DOB issued objections to the underlying plans subsequent to audits conducted while the cases were pending before the Board and well after the zoning change; and

WHEREAS, in both of these cases, the objections were resolved and DOB did not determine that the permits were invalid; and

WHEREAS, the applicant apparently theorizes that each and every objection cited by DOB was correctly raised, and that the developers in the two cases submitted revised plans showing compliance where no such compliance was shown before; and

WHEREAS, however, a review of the DOB objection sheets from the prior cases reveals that the great majority of the Building Code objections were resolved not through a change to plans subsequent to an admission of unlawfulness, but rather through: (1) an acknowledgement by DOB that a prior version of the Building Code applied, or (2) a showing that that the particular matter objected to had already been resolved through a reconsideration by a DOB official at a higher level than the examiner; and

WHEREAS, in other words, the developers in the two prior cases were able to preserve a DOB determination that the construction permits were valid by showing DOB why the objections were improper; and

WHEREAS, the Developer here has been unable to similarly convince DOB as to the objections to its plans; and

WHEREAS, further, many of the objections for both prior cases were very minor detail concerns related to plan notations, unrelated to either the ZR or the Building Code in a substantive manner; and

WHEREAS, that such minor plan notation details do not compromise the validity of a permit is evidenced by DOB’s ultimate determination that the permits in both prior cases were valid; the minor details, unlike the significant ZR and Building Code deficiencies discussed by DOB in the instant case, did not support a determination that the permits were based on incomplete plans and specifications; and

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WHEREAS, thus, in accordance with 11-31(a), the Board deferred to DOB's expertise in determining whether the underlying permits for these two prior cases were based upon complete plans and specifications; and

WHEREAS, finally, the applicant raises allegations that the Developer was unreasonably obstructed in his attempts to gain DOB review of the plans underlying the Permit in advance of the Rezoning Date; and

WHEREAS, DOB refuted this contention, noting that the Developer's representative had frequent meetings with DOB's examination staff, and that four out of seven scheduled meetings between March 22, 2006 and April 14, 2006 were in fact cancelled by the Developer's representative; and

WHEREAS, the Board observes that the applicant's representations about negligence or improper process at DOB are not supported by the record; and

WHEREAS, in sum, while the Board defers to DOB as to the validity of the Permit, even if it were to consider applicant's arguments, it would decline to credit any of them; and

WHEREAS, therefore, based upon DOB's determination here, the Board concludes that the work performed at the site was not completed pursuant to a valid permit; and

WHEREAS, accordingly, relief pursuant to ZR § 11-331 is unavailable.

Therefore it is Resolved that this application to renew New Building Permit No. 302073681 pursuant to Z.R. § 11-331 is denied.

Adopted by the Board of Standards and Appeals, February 13, 2007.

166-06-BZY

APPLICANT – Eric Palatnik, P.C., for Mujahid Mian, owner.

SUBJECT – Application July 28, 2006 – Proposed extension of time (§11-331) to complete construction of a minor development for a multi-family building. Prior zoning was R4 zoning district and new zoning is R4-A as of June 29, 2006.

PREMISES AFFECTED – 84-59 162nd Street, south of the corner formed by the intersection of 84th Drive and 162nd Street, Block 9786, Lot 7, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction;

and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, with continued hearings on December 12, 2006 and January 30, 2007, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Hinkson; and

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

WHEREAS, the subject site is located south of the corner formed by the intersection of 84th Drive and 162nd Street; and

WHEREAS, the site was formerly located within an R4 zoning district; and

WHEREAS, the applicant states that on June 16, 2006, the developer of the site (the "Developer") obtained a Department of Buildings' permit (NB Permit No. 402400380) for a three-family residential building (hereinafter, the "Permit"); and

WHEREAS, the applicant states that excavation and foundation work commenced thereafter; and

WHEREAS, however, on June 29, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Jamaica Hill/Hillcrest rezoning proposal, which changed the zoning district from R4 to R4A; and

WHEREAS, this zoning change rendered the development non-complying as to the amount of dwelling units, since the R4A district only allows detached single and two-family homes; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, ZR § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before

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

WHEREAS, because the proposed development contemplates construction of one building on a single zoning lot, it meets the definition of Minor Development; and

WHEREAS, the applicant represents that the Permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the Board has reviewed the record and notes that DOB has not expressed any concern about the validity of the Permit; thus, there is no question as to the lawfulness of the Permit in this matter; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, more specifically, the applicant states that all of the excavation and foundation work was completed, and that no more concrete needs to be poured for the foundation; and

WHEREAS, as to excavation, the applicant states that subsequent to the completion of sheeting and shoring work on June 12, 2006, the excavation commenced on June 22, 2006; and

WHEREAS, the applicant submitted an affidavit from the project engineer, who noted that as of June 23, 2006, the excavation was 90 percent complete; and

WHEREAS, the project engineer also explained that excavation work continued and was completed as of June 24, 2006, as evidenced by invoices from trucking companies for soil removal; and

WHEREAS, finally, the engineer notes that his office visually inspected the site on June 30, 2006, and observed that the installation of the foundation was completed; and

WHEREAS, thus, the applicant concludes that excavation was completed prior to the Rezoning Date; and

WHEREAS, in a series of submissions, DOB expressed its disagreement with the applicant as to this conclusion; and

WHEREAS, in a submission dated November 15, 2006, DOB initially cited to a violation report issued by a DOB inspector on July 10, 2006; this report reads in pertinent part: "At inspection time being removed excavation shoring and loading on truck, (6) employees working and excavator at inspection."; and

WHEREAS, on the basis of this inspection report, DOB concluded that excavation was not complete as of the Rezoning Date; and

WHEREAS, subsequently, in a submission dated December 6, 2006, DOB provided pictures taken during the

July 10, 2006 inspection, which show mounds of dirt within the excavation, and an excavator lifting what appears to be shoring materials; and

WHEREAS, DOB suggested that the inspector also observed backfilling and grading in the excavated area between the exterior foundation walls and the adjoining premises; and

WHEREAS, DOB characterized this work as "finish work," but suggested to the Board that it was also part of the excavation; and

WHEREAS, DOB also noted that the pictures illustrate that a soil heap that was previously on the floor of the excavated hole was removed; and

WHEREAS, again, DOB concluded that excavation was not complete as of the Rezoning Date; and

WHEREAS, subsequently, in a submission dated January 9, 2007, DOB argued that the developer had not excavated that part of the site where a concrete slab was proposed, in the bed of the excavation, as of the Rezoning Date; and

WHEREAS, additionally, DOB also alleged that a center foundation wall did not appear to be installed, and concluded that if it was not installed, then the excavation for such a wall had not been completed; and

WHEREAS, DOB also expressed concern that the foundation walls had not been installed to the depth indicated on the approved plans, although it was uncertain if this was the case; and

WHEREAS, notwithstanding the above allegations, DOB distilled its arguments in opposition to this application in its final submission, dated February 6, 2007; and

WHEREAS, in this submission, DOB suggests that the following activities constitute excavation performed after the Rezoning Date: (1) the removal of the soil heap; and (2) the removal of soil between the foundation walls and the adjoining premises; and

WHEREAS, DOB also cited to certain dictionary definitions of the word "excavation" in support of the argument that such soil-related activities at a construction site can properly be characterized as excavation; and

WHEREAS, the Board understands that the statute under which the applicant seeks relief requires that excavation be completed; and

WHEREAS, however, the Board disagrees that the Developer failed to meet this test; and

WHEREAS, the Board observes that all elements of the foundation work have been installed on the site; and

WHEREAS, it is difficult for this Board to understand DOB's contention that every instance of earth-related work on a construction site constitutes excavation for purposes of the statute in light of the reality that all of the foundation work has been completed; and

WHEREAS, instead, depending on the circumstances, certain of the activities cited by DOB are outside the scope of excavation for purposes of ZR § 11-331; and

WHEREAS, for instance, in this matter, the Board would not consider the following activities to be "excavation": removal or redistribution of soil heaps (of previously excavated

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soil) or backfill, the grading of a site already excavated to a depth required to install the foundation walls in preparation for a non-foundational building element, the removal of soil outside the foundation walls for a reason unrelated to foundation work, or the removal of shoring materials; and

WHEREAS, the Board respects the assistance that DOB affords it in statutory vesting cases when there is a question as to the validity of the permit and acknowledges that as an agency that enforces the Building Code, DOB has a broad understanding of construction practice; and

WHEREAS, nevertheless, a determination as to what constitutes excavation in the context of applications of this type is solely within the Board's jurisdiction and realm of expertise, and reliance upon dictionary definitions is not necessary; and

WHEREAS, accordingly, the Board finds that excavation was completed as of the Rezoning Date; and

WHEREAS, as to the foundation, the applicant states that almost all foundation work was completed as of the effective time of the Rezoning; and

WHEREAS, the applicant notes that 238 of the 250 cubic yards of concrete required for the foundation were poured as of this effective time; and

WHEREAS, the applicant has provided substantial evidence in support of the contention that almost all foundation work has been completed, in the form of affidavits from a representative of the construction company that performed the foundation work, photographs of the site, and a foundation survey; and

WHEREAS, in support of the contention that 238 cubic yards of concrete were poured for the foundation prior to the effective time of the Rezoning, the applicant has submitted pour tickets from a concrete batching company, reflecting the claimed amount of concrete pours and the dates; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which indicate that all of the cost of completing the footings and foundation walls had been incurred as of the Rezoning Date; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, thus, the Board concludes that substantial progress had been made on foundations as of the Rezoning Date; and

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 402400380 pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on August 13, 2007.

Adopted by the Board of Standards and Appeals, February 13, 2007.

77-06-A & 78-06-A

APPLICANT – Stephen J. Rizzo, Esq., for Block 7092 LLC, owner.

SUBJECT – Application April 27, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the zoning district regulations in effect as of March 1999. R3-2 Zoning District.

PREMISES AFFECTED – 96 Crabtree Avenue, Woodrow Road east of Turner Street, Block 7092, Lot 1, Block 7105, Lots 555 & 561, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Bradley Sreew.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 10 A.M., for decision, hearing closed.

292-06-A

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6/M1-1. M1-2/R6A and Mx-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

For Administrative: Marisa Sasitorn, Department of Buildings.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 13, 2007
1:30 P.M.

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

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ZONING CALENDAR

178-06-BZ

CEQR #07-BSA-008M

APPLICANT – The Law Office of Fredrick A. Becker, for Zurich Holding, Co., LLC, owner; Samson International Inc. d/b/a Nao Spa, lessee.

SUBJECT – Application August 16, 2006 – Special Permit (§73-36) to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.

PREMISES AFFECTED – 609 Madison Avenue, southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 9, 2006, acting on Department of Buildings Application No. 104241544, reads in pertinent part:

“Proposed Physical Culture Establishment is not an ‘as-of-right’ use in a C5-3 (Midtown) zoning district. (ZR 32-00)”;

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district within the Special Midtown District (MID), the establishment of a physical culture establishment (PCE) on portions of the cellar level and first and second floors of an existing mixed-use commercial and residential building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Commissioner Hinkson; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Madison Avenue and East 58th Street; and

WHEREAS, the site is occupied by a five-story with penthouse mixed-use commercial and residential building; and

WHEREAS, the spa currently occupies a total of 4,635 sq. ft., which includes 1,030 sq. ft. of space in the cellar, 950 sq. ft. of floor area on the first floor, and 2,655 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the facility offers beauty salon and accessory spa services, including haircutting and related services and facials; and

WHEREAS, because the applicant proposes to offer massages in the future, the special permit for a PCE is required; and

WHEREAS, the Board notes that the spa began operating at the site on October 1, 2006; however, massages are not offered yet and therefore, the special permit was not necessary; and

WHEREAS, the spa is operated under the name Nao Spa; and

WHEREAS, the proposed PCE will maintain the following hours of operation: Monday through Saturday, 8:30 a.m. to 7:00 p.m., and will be closed on Sunday; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.06BSA008M, dated November 7, 2006; and

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

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance

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with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 (MID) zoning district, the establishment of a physical culture establishment on portions of the cellar level and first and second floors of an existing mixed-use commercial and residential building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 17, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 13, 2017;

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

THAT the hours of operation shall be limited to: Monday through Saturday, 8:30 a.m. to 7:00 p.m., and the PCE shall be closed on Sunday;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 13, 2007.

181-06-BZ

CEQR #07-BSA-010M

APPLICANT – Greenberg Trarurig, LLP, by Jay Segal/Deirdre Carson, for 471 Washington Street Partners, owners.

SUBJECT – Application August 21, 2006 – Zoning variance pursuant to (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units and ground floor retail use in an M1-5 district (Area B-2 of the Special Tribeca Mixed Use District). The proposal is contrary to use regulations (§42-10 and §111-104(d)).

PREMISES AFFECTED – 471 Washington Street (a/k/a 510-520 Canal Street), Block 595, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Margo Flug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 13, 2006, acting on Department of Buildings Application No. 104439546, reads in pertinent part:

“Proposed residential dwelling units are not permitted as-of-right in M1-5 district within area B-2 of the Special Tribeca Mixed District and it is contrary to ZR 42-10 and ZR 111-104(d)”; and 1

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5 zoning district, within Area B2 of the Special Tribeca Mixed Use District, a nine-story residential building with retail use on the first floor and seven dwelling units above, which is contrary to ZR §§ 42-00 and ZR 111-104(d); and

WHEREAS, the proposed building will have a total floor area of 29,118 sq. ft. (4.99 FAR), a residential FAR of 4.53, a street wall height of 66’-0” on Washington Street and 102’-0” on Canal Street, a total height of 110’-6”, without bulkheads, a maximum total height of 124’-6”, with bulkheads; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in the *City Record*, with a continued hearing on January 9, 2007, and then to decision on February 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, Canal West provided testimony in support of this application citing in particular the proposed plan to maintain the continuity of the street wall on Canal Street and Washington Street and the setback provided adjacent to the townhouses on Canal Street; and

WHEREAS, a certain neighbor provided testimony in opposition to this application, citing concerns about the building height; and

WHEREAS, the subject premises is located on the

1 The Board notes that ZR § 111-104(d) has been re-designated ZR § 111-104(e) in a recent text amendment; however, the text of the provision remains the same and this has no bearing on the Board’s waiver of the provision.

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southeast corner of Washington Street and Canal Street, and has 5,837 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5 zoning district within Area B2 of the Special Tribeca Mixed Use District; and

WHEREAS, the site is currently occupied by a parking lot, with an attendant's booth and an advertising billboard; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lot is irregularly-shaped; (2) the lot is small; and (3) the site is in a Zone A High Hazard Flood Plain; and

WHEREAS, as to the lot's shape, the applicant states that the lot has a narrow, wedge-like shape due to its location at an angular intersection of Canal Street and Washington Street; and

WHEREAS, specifically, the applicant states that the site is bounded on the north by Canal Street, with 90'-9" of frontage; to the west by Washington Street, with 84'-10" of frontage; and to the northwest with an additional 21'-5" of frontage at the corner where the street widens at the intersection; and

WHEREAS, the applicant represents that the irregularly-shaped lot creates difficulties in developing the site because there is a high ratio of exterior walls to usable interior space for such a long and narrow site; and

WHEREAS, the applicant documented additional construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, as to size, the applicant represents that the lot is small, which results in a disproportionate share of it being devoted to the building core, which includes elevators, stairways, and bathrooms and which is comparable in size to a core that could serve a building twice the size; and

WHEREAS, the applicant represents that this condition results in a higher percentage of lost floor space than for a larger building with the same core; and

WHEREAS, the applicant submitted a 400-ft. radius diagram and a land use map of the area which illustrate that the site is one of only approximately three vacant parcels of the 56 sites reflected on the radius diagram and the only vacant site at the point where Canal Street widens; and

WHEREAS, as to the subsurface conditions, the applicant represents that additional foundation costs arise due to required dewatering during excavation, as well as waterproofing the foundation walls; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right retail/office building with an FAR of 5.0; and

WHEREAS, the applicant concluded that such a scenario would result in a loss, due to the size of the lot, as well as premium construction costs associated with the irregular lot

conditions; and

WHEREAS, at hearing, the Board asked the applicant to revise the financial analysis to eliminate the value of 415 Washington Street from the comparables; and

WHEREAS, the Board did not find this comparable to be a useful comparison since its high sale value may be attributed to the Board grant associated with the site; and

WHEREAS, in response, the applicant removed the reference to 415 Washington Street's value and revised the financial analysis accordingly; and

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

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

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

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, some of which occupy the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, the map reflects the following uses: an eight-story residential building directly across Canal Street, a six-story mixed-use residential/commercial building across Canal Street on the next block, and a six-story residential building and an eight-story residential building directly across Washington Street; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the character of the area is mixed-use, and finds that the introduction of seven dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the applicant states that the zoning district directly across Canal Street was recently rezoned to allow residential use and that the rezoned area is occupied almost entirely by residential uses; and

WHEREAS, the applicant states further that in the subject M1-5 zoning district, buildings constructed prior to December 15, 1961, with a lot coverage of less than 5,000 sq. ft., are permitted to convert all but the first floor to residential use as of right; and

WHEREAS, the applicant notes that there are additional authorizations from the City Planning Commission which permit residential conversions to buildings with lot coverage greater than 5,000 sq. ft.; and

WHEREAS, as to the height and massing, the applicant

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states that the proposed building would be similar in height to existing buildings in the neighborhood; and

WHEREAS, nevertheless, at hearing, the Board asked the applicant to address the compatibility of the proposed street wall and building heights to nearby buildings; and

WHEREAS, the applicant submitted information about nearby building heights which reflects that, across Canal Street, there are two completed buildings and one under construction, with heights of 120'-0" and higher; and

WHEREAS, on Washington Street, the applicant represents that the proposed 66'-0" street wall is compatible with the adjacent building's street wall of 65'-2"; the applicant represents that there are two even taller buildings on the block and adjacent subject block on the Washington Street frontage; and

WHEREAS, the applicant submitted an illustration noting the heights of buildings in proximity to the site; and

WHEREAS, the Board observes that there is a context for seven and eight-story buildings along Washington Street, Greenwich Street, and Canal Street in the vicinity of the subject site; and

WHEREAS, specifically, the Board observes that the proposed street wall on Washington Street is slightly lower in height to the street wall of the adjacent building and is also comparable to the street wall height of the building directly across the street; and

WHEREAS, similarly, the Board notes that the proposed street wall on Canal Street is compatible with the street wall heights of the building's directly across Canal Street; and

WHEREAS, the Board notes that the applicant proposes to setback the easternmost portion of the building on the Canal Street frontage, which is more compatible with the adjacent three and four-story buildings; and

WHEREAS, the applicant represents that after a minor revision to the originally submitted plans, the ninth floor has been slightly reduced in size so that it is not visible from Canal Street; and

WHEREAS, the applicant notes that the proposed building complies with all of the bulk regulations for a residential use in a C6-2A/R8A equivalent zoning district aside from the Canal Street street wall height and setback; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height and FAR are consistent with other buildings in the neighborhood; and

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

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

WHEREAS, the applicant states, and the Board agrees, that the return associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed

building of seven dwelling units is limited in scope and compatible with nearby development; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA010M, dated October 19, 2006; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: an October, 2006 Environmental Assessment Statement and an October, 2005 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, noise and air quality impacts; and

WHEREAS, a Restrictive Declaration was executed on December 27, 2006 and submitted for recordation on January 3, 2007 for the subject property to address hazardous materials concerns; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, on a site within an M1-5 zoning district, within Area B2 of the Special Tribeca Mixed Use District, a nine-story residential building with retail use on the first floor and seven dwelling units above, which is contrary to ZR §§ 42-00 and ZR

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111-104(d), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 8, 2007"—eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: nine stories, seven residential units, a total floor area of 29,118 sq. ft. (4.99 FAR), a residential FAR of 4.53, a street wall height of 66'-0" on Washington Street and 102'-0" on Canal Street, a total height of 110'-6", without bulkheads and a maximum total height of 124'-6", with bulkheads;

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

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

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

Adopted by the Board of Standards and Appeals, February 13, 2007.

218-06-BZ

CEQR #07-BSA-013M

APPLICANT – The Law Office of Fredrick A. Becker, for Tower Plaza Associates, Inc., owner; TSI East 48 Inc. d/b/a New York Sports Club, lessee.

SUBJECT – Application August 30, 2006 – Special Permit pursuant to Z.R. §73-36 to allow the operation of an existing PCE located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building. The Premises is located in C1-9 (TA), R8B, and R10 zoning districts. The proposal is contrary to Z.R. §32-01(a).

PREMISES AFFECTED – 885 Second Avenue, westerly side of Second Avenue between East 47th Street and 48th Street, Block 1321, Lot 22, Borough of Manhattan.

COMMUNITY BOARD # 6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 24, 2006, acting on Department of Buildings Application No. 104492078, reads in pertinent part:

"The proposed Physical Culture Establishment in

the Sub-cellar and Cellar of this building is not a permitted use as of right in a C1-9 zoning district, and therefore is contrary to Section 32-01(a) of the Zoning Resolution."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district within the Special Transit Land Use District (TA), partially within an R8B zoning district, and partially within an R10 zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar and sub-cellar levels of a 46-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 13, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Commissioner Hinkson; and

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

WHEREAS, the subject site is located on the west side of Second Avenue, between East 47th Street and East 48th Street; and

WHEREAS, the site is occupied by a 46-story commercial building; and

WHEREAS, the PCE will occupy a total of 13,427 sq. ft. of floor space, which includes 6,856 sq. ft. in the cellar and 6,571 sq. ft. in the sub-cellar; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

WHEREAS, the PCE will be operated as a New York Sports Club; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing the Board asked the applicant to confirm that the PCE would be located within the portion of the building which is in the C1-9 (TA) zoning district since the special permit is not available in either the R8B or R10 zoning district; and

WHEREAS, the applicant responded by revising the site plans to illustrate that the PCE is confined to the portion of the site located within the C1-9 (TA) zoning district; and

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

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.07BSA013M dated October 10, 2006; and

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

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 (TA) zoning district, partially within an R8B zoning district, and partially within an R10 zoning district, the establishment of a physical culture establishment on portions of the cellar and sub-cellar levels of a 46-story commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 8, 2006"-(2) sheets and "Received February 1, 2007"-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 13, 2017;

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

THAT the hours of operation shall be limited to: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 13, 2007.

236-06-BZ

APPLICANT – Moshe M. Friedman, for Michael Dalezman, owner.

SUBJECT – Application September 12, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, floor area (§23-141) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1500 East 21st Street, a/k/a Kenmore Place, 115' north of intersection formed by East 21st Street and Avenue N, Block 7656, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 15, 2006, acting on Department of Buildings Application No. 302222752, reads in pertinent part:

“Extension to . . . dwelling is contrary to:

- ZR 23-141 Floor Area Ratio
- ZR 23-141 Open Space Ratio
- ZR 23-47 Rear Yard . . .”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a two-story two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on January 23, 2007, after due notice by publication in *The City Record*, and then to decision on

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February 13, 2007; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, the subject lot is located on East 21st Street, 115 ft. north of the intersection formed by East 21st Street and Avenue N; and

WHEREAS, the subject lot has a total lot area of 3,750 sq. ft., and is occupied by a 2,506.12 sq. ft. (0.69 FAR) single-family home; and

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

WHEREAS, the proposed enlargement involves a modest extension of the existing dwelling into the rear yard at both the first and second floors, and a modest extension of the dwelling in the front at the second floor and

WHEREAS, the applicant seeks an increase in the floor area from 2,506.14 sq. ft. (0.69 FAR) to 3,176.48 sq. ft. (0.85 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide for an open space ratio of 68 percent (an open space ratio of 150 percent is the minimum required); and

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

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will maintain the existing side yards of 7'-8 1/2" and 5'-5", as well as the existing lawful non-complying front yard at the first floor of 14'-11"; further, the modest extension in the front yard at the second floor will comply with the 15'-0" front yard requirement; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the FAR request is reasonable as it represents a modest increase to the existing FAR; and

WHEREAS, accordingly, 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 R2 zoning district, the proposed enlargement of a two-story two-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 27, 2006"-(9) sheets and "Received January 16, 2007"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,176.48 sq. ft., a total FAR of 0.85, an Open Space Ratio of 68 percent, and a rear yard of 20'-0", as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

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

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

Adopted by the Board of Standards and Appeals, February 13, 2007.

274-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Rockaway Homes, Inc., owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) for the construction of a two-story one family residence on a vacant lot which seeks to vary the required front yards (§23-45) and minimum lot width (§23-32) in an R3-2 zoning district.

PREMISES AFFECTED – 116-07 132nd Street, vacant triangular lot with Lincoln Street to the east 132nd Street to the west and 116th Avenue to the north, Block 11688, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough
Commissioner, dated February 7, 2007, acting on Department
of Buildings Application No. 402526682, reads in pertinent
part:

- “1. Proposed front yards are contrary to Z.R. section
23-45.
2. Existing lot size is contrary to Z.R. section 23-
32.”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an R3-2 zoning district, the construction of a two-
story single-family dwelling without a complying front yard on
a lot that does not comply with minimum lot width, contrary to
ZR §§ 23-45 and 23-32; and

WHEREAS, the proposed dwelling will have the
following complying parameters: 1,071.74 sq. ft. of floor
area, a Floor Area Ratio (FAR) of 0.33, an open space ratio
of 84 percent, a wall height of 20’-0”, a total height of 25’-
9”, one front yard of 15’-0” ft., one front yard of 10’-0”, and
one parking space; and

WHEREAS, however, the lot is only 3,274 sq. ft.; the
minimum lot size in the subject R3-2 zoning district is 3,800
sq. ft.; and

WHEREAS, further, only one of the two required 15’-
0” front yards will be provided; the other front yard will
only be 8’-0”; and

WHEREAS, a public hearing was held on this
application on January 23, 2007, after due notice by publication
in *The City Record*, and then to decision on February 13, 2007;
and

WHEREAS, Community Board 10, Queens,
recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and
neighborhood examination by a committee of the Board,
consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, the site is a vacant triangular lot, bordered
by Lincoln Street to the east, 132nd Street to the west, and 116th
Avenue to the north; and

WHEREAS, the site is irregularly shaped, with 43 feet of
frontage along 116th Avenue, 153 feet of frontage along 132nd
Street, and approximately 159 feet of frontage along Lincoln
Street; and

WHEREAS, the applicant states that the site cannot be
developed at all without a variance, due to its insufficient lot
size, and also contends that front yard relief is necessary, for
reasons stated below; thus, the instant application was filed;
and

WHEREAS, the applicant states that the following are
unique physical conditions, which create practical difficulties
and unnecessary hardship in developing the subject site in
compliance with underlying district regulations: (1) the lot’s
small size; and (2) the irregular and triangular shape of the lot;

and

WHEREAS, as to the site’s size, the applicant notes that
the without a waiver of ZR § 23-32, which provides for a
minimum lot area of 3,800 sq. ft., the site could not be
developed at all; and

WHEREAS, the applicant has submitted evidence that
the subject lot has been in existence since at least prior to 1961;
and

WHEREAS, the Board agrees that no development on
the site is possible unless this requirement is waived; and

WHEREAS, as to the site’s shape, the applicant states
that its triangular shape results in a severely restricted width of
only 20’-3” at its widest point and 7’-8” at its narrowest; and

WHEREAS, the applicant notes that for a triangular
shaped lot, ZR § 23-45 requires the provision of two 15’-0”
front yards, and one 10’-0” front yard; and

WHEREAS, the applicant states that if two 15’-0” front
yards and one 10’-0” front yard were provided, the site’s
limited width, discussed above, would severely constrain the
floor plates that could be constructed, resulting in an
unmarketable home; and

WHEREAS, more specifically, the owner would be
forced to construct a triangular building with a width of 13 feet
at its widest point

WHEREAS, the Board agrees that the lot size and front
yard waivers are necessary in order to construct a habitable and
marketable dwelling; and

WHEREAS, thus, the Board finds that the
aforementioned unique physical conditions, when
considered in the aggregate, create a practical difficulty in
developing the site in compliance with the applicable zoning
provisions; and

WHEREAS, the Board has determined that because of
the subject lot’s unique physical conditions, there is no
reasonable possibility that a complying and viable development
could be constructed; and

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

WHEREAS, the applicant notes that the proposed house
complies with all R3-2 district bulk parameters aside from lot
size and front yard, and that the proposed bulk and height is
compatible with the other residential buildings in the immediate
vicinity; and

WHEREAS, based upon its review of the submitted
land use map, the submitted pictures, and its site visit, the
Board observes that the site is surrounded by numerous
detached two-story dwellings, comparable in size or larger
than the proposed home; and

WHEREAS, in response to an inquiry from the Board
about the unspecified width of the adjoining sidewalks, the
applicant submitted new plans showing the dimensions of
the sidewalks; and

WHEREAS, specifically, the revised plans show that
two 15’-0” sidewalks and one 10’-0” sidewalk will be

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provided, which the applicant represents will be sufficient to accommodate anticipated pedestrian traffic in the area; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, in an R3-2 zoning district, the construction of a two-story single-family dwelling without a complying front yard on a lot that does not comply with minimum lot width, contrary to ZR §§ 23-45 and 23-32; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 30, 2007"– (5) sheets; and *on further condition*:

THAT all bulk parameters, including front yards and the width of the adjacent sidewalks, shall be as reflected on the BSA-approved plans;

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

THAT the use and layout of the cellar shall be as approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, February 13, 2007.

239-04-BZ

APPLICANT – Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side

of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

87-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).
PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik and Aldo Frugtacci.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for continued hearing.

318-05-BZ

APPLICANT – Marc A. Chiffert, P.E., for 2040 MLK Realty, LLC, owner.

SUBJECT – Application November 1, 2005 – Zoning variance under §72-21 to allow a proposed horizontal enlargement of an existing one-story non-conforming commercial building in an R7-1 district. The proposal calls for Use Group 6 retail use and is contrary to §52-22.

PREMISES AFFECTED – 2040 Dr. MLK JR. Boulevard f/k/a 2040 University Avenue, northeast corner of intersection of West Burnside Avenue and Dr. MLK Jr. Boulevard, Block 3210, Lot 2, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Marc A. Chiffert.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a PCE in a portion of the cellar and a portion of the first floor in a three-story building in a C2-3/R6 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 13,

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2007, at 1:30 P.M., for continued hearing.

79-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Patrick W. Jones.

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

96-06-BZ

APPLICANT – Stuart A. Klein, Esq., for West Properties, Inc., owner; Acqua Beauty Bar NY, Inc., lessee.

SUBJECT – Application May 15, 2006 – Special Permit (§73-36) to permit, in a C5-P zoning district located within the Midtown Special District and Preservation Subdistrict, the placement of a Spa within the cellar, first and second floors of an existing six (6) story commercial building. The proposal is contrary to section 32-10.

PREMISES AFFECTED – 39 West 56th Street, north side of 56th Street between 5th and 6th Avenues, Block 1272, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Madeline Fletcher.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for decision, hearing closed.

97-06-BZ

APPLICANT – Stuart A. Klein, Esq., for BFB Partners, LLC, owner; Thai Privilege Spa Company (NY), Limited, lessee.

SUBJECT – Application May 15, 2006 – Special Permit (§73-36) to permit, in an M1-5A zoning district located within the Landmark's Preservation Commission's Shoh Cast Iron District, the placement of a physical culture establishment (PCE) within a portion of an existing six (6) story commercial building.

PREMISES AFFECTED – 153-155 Spring Street, a/k/a 411 West Broadway, frontage east side of West Broadway, Block 501, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Madeline Fletcher.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for decision, hearing closed.

98-06-BZ & 284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug, Rabbi Shnick and Marc Mariscal.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

136-06-BZ

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under § 72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§ 42-00), FAR (§ 43-12), and rear yard (§ 43-26 and § 43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Kenneth Fisher.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for continued hearing.

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2007, at 1:30 P.M., for decision, hearing closed.

137-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.

SUBJECT – Application June 30, 2006 – Variance (§72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (§23-461) and does not line up with front yard line of adjacent lot (§23-45(b)) in an R4A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, west side of Hering Avenue 325’ south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.

COMMUNITY BOARD # 11BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Off-Calendar.

Jeff Mulligan, Executive Director

Adjourned: 5:00P.M.

275-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.

PREMISES AFFECTED – 408-414 West 13th Street and 13-15 Little West 12th Street, south side of West 13th Street, 124.16’ west of the corner formed by the intersection of Ninth Avenue and West 13th Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisinier and Doris Diether, CB #2.

ACTION OF THE BOARD – Laid over to February 27, 2007, at 1:30 P.M., for deferred decision.

290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§ 42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff, Jack Freeman and Doris Diether, CB #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 20,

BULLETIN

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CHRISTOPHER COLLINS, *Vice-Chair*

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New Case Filed Up to February 27, 2007

46-07-BZ

1328 East 23rd Street, Located on the west side of East 23rd Street between Avenue M and Avenue N., Block 7658, Lot(s) 62, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT)-73-622-To allow the enlargement of a single-family residence.

47-07-A

144 East 44th Street, South side of 44th Street 195 ft. east of Lexington Avenue., Block 1298, Lot(s) 45, Borough of **Manhattan, Community Board: 6.** Appeal-To install an exterior sign on the west façade of building.

48-07-BZ

7-12 126th Street, West side 90 ft. south of 7th Avenue., Block 3970, Lot(s) 11, Borough of **Queens, Community Board: 7.** Under 72-21-To enlarge existing one family dwelling. Enlargemnt projects into rear yard due to zoning district change from R3-2 to R2A.

49-07-BZ

37-02 Main Street, Southwest corner of 37th Avenue and Main Street., Block 4974, Lot(s) 27, Borough of **Queens, Community Board: 7.** (SPECIAL PERMIT)73-36 & 32-31-For a Physical Culture Establishment on the third, fourth and fifth floors of the building.

50-07-A

100-12 39th Avenue, Northside of 39th Avenue distant 500' west of corner of 39th Avenue and 103rd Street., Block 1767, Lot(s) 61, Borough of **Queens, Community Board: 3.** Appeal-To permit the construction of a five story dwelling (UG2) with communiity facility medical office (UG4).

51-07-BZ

70-44 Kissena Boulevard, Northwest corner of Kissena Biulevare and 70th Road., Block 6656, Lot(s) 52, Borough of **Queens, Community Board: 8.** Under 72-21-To permit the construction of a one story commerical building (UG6) on a site which was occupied by a gasoline station (UG16).

52-07-BZ

1576 East 27 Street, West side of East 27 Street., Block 6773, Lot(s) 43, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622-Extend rear at first and second floor new attic.

53-07-BZ

1901 Eighth Avenue, Corner of Eighth Avenue and 19th Street., Block 888, Lot(s) 7, Borough of **Brooklyn, Community Board: 7.** Under 72-21-Proposal is to rehabilitate and convert to residential use a 75 year old manufacturing building.

54-07-BZ

1776 East 26 Street, West side of East 26 Street between Avenue R and Quentin Road, approximately, 200 feet north of Avenue R., Block 6808, Lot(s) 34, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT)73-622-Enlargement of a single family home.

55-07-A

3 Devon Walk, South east corner Devon Walk and mapped Oceanside Avenue., Block 16350, Lot(s) p/o 400 Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling. Proposed upgrade of non-conforming private disposal system.

56-07-A

13 Bayside Roxbury, Intersection of mapped Bayside Drive and unmapped Roxbury Avenue, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling. Propoised upgrade of non-conforming private disposal system.

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

CALENDAR

MARCH 20, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 20, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

947-80-BZII

APPLICANT – Sheldon Lobel, P.C., for Hellmuth Owners Corp., owner.

SUBJECT – Application February 12, 2007 – Extension of Time to complete construction for a Variance that was originally granted on February 17, 1981 to allow the conversion of an eight story building from commercial to residential use which expired on March 25, 2007 in a C6-2A zoning district.

PREMISES AFFECTED – 154-158 West 18th Street, south side of West 18th Street between 6th Avenue and 7th Avenue, Block 793, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Inc., owner; Thomas Carroll, lessee.

SUBJECT – September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code, regarding access and fire safety. R4 - Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

6-07-A thru 9-07-A

APPLICANT – Sheldon Lobel, P.C., for College Point Holding, LLC, owner.

SUBJECT – Application January 8, 2007 – Proposed construction of four two family homes not fronting on mapped street which is contrary to Article 3, Section 36 of the General City Law. R4A Zoning District.

PREMISES AFFECTED – 127-09, 127-11, 127-15 and 127-17 Gurino Drive, (*Former 25th Road*) between 127th Street and Ulmer Street, Block 4269, Lots 1 & 27 (*to be known as New Tax Lots 1, 2, 3 & 4*), Borough of Queens.

COMMUNITY BOARD #7Q

MARCH 20, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 20, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

240-06-BZ thru 251-06-BZ

APPLICANT – Manat, Phelps & Phillips, LLP, for St. John's University, owner.

SUBJECT – Application September 15, 2006 – Variance (§72-21) to permit a five foot encroachment in the required front setback. The proposal would convert the uses in the twelve subject buildings to community facility (dormitory Use Group 3A), an as-of-right use in the R4 zoning district. The proposal is contrary to the required front yard setback (24-34).

PREMISES AFFECTED – 147-04 to 147-30 Union Turnpike, Block 6715, Lots 25-37, Borough of Queens.

COMMUNITY BOARD #8Q

288-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of sections 24-111 (FAR), 24-521 (wall height, setback and sky exposure plane), 24-34 (front yard) and 24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223rd and 224th Streets, Block 10796, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

301-06-BZ

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111' north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of

CALENDAR

Brooklyn.

COMMUNITY BOARD #5BK

316-06-BZ

APPLICANT- Jesse Masyr, Esq., Wachtel & Masyr, LLP, for Blaseboro Realty, LLC, owner; New York Botanical Barden, lessee.

SUBJECT - Application December 7, 2006 - Variance (§72-21) to permit the construction of the proposed accessory parking garage (UG4) with 825 parking spaces on six stories, in one cellar level and on the roof. The Premises is located in a C8-2 zoning district. The proposal is requesting waivers with respect to setback (33-432) and parking (36-11 and 36-12).

PREMISES AFFECTED - 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lots 1 & 4, Borough of The Bronx.

COMMUNITY BOARD #7BX

334-06-BZ

APPLICANT - Law Office of Fredrick A. Becker, for Machia Abramczyk, owner.

SUBJECT - Application December 29, 2006 - Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141) and the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED - 1119 East 23rd Street, East 23rd Street between Avenue K and Avenue L, Block 7623, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

1-07-BZ

APPLICANT - Law Office of Fredrick A. Becker, for Jacqueline Savio and Alfred Buonanno, owner.

SUBJECT - Application January 2, 2007 - Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary (23-141) in that the proposed building exceeds the maximum permitted floor area ratio of .75 in an R4-1 zoning district.

PREMISES AFFECTED - 1792 West 11th Street, West 11th Street between Quentin Road and Highlawn Avenue, Block 6645, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #11BK

MARCH 21, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 21, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

APPEAL CALENDAR

54-05-A

APPLICANT - NYC Department of Buildings.

OWNER OF PREMISES - Yeshiva Imrei Chaim Viznitz.

SUBJECT - Application March 4, 2005 - Application to revoke Certificate of Occupancy No. 300131122, on the basis that the Certificate of Occupancy allows conditions at the subject premises that are contrary to the Zoning Resolution and the Administrative Code.

PREMISES AFFECTED - 1824 53rd Street, southeast corner of 18th Avenue, block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

Jeff Mulligan, Executive Director

SPECIAL HEARING

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 27, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson.

Absent: Commissioner Ottley-Brown.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon November 21, 2006, as printed in the bulletin of November 30, 2006, Vol. 91, No. 45. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

166-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Kassiani Katos, owner; KPS Food Corporation, lessee.

SUBJECT – Application August 30, 2006 – Extension of Term and waiver of the rules for variance to permit an eating and drinking establishment (Burger King & Popeye's) which expired in January 6, 2006 in a C1-2(R3-2) and R3-2 zoning district; and an extension of Time to obtain a certificate of occupancy which expired on March 18, 1998.

PREMISES AFFECTED – 164-17 Union Turnpike, north side of Union Turnpike, 148.83' east of 164th Street, Block 6972, Lot 21, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance for an eating and drinking establishment, which expired on January 6, 2006; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, Community Board 8, Queens, recommends approval of this application with the following conditions: garbage pick up be limited to daylight hours, noise levels from the ventilation system be at an acceptable level, sidewalks be cleared of snow and maintained, the facility be closed at 11:00 p.m., lights be directed away from residences, and food stacks be cleaned; and

WHEREAS, the subject premises is located on the north side of Union Turnpike, 148.83 ft. east of 164th Street; and

WHEREAS, the site has a lot area of approximately 24,340 sq. ft. and is located partially within a C1-1 (R3-2) zoning district and partially within an R3-2 zoning district; and

WHEREAS, the eating and drinking establishment occupies a one-story commercial building with 3,569 sq. ft. of floor area; and

WHEREAS, the establishment is operated as a Burger King and a Popeye's; and

WHEREAS, on January 6, 1976, under the subject calendar number, the Board granted a variance, to permit a change in occupancy from an automobile rental and service establishment to an eating and drinking establishment with accessory parking; and

WHEREAS, the grant was subsequently amended and extended twice; and

WHEREAS, most recently, on March 18, 1997, the term was extended for a period of ten years from the expiration of the prior grant; and

WHEREAS, this application seeks an additional ten year term; and

WHEREAS, at hearing, the Board asked the applicant if the garbage enclosure along the northern lot line of the site is located within the R3-2 zoning district; and

WHEREAS, the applicant responded that the garbage enclosure is located within the portion of the site within the R3-2 zoning district but that the adjacent property is occupied by a pumping station rather than by residential use; and

WHEREAS, at hearing, the applicant stated that the operation of the site would comply with all of the Community Board's conditions; and

WHEREAS, however, the applicant stated that it is difficult to guarantee the hours of garbage removal, but that it would request an early pick up; and

WHEREAS, additionally, the applicant seeks an extension of time to obtain a certificate of occupancy, which expired on March 18, 1998; and

WHEREAS, the applicant represents that a certificate of occupancy has not been obtained due to an administrative delay; and

WHEREAS, the applicant states that the certificate of occupancy will be obtained within six months; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 6, 1976, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a permanent certificate of occupancy, and an extension of the term for a term of ten years from the expiration of the last grant to expire on January 6, 2016; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received December 5, 2006' -(5) sheets; and *on condition*:

MINUTES

THAT this grant shall be limited to a term of ten years, expiring January 6, 2016;

THAT the hours of operation shall be limited to: 7:00 a.m. to 11:00 p.m., daily;

THAT garbage removal shall be limited to the hours of 8:00 a.m. to 9:00 p.m., daily;

THAT all exterior lighting shall be directed down and away from adjacent residences;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

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.”

(Alt. 231/1975)

Adopted by the Board of Standards and Appeals, February 27, 2007.

383-04-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Israel Realty; lessee: Total Fitness & Karate Center.

SUBJECT – Application December 6, 2004 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 46-21 Greenpoint Avenue, 47th Street, Block 152, Lot 1, Borough of Queens.

COMMUNITY BOARD #2 Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 29, 2004, acting on Department of Buildings Application No. 400946410, reads in pertinent part:

“Legalization of existing physical cultural establishment requires BSA approval as per 73-36.”; and

WHEREAS, this is an application under ZR § 73-36, to permit, on a site within a C4-2 zoning district, the legalization of a Physical Culture Establishment (PCE), which occupies the cellar level of a two-story commercial building; and

WHEREAS, on April 19, 1988, under BSA Cal. No. 685-87-BZ, the Board granted a special permit to allow the

legalization of the PCE operating at the site, for a term of ten years; and

WHEREAS, the applicant failed to renew the special permit at its expiration; and

WHEREAS, accordingly, the PCE has illegally occupied and operated within the building since April 19, 1998; and

WHEREAS, because the special permit had been expired for more than six years, the applicant brought an application for a new special permit; and

WHEREAS, the special permit application was filed on December 6, 2004; and

WHEREAS, in January 2005, Board staff contacted the applicant to discuss the deficiencies of the application; and

WHEREAS, on February 18, 2005, the applicant made a submission; and

WHEREAS, on April 28, 2005, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, on August 15, 2005, Board staff issued a Notice of Intent to dismiss; and

WHEREAS, in December 2005, Board staff met with the applicant again to discuss the deficiencies of the application; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, on August 17, 2006, Board staff issued a second Notice of Intent to dismiss; and

WHEREAS, on September 14, 2006, Board staff spoke with the applicant and reviewed the outstanding issues of the April 28, 2005 Notice of Objections; and

WHEREAS, the applicant did not provide any response; and

WHEREAS, on November 16, 2006, the Board sent the applicant a Notice of Hearing, which stated that the case had been put on the January 23, 2007 dismissal calendar; and

WHEREAS, the applicant appeared at the January 23, 2007 hearing and requested additional time to complete the application; and

WHEREAS, at hearing, the Board scheduled a February 20, 2007 submission date and a February 27, 2007 continued hearing; and

WHEREAS, on February 20, 2007, Board staff met with the applicant to discuss the significant deficiencies of the application including an incomplete Department of Investigations application and the lack of an Environmental Assessment Statement; and

WHEREAS, the applicant failed to cure the deficiencies of the application; and

WHEREAS, the applicant also failed to appear at the February 27, 2007 hearing; and

WHEREAS, accordingly, because of the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 383-04-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, February 27, 2007.

MINUTES

27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner.

SUBJECT – Application October 23, 2006 – Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on October 16, 2006; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, the subject premises is located on the west side of Coney Island Avenue between Beverly Road and Avenue C; and

WHEREAS, the site has a lot area of approximately 5,100 sq. ft. and is located within a C2-3 (R5) zoning district; and

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

WHEREAS, the PCE occupies a portion of the first floor and mezzanine; and

WHEREAS, on October 16, 1996, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years; and

WHEREAS, the instant application seeks approval of interior layout modifications including the rearrangement of the eating and drinking area, the relocation of the sauna, steam room and shower, and the enlargement of the men's locker room; and

WHEREAS, the applicant also requests a ten-year extension of term for the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested interior modifications and extension of term are appropriate, with the conditions 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 October 16, 1996, so that as amended this portion of the resolution shall read: “to grant approval of a the requested layout modifications and an extension of the term for a term of ten years from the expiration of the last grant to expire on October 16, 2016; on condition that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received January 10, 2007’–(4) sheets; and on condition:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years to expire on October 16, 2016;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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. 300326895)

Adopted by the Board of Standards and Appeals, February 27, 2007.

30-00-BZ

APPLICANT– Sheldon Lobel, P.C., for Sand Realty Group, Inc., owner.

SUBJECT – Application October 13, 2006 – Extension of term/Waiver of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) within an R7-2 zoning district.

PREMISES AFFECTED – 458 West 166th Street, north side of West 166th Street, between Amsterdam Avenue and Edgecomb Avenue, Block 2111, Lot 57 (a/k/a 53-55, 57, 71-73), Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

MINUTES

THE RESOLUTION:

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a parking lot, which expired on February 6, 2006; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; the Community Board recommends that the term be limited to five years; and

WHEREAS, the subject premises is located on the north side of West 166th Street, between Amsterdam Avenue and Edgcombe Avenue; and

WHEREAS, the site is located within an R7-2 zoning district and is occupied by a 18,350 sq. ft. parking lot; and

WHEREAS, on February 6, 2001, the Board granted a variance to legalize an open parking lot (Use Group 8) at the site for a five-year term; and

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

WHEREAS, the applicant represents that there are approximately 71 spaces for motor vehicle parking and storage at the site and that this condition will be maintained; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 6, 2001, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the date of this grant; *on condition* that the use and operation of the parking lot shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received February 12, 2007 -(2) sheets; and *on condition*:

THAT this grant shall be limited to a term of ten years, to expire on February 6, 2016;

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

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

THAT 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. 101948403)

Adopted by the Board of Standards and Appeals, February 27, 2007.

1038-80-BZ

APPLICANT – Davidoff & Malito & Hatcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corp., lessee.

SUBJECT – Application February 6, 2007 – Extension of Term of a Special Permit for an amusement arcade (UG15 in an M2-1 zoning district.

PREMISES AFFECTED – 31-07/09 11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for decision, hearing closed.

8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125' east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Sarem Ozdusal and William Allen.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for continued hearing.

60-82-BZ

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

SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to §11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

MINUTES

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for decision, hearing closed.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Howard Weiss.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for continued hearing.

200-01-BZ

APPLICANT – Davidoff Malito & Hatcher by Howard S. Weiss, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 9, 2007 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for the enlargement of a community use facility (Hillside Manor) in a C2-2/R-5 zoning district which expired on January 11, 2007.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for decision, hearing closed.

124-02-BZ

APPLICANT – Law Office of Howard Goldman, for St. John's University, owner.

SUBJECT – Application January 9, 2007 – Reopening of a

previously approved variance to grant an extension of time to complete substantial construction of two parking facilities for St. John's University. R4 zoning district.

PREMISES AFFECTED – 8000 Utopia Parkway, bounded by Union Turnpike, 82nd Street and 180th Street, Block 7021, Lots 1 and 50, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 10 A.M., for decision, hearing closed.

213-06-A

APPLICANT – Fredrick A. Becker, Esq., for 7217 Grand Avenue Corp., owner.

SUBJECT – Application August 23, 2006 – to permit the construction of three story mixed use commercial/residential structure within the bed of a mapped street (72nd Place), contrary to General City Law Section 35. Premises is located in an C1-2 (R6B) Zoning District.

PREMISES AFFECTED – 72-19 Grand Avenue, northwest corner of Grand Avenue and 72nd Place, Block 2506, Lot 96 (tent.), Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 18, 2006, acting on Department of Buildings Application No. 402141419 which reads in pertinent part:

“Proposed new building is on City street widening contrary to General City Law Section 35.”; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in the *City Record*, and then to decision on February 27, 2007; and

WHEREAS, by letter dated September 11, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated November 6, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 2, 2007, the Department of Transportation (DOT) stated that it had reviewed the application and advised the Board that the proposed building's height will impair visibility at the

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intersection due to the angle of the intersection and the curvature of the street; and

WHEREAS, accordingly, DOT recommended that the curb cut be pushed back further away from the intersection as much as possible towards the end of the property and that the sidewalk adjacent to the property be a five feet in width and completely free of obstacles; and

WHEREAS, the Board notes that the February 2, 2007 letter did not indicate that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter February 9, 2007, in response to DOT's request, the applicant submitted a revised plot plan and statement reflecting a proposed ten-ft. sidewalk on 72nd Place, and a 15-ft. sidewalk on Grand Avenue, both with a minimum five-ft. width free of obstacles; and

WHEREAS, the plot plan also provides that the curb cut will be relocated to the northerly edge of the premises as far away from the intersection as possible; and

WHEREAS, additionally, the applicant notes that the new building will be in the same location as the existing building and therefore will not result in any new visibility impairment at the intersection; and

WHEREAS, by letter dated February 16, 2007, DOT states that it has reviewed the applicant's revised submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 18, 2006, acting on Department of Buildings Application No. 402141419, 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 February 9, 2007"-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building.

Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Mark J. Kurzman and Joel Cohen.

For Administration: Angelina Martinez, Department of Buildings.

THE VOTE TO CLOSE HEARING

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Off Calendar.

45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application February 8, 2007 – For a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue "N" and Avenue "O", Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Mark J. Kurzman, Abraham Lasker and David Tovey.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:00 A.M.

REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 27, 2007

1:30 P.M.

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

ZONING CALENDAR

36-06-BZ

APPLICANT – Sheldon Lobel, P.C., for The RNR Group

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Ltd., owner.

SUBJECT – Application March 1, 2006 – Special Permit pursuant to Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor’s establishment (Use Group 16) by 2,485 square feet.

PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 6, 2006, acting on Department of Buildings Application No. 301801726, reads in pertinent part:

“Proposed enlargement of a legal, non-conforming manufacturing use located in a R3-2 zoning district is not allowed and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-53 ZR and must be referred to the Board of Standards and Appeals.”; and

WHEREAS, this is an application made pursuant to ZR §§73-53 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a legal non-conforming mixed-use residential (Use Group 2)/manufacturing (Use Group 16) building, which does not comply with requirements related to commercial floor area, commercial floor area ratio, open space ratio, and front, side, and rear yards, contrary to ZR §§33-121, 23-141, 23-45, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in *The City Record*, with continued hearings on December 5, 2006 and January 23, 2007, and then to decision on February 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject zoning lot is located on the east side of Utica Avenue, between Avenue M and Avenue N, within an R3-2 zoning district; and

WHEREAS, the lot is approximately 6,000 square feet and is improved upon with a one-story building with a partial second story mixed-use residential/manufacturing building; and

WHEREAS, the manufacturing use currently occupies the entire 4,332 sq. ft. first floor (0.72 FAR); and

WHEREAS, two residential units currently occupy the existing 1,452 sq. ft. second floor; and

WHEREAS, the proposed enlargement will be built above the existing first floor and will add 2,310 square feet of manufacturing floor area to the second floor; and

WHEREAS, the enlargement will result in the following non-compliances: a commercial/manufacturing FAR of 1.10 (the maximum permitted commercial/manufacturing FAR is 1.0) and a commercial/manufacturing floor area of 6,642 sq. ft.; and

WHEREAS, the open space and side, front, and rear yards are existing non-compliances, which will be maintained; and

WHEREAS, the current owner purchased the property in 1995, and has used it since then for the design and manufacturing of custom cabinets and interiors (Use Group 16); and

WHEREAS, as to the prerequisites, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the use of the premises is not subject to termination pursuant to ZR §52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use where the existing manufacturing floor area is located during the past five years; the subject building has not received an enlargement pursuant to ZR §§11-412, 43-121 or 72-21; and that the subject use is listed in Use Group 16, not Use Group 18; and

WHEREAS, the applicant also demonstrated that the requested proposal is for an enlargement that results in less than 45 percent of the floor area occupied by the UG 16 use on December 17, 1987, and does not exceed 10,000 square feet; and

WHEREAS, in support of the above, the applicant has submitted plans, an owner’s statement, Sanborn maps, and a history of the establishment’s listing in the telephone directory; and

WHEREAS, the applicant represents that the enlargement is an entirely enclosed building, and that there will be no open uses of any kind; and

WHEREAS, additionally, the proposed plans reflect that the enlargement will provide for a 30-ft. rear yard and an 8-ft. side yard above the first floor; and

WHEREAS, the applicant notes that the enlargement will result in the hiring of approximately four new employees, which is below the number which will generate significant increases in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states there will be adequate parking to accommodate projected parking needs; and

WHEREAS, further, all parking and loading will be enclosed; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is

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adequate parking for the vehicles generated by the enlargement, and that loading will be inside the building; and

WHEREAS, at hearing, the Fire Department provided testimony stating that two forms of egress should be provided from the second floor; and

WHEREAS, the Board asked the applicant to confirm that egress complied with all Building Code requirements; and

WHEREAS, in response, the applicant submitted a reconsideration from DOB stating that the egress, as shown on the approved plans, complies with all Building Code requirements; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the Board notes that the new manufacturing space abuts an automotive repair facility and that there is a commercial warehouse and a transportation facility across Utica Avenue; and

WHEREAS, the Board also observes that the subject block is developed with many other commercial uses; and

WHEREAS, additionally, the subject zoning district is adjacent to C1-2 and C2-2 zoning districts; and

WHEREAS, thus, the neighborhood in which the site is located is characterized by a significant manufacturing and commercial presence; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of a viable UG 16 use, which provides jobs and tax revenue, on a site where such use is appropriate and legal; and

WHEREAS, based upon the above, 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 are outweighed by the advantages to be derived by the community; and

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§73-53 and 73-03; and

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

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

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a 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 each and every one of the required findings under ZR §§73-53 and 73-03 for a special permit to allow, within an R3-2 zoning district, the proposed enlargement of a legal non-conforming mixed-use residential (Use Group 2)/manufacturing (Use Group 16) building, which does not comply with requirements related to commercial floor area, commercial floor area ratio, open space ratio, and front, side, and rear yards, contrary to ZR §§ 33-121, 23-141, 23-45, 23-461, and 23-47, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked "Received February 23, 2007"-(7) sheets; and *on further condition*;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no open uses on the site;

THAT prior to the issuance of a certificate of occupancy, DOB shall ensure that there is no commercial occupancy of the two existing residential units;

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

THAT all applicable fire safety measure will be complied with;

THAT all egress and staircases shall be as approved by DOB;

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

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

Adopted by the Board of Standards and Appeals February 27, 2007.

54-06-BZ
CEQR #06-BSA-069K

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.
SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story and cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third

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years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR §113-51 (Floor Area); §113-55 and §23-631 (Perimeter Wall Height, Total Height and Sky Exposure Plane); §113-542 and §23-45 (Front Yard and Setback); §113-543 and §23-461(a) (Side Yard); §113-544 (Rear Yard); §113-561 and §23-51 (Parking); and §113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 13, 2007, acting on Department of Buildings Application No. 302088960, reads in pertinent part:

1. Proposed floor area is contrary to ZR 113-51.
2. Proposed perimeter wall height is contrary to ZR 113-55 and ZR 23-631.
3. Proposed front yard is contrary to ZR 113-542 and ZR 23-45.
4. Proposed rear yard is contrary to ZR 113-544.
5. Proposed setback is contrary to ZR 113-542 and ZR 23-45.
6. Proposed sky exposure plane is contrary to ZR 113-55 and ZR 23-631.
7. Proposed parking is contrary to ZR 113-561 and ZR 25-31.
8. Proposed loading berth is contrary to ZR 113-22(b).”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-1 zoning district within the Ocean Parkway Special District (OP), the construction of a new three-story Use Group 3 school and accessory dormitory building (the “New Building”), which results in non-compliances with zoning requirements related to floor area, perimeter wall height, front yard, rear yard, setback, sky exposure plane, parking and loading, contrary to ZR §§ 113-51, 113-55, 23-631, 113-542, 23-45, 113-544, 113-561, 25-31, and 113-22(b); and

WHEREAS, specifically, the New Building will have a community facility and total Floor Area Ratio (FAR) of 2.32 (1.5 is the maximum permitted); a perimeter wall height of 35 ft. (21 ft. is the maximum permitted); a front yard of seven feet (a 10 ft. front yard is required); no rear yard (a rear yard of 20 ft. is required); no setback (a setback of 10 ft. is required); sky exposure plane non-compliance; no parking spaces (18 spaces

are required); and no loading berth (one is required); and

WHEREAS, the applicant initially proposed a building with an FAR of 2.43, a total and perimeter wall height of 41 ft., no front yard, and less than a 10 ft. side yard; and

WHEREAS, however, in response to concerns of the Board as to the impact of the initially proposed building, the applicant reduced the total height to within complying parameters, proposed a complying side yard, and reduced the degree of non-compliance as to FAR and the front yard; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, with continued hearings on September 12, 2006, November 14, 2006 and January 9, 2007, and then to decision on February 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

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

WHEREAS, the Kensington-Flatbush Preservation Association (the “Opposition”) opposed this application, for reasons that are discussed below; and

WHEREAS, the application is brought on behalf of The Cheder (the “School”), a not for profit education institution; and

WHEREAS the site is located on the north side of Elmwood Avenue between East 3rd Street and East 5th Street, with frontage of 120 ft. on Elmwood Avenue, and a lot area of 10,790 sq. ft.; and

WHEREAS, the site abuts a railroad line to the rear, and is across the street from a seven-story multiple dwelling; and

WHEREAS, the site has a shallow depth, extending only 90 feet from the front lot line to the rear lot line; and

WHEREAS, the site is currently occupied by two single-family homes that are proposed to be demolished; and

WHEREAS, the New Building will house the School’s 9th through 12th grades, and first through third year of college, as well as seven rooms for the college students; and

WHEREAS, the total proposed enrollment at the New Building will be 230 students; and

WHEREAS, the School currently operates another facility approximately one block from the subject site, at 129 Elmwood Street (the “129 Building”); and

WHEREAS, the 129 Building houses the School’s lower grades, as well as a catering hall that is as of right aside from its kitchen; and

WHEREAS, the applicant states that the School’s high school is also currently housed at the 129 Building; and

WHEREAS, the 129 Building was constructed pursuant to a prior Board grant, made under BSA Cal. No. 139-96-BZ; and

WHEREAS, during the hearing process, the Opposition contends that the School has not complied with various conditions of this resolution; and

WHEREAS, because of this, the Opposition suggests that the Board should question the credibility of the School in the instant application; and

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WHEREAS, the Opposition even suggests that the Board deny the instant application on this basis; and

WHEREAS, the Board observes that while it does possess the authority to investigate allegations concerning the School's failure to comply with another grant, such consideration does not need to precede the conclusion of the instant application; and

WHEREAS, the Board may ultimately determine, upon further investigation, that the School should make more effort to comply with the conditions related to 139-96-BZ, and may take appropriate action to ensure that this occurs; and

WHEREAS, however, such a determination would not require the Board to deny the instant application; and

WHEREAS, the Board also notes that the School previously applied to enlarge another one of its facilities, located at 4001 16th Avenue, under BSA Cal. No. 45-05-BZ; and

WHEREAS, the applicant states that the proposed expansion of this facility (which now houses the nursery school program) was ultimately determined to be unsatisfactory, and this application was withdrawn after the subject site became available; and

WHEREAS, the applicant represents that the New Building will fulfill significant programmatic needs of the School; and

WHEREAS, specifically, the applicant notes that the New Building will allow for: seven classrooms on the first through third floors for grades nine through twelve and the college levels, two religious study rooms, library space, a full-sized gym, lunch room and kosher kitchen at the cellar level, seven dormitory rooms with 30 beds on the second floor, office space, restrooms, janitorial space, and a recreation area at the rooftop level; and

WHEREAS, the applicant states that the New Building is needed to serve the current student body, and to accommodate anticipated growth; and

WHEREAS, specifically, the New Building will accommodate 230 high school and post-grad students; and

WHEREAS, the applicant notes that each successive graduating class needs new space as it progresses through the grades; and

WHEREAS, the Board also observes that the New Building needs to be located near both the 129 Building (in order to reduce administrative costs) and within the geographic area from which the School's student are drawn (so that students can easily come to the facility); the subject site satisfies both these goals; and

WHEREAS, during the hearing process, the Board asked the applicant to explain the need for the proposed dormitory rooms, which, as noted above, the applicant claims is a component of the programmatic needs; and

WHEREAS, the applicant also explained that the educational program for the upper level students requires an intensive degree of study per day, that extends into well into the late evening hours, which in turn necessitates that sleeping accommodations be provided; and

WHEREAS, the applicant also submitted a list of other similar schools that provide dormitory beds for their students in

comparable facilities; and

WHEREAS, based upon the above, the Board agrees that the cited programmatic needs are legitimate and have been documented with substantial evidence; and

WHEREAS, the Board also notes that as an educational institution, the School is entitled to special treatment under applicable zoning ordinances, and its programmatic space needs may form the basis for a claim of practical difficulties; and

WHEREAS, the Board observes that the School's programmatic needs necessitate the majority of the needed waivers; and

WHEREAS, specifically, as to the FAR waiver, the applicant notes that without such waiver, the New Building would be much smaller and would not be able to accommodate the proposed enrollment of 230 high school and post-graduate students; and

WHEREAS, the Board notes that the remainder of the waivers largely arise due to the need to accommodate the increase in FAR in a reasonable building envelope; and

WHEREAS, as to the perimeter wall height and front yard waivers, the Board observes that with the proposed FAR, the most efficient layout for the School's programmatic needs is three stories of uniform size; and

WHEREAS, these two waivers facilitate such uniformity; if not granted, setbacks would be required that would limit the size of classrooms or even eliminate them and offices and eliminate six proposed dormitory rooms; and

WHEREAS, as to the rear yard, the applicant notes that the provision of a fully complying rear yard would result in floor plates that could not accommodate the study halls, the library, and classrooms; additionally, the fire stairwell at the rear of the building would have to be relocated to elsewhere in the interior of the building, further compromising the floor plates; and

WHEREAS, the Board also observes that the site's shallow depth, as mentioned above, further complicates the provision of a fully complying rear yard; and

WHEREAS, as to the parking waiver, the applicant states that the provision of the required amount of parking would eliminate the possibility of providing the above-cited programmatic elements; and

WHEREAS, finally, as to the loading berth waiver, the Board observes the provision of a loading berth would have to occur at grade, which would eliminate approximately 216 sq. ft. of floor area on the first floor; this would result in the loss of classroom and office space; and

WHEREAS, alternatively, in order to accommodate the stated programmatic needs, this lost square footage would need to be recaptured on a fourth floor (creating a total height non-compliance, adding to construction costs, and interfering with the functional operation of the School); and

WHEREAS, based upon its consideration of the above, the Board finds that the site's shallow depth, the need to have a facility in close proximity to the 129 Building, and the other established programmatic needs of the School, when considered in combination, create unnecessary hardship and practical difficulty in developing the site in compliance with the

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applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, as a threshold issue, the Board notes that the use of the site for a religious school is as of right in the subject R3-1 zoning district; and

WHEREAS, as to the FAR, the Board observes that there is a seven-story multiple dwelling across the street with an FAR of 2.89, and a six-story building at 505 Elmwood Avenue with an FAR of 3.96, both of which exceed the New Building's proposed FAR; and

WHEREAS, the Board also observes that the additional FAR is located primarily at the rear of the New Building, where it will have less impact since the site abuts railroad tracks to the rear; and

WHEREAS, as to the height of the New Building, the applicant notes that at 35 feet, it is lower than the seven-story multiple dwelling across the street (75 feet), the six-story building at 505 Elmwood Avenue (65 feet) and a 13-story building at the corner of Elwood Avenue; and

WHEREAS, the Board observes that the total height was reduced and now complies with the maximum height; and

WHEREAS, the Board further observes that the perimeter wall height was reduced, and any impact of the slight variance for wall height will be minimized by the provision of a front yard of seven feet; and

WHEREAS, likewise, as to the rear yard, the applicant states, and the Board agrees, that since the site abuts this railroad track to the rear, there will be no detrimental impact from this waiver; and

WHEREAS, the Board further observes that the front yard waiver is modest (only a 3 ft. non-compliance), and that a nearby building on the same block-front also possesses a non-complying front yard; and

WHEREAS, finally, the Board notes that the New Building provides complying side yards; and

WHEREAS, as to garbage storage and collection, the applicant notes that the School will install a refrigerated garbage storage room at the cellar level, and that garbage will only be collected at scheduled times and will not be left in the street; and

WHEREAS, the Board also notes that restrictions on garbage storage and collection will be made conditions of this grant; and

WHEREAS, as to traffic and parking, the applicant submitted a study prepared by its traffic and parking consultant, which concluded that the proposed action would not have any significant effect on neighborhood traffic or on-street parking supply; and

WHEREAS, at the request of the Board, the consultant made subsequent submissions that explain the methodology used in the study, and which analyzed the differential between an as of right school development and the proposed New Building, assuming that the New Building could accommodate 70 more students; and

WHEREAS, these subsequent submission clarified that the methodology used was appropriate, and that the proposal, when compared to an as of right development, was not anticipated to result in any significant impacts as to traffic and parking; and

WHEREAS, the applicant also notes that it will provide bicycle racks (four racks allowing storage of 36 bikes total) in the front yard so that students may bike to school; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the School could occur on the subject site given the site's configuration; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum waivers necessary to accommodate the School's programmatic needs; and

WHEREAS, the applicant also notes that the degree of the waivers is modest in most cases; and

WHEREAS, the Board also observes that the applicant reduced the size of the building in terms of FAR, maximum height, and side yards, in order to create a more compatible building envelope; and

WHEREAS, therefore, the Board agrees that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

WHEREAS, as noted above, the Opposition made a variety of arguments and observations regarding the instant application; and

WHEREAS, three of those arguments are as follows: (1) the applicant has failed to clarify the School's enrollment; (2) the applicant's traffic study fails to consider the alleged transport of students by private bus; and (3) the floor to ceiling heights can still be adjusted; and

WHEREAS, as to the School's enrollment, the Opposition cites to a document that allegedly indicates that the enrollment is actually 468, rather than the 435 initially claimed by the applicant, or the 444 now claimed; and

WHEREAS, the Board finds that the applicant has credibly established that the total enrollment of Kindergarten through 12th grade is 444, based upon submitted documentation; and

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WHEREAS, further, it finds the Opposition's concern about the actual number to be somewhat picayune, given that whether the number is 435, 444 or 468, the programmatic need pressures facing the School would be largely the same; and

WHEREAS, as to the use of private buses, the applicant explains that the reference to such buses was in error, and that students will arrive and leave the New Building primarily by walking or biking, as reflected in the afore-mentioned traffic study; and

WHEREAS, as to the floor to ceiling heights, the Opposition claims that further reduction is still possible; and

WHEREAS, however, the Board observes that the floor to ceiling heights are not extreme given the proposed educational use of the New Building, and that the total height now complies; and

WHEREAS, the Opposition also made a variety of other arguments not specifically addressed, none of which the Board finds persuasive, for the reasons stated by the applicant in its most recent submission; and

WHEREAS, in sum, the Board declines to view any of the Oppositions' arguments as fundamental flaws in the application; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA069K, dated March 21, 2006; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R3-1 (OP) zoning district, the construction of a new three-story Use Group 3 school and accessory dormitory

building, which results in non-compliances with zoning requirements related to floor area, perimeter wall height, front yard, rear yard, setback, sky exposure plane, parking and loading, contrary to ZR §§ 113-51, 113-55, 23-631, 113-542, 23-45, 113-544, 113-561, 25-31, and 113-22(b), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 21, 2007" – (8) sheets; and *on further condition*:

THAT no commercial catering shall be permitted within the building or on-site;

THAT the only outdoor recreation space shall be located on the roof, as indicated on the BSA-approved plans, and shall only be used from 8:30 am to 6:30 pm;

THAT garbage shall be stored in the designated storage area and only placed on the street on scheduled pick-up days;

THAT garbage pick-up shall occur Tuesday and Friday between 7:30 am to 9:30 am;

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

THAT the bulk parameters of the building shall be as follows: a community facility and total Floor Area Ratio of 2.32; a total and perimeter wall height of 35 ft; and a front yard of seven feet, all as indicated on the BSA-approved plans;

THAT four bicycle racks shall be located as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

107-06-BZ

CEQR #06-BSA-092M

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Barbizon Hotel Associates, L.L.P.

SUBJECT – Application May 25, 2006 – Special Permit (§73-36) to allow a physical culture establishment use (Equinox) in the cellar, subcellar, first floor and second floor of a 22 story mixed use building. C1-8X/R8B zoning district.

PREMISES AFFECTED – 140 East 63rd Street, northwest corner block bounded by Lexington and Third Avenues, Block 1397, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 3, 2006, acting on Department of Buildings Application No. 104405038, reads in pertinent part:

“The proposed Physical Culture Establishment is not permitted as of right in C1-8X district and is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-8X zoning district and partially within an R8B zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar and sub-cellar levels and the first and second floors of a 22-story mixed-use commercial/residential building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on January 23, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Commissioner Collins; and

WHEREAS, Community Board 8, Manhattan, does not take a position on this application; and

WHEREAS, an existing residential tenant of the building provided testimony in opposition to the application; the concerns of this tenant are discussed below; and

WHEREAS, the subject site is located on the southeast corner of Lexington Avenue and East 63rd Street; and

WHEREAS, because more than 50 percent of the lot area is located in the C1-8X zoning district and the greatest distance from the district boundary to any lot line does not exceed 25 feet, the C1-8X zoning district regulations may apply to the entire premises, pursuant to ZR § 77-11; and

WHEREAS, the site is occupied by a 22-story building, which was formerly a hotel; and

WHEREAS, the PCE, which is operated as an Equinox Fitness Club, has been in operation at the premises since 1998 as an accessory use to the hotel; and

WHEREAS, the hotel was recently closed and the building is being converted to a mixed-use commercial/residential use; and

WHEREAS, because of the conversion, the PCE will no longer be an accessory use and therefore the special permit is required; and

WHEREAS, the Board notes that the building does not currently comply with the maximum permitted FAR within the C1-8X zoning district but that after the conversion, the building will comply with all relevant zoning district regulations; and

WHEREAS, the Board notes that the building’s conversion plans are proceeding at DOB; and

WHEREAS, the PCE will occupy a total of 38,209 sq. ft. of floor space in the sub-cellar and cellar levels and on the first and second floors; and

WHEREAS, the Board defers approval of the location of

the PCE on the first and second floors and of the floor area calculations to DOB, to be confirmed prior to the issuance of a certificate of occupancy; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant responded to the tenant’s following concerns: (1) that a separation between residential services and PCE services be provided, (2) that the second floor was illegally altered for PCE use, and (3) that noise from the PCE was affecting residential uses above; and

WHEREAS, as to the separation of uses at the site, the applicant represents that the building will maintain separate entrances for the PCE and the residential uses, with the PCE entrance being located on Lexington Avenue and the residential entrance being located on East 63rd Street; and

WHEREAS, additionally, the applicant represents that the PCE will provide a designated storage room for garbage; and

WHEREAS, as to the use of the second floor, the applicant, through the building owner, replied that the change of use in 1997, when the health club performed the alterations to the second floor, was approved and permitted by DOB and resulted in an amended certificate of occupancy; and

WHEREAS, the owner states that the uses on the second floor were discontinued in 1997 and represents that no complaints have been filed by any of the tenants until now; and

WHEREAS, further, the owner represents that none of the other existing tenants characterized the use of the second floor as a required building service; and

WHEREAS, additionally, the owner also notes that efforts were made to relocate and accommodate the remaining residential tenants through the conversion and to offer them services that are comparable to those offered before the conversion; and

WHEREAS, as to noise, the applicant notes that the PCE use does not go above the second floor and the residential use begins at the fourth floor; the third floor, which will be used by commercial tenants or for tenant storage, will provide a buffer between the uses; and

WHEREAS, the applicant also submitted a sound attenuation analysis from a sound consultant describing the sound attenuation measures that are in place; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.06-BSA-092M dated May 25, 2006; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-8X zoning district and partially within an R8B zoning district, the establishment of a physical culture establishment on portions of the cellar and sub-cellar levels and the first and second floors of a 22-story mixed-use commercial/residential building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 20, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 27, 2017;

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

THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.;

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

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

THAT DOB shall review and approve the location of the PCE on the first and second floors and of the floor area calculations prior to the issuance of a certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

157-06-BZ CEQR #07-BSA-004Q

APPLICANT– The Law Office of Fredrick A. Becker, for C & K Steinway, LLC, owner; TSI Astoria Inc. dba New York Sports Club, lessee.

SUBJECT – Application July 15, 2006 – Special Permit (§73-36) to legalize the enlargement of a previously approved physical culture establishment on the first and second floor of a three story commercial building. C4-2A, C2-2(R6) zoning district.

PREMISES AFFECTED – 28-56 Steinway Street, northwest corner of Steinway Street and 30th Avenue, Block 662, Lot 41, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 16, 2006, acting on Department of Buildings Application No. 401705963, reads in pertinent part:

“Proposed enlargement of Physical Culture Establishment at 2nd floor located at 28-26 Steinway (265-03-BZ) is contrary to ZR 12-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-2 (R6)

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zoning district and partially within a C4-2A zoning district, the legalization of a physical culture establishment (PCE) on portions of the first, second, and third floors of a three-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, the subject site is located on the northwest corner of Steinway Street and 30th Avenue; and

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

WHEREAS, the PCE, which is operated as New York Sports Club, has been in operation at the premises since 2004; and

WHEREAS, on January 13, 2004, under BSA Cal. No. 265-03-BZ, the Board granted a special permit for a PCE at the subject premises for a ten-year term; and

WHEREAS, the PCE as approved occupied a total of 18,005 sq. ft. of floor area on the first, second, and third floors; and

WHEREAS, the applicant now proposes to legalize an increase in the floor area, primarily on the second floor, which results in a total floor area of 30,676 sq. ft.; and

WHEREAS, because of the significant increase in floor area, the applicant requests a new special permit, which will supersede the prior special permit; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:30 a.m. to 12:00 a.m.; Friday, 5:30 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant whether the signage complied with zoning district regulations; and

WHEREAS, the applicant responded that the marquee signage was an existing non-complying condition; and

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

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

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

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

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-004Q dated November 10, 2006; and

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

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-2 (R6) zoning district and partially within a C4-2A zoning district, the legalization of a physical culture establishment on portions of the first, second, and third floors of a three-story commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2006"-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 27, 2017;

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

THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 12:00 a.m.; Friday, 5:30 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

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

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

THAT all signage shall be as approved by DOB;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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DOB/other jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

266-06-BZ

CEQR #07-BSA-023M

APPLICANT – Friedman & Gotbaum, LLP, for Woodcutters Realty Corp., owner; Three on Third LLC, lessee.

SUBJECT – Application September 29, 2006 – Special Permit (§ 73-52) to extend C6-1 zoning district use and bulk regulations twenty-five (25) feet into an adjacent R7-2 district to allow a mixed-use building containing Use Group 5 (transient hotel) on the residentially zoned portion of the subject zoning lot. C6-1 and R7-2.

PREMISES AFFECTED – 4 East 3rd Street, a/k/a 335-343 Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Lori Cuisinier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 28, 2006, concerning DOB applications numbers 103310329-NB and 104296888-A2, reads:

“ZR 77-11, ZR 22-10 Proposed 16 story building with commercial use is located on a zoning lot split between two zoning district C6-1/R7-2 with greatest maximum permitted distance exceeding 25’ on R7-2 portion, hence proposed extension of commercial use within R7-2 zoning district is not permitted. Proposed commercial use within R7-2 zoning district is not permitted”; and

WHEREAS, this is an application under ZR § 73-52 to permit the proposed development of a 16-story mixed-use community facility, residential and commercial (hotel) building, on a lot partially within a C6-1 zoning district and

partially within an R7-2 zoning district, which is contrary to Z.R. § 22-10 and which requires a special permit to allow the extension of the commercial use to a 25 foot portion of the lot within the R7-2 zoning district; and

WHEREAS, the proposed building will have a total floor area of 78,543 sq. ft., a total residential floor area of 7,231 sq. ft, a total community facility floor area of 1,130 sq. ft., a total commercial floor area of 70,182 sq. ft., a total Floor Area Ratio (FAR) of 6.49, a total height of 204’-0”, a wall height of 70’-0” (C6-1) and a wall height of 56’-0” (R7-2), an open space ratio of 16.7 percent, a 30 ft. rear yard, and setbacks of 10 and 15 ft.; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in the City Record, and then to decision to February 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 3, Manhattan, recommends approval of the subject application, on condition that the developer of the site enter into a Memorandum of Understanding (“MOU”) with the Community Board; the MOU covers a variety of topics, including hiring practices, sound attenuation, visual aesthetics, and use restrictions; and

WHEREAS, the Board notes that it is not a party to the MOU and said agreement is not enforceable here; and

WHEREAS, the Board observes that this site and proposed development was the subject of a prior appeal, brought under BSA Cal. No. 317-05-A; and

WHEREAS, this appeal challenged DOB’s issuance of construction permits for the proposed development, but was withdrawn after the developer agreed to make modifications to the building and address various community concerns; and

WHEREAS, the site is located on the southeast corner of East Third Street and the Bowery, with 139’-9” of frontage on East Third, and 102’-8” of frontage along the Bowery, with a total lot area of 12, 084 sq. ft.; and

WHEREAS, the eastern side lot line of the site partially abuts the Marble Cemetery, a New York City landmark; and

WHEREAS, the portion of the site that is within the C6-1 zoning district occupies 9,788.6 sq. ft.; the portion of the site that is within the R7-2 zoning district occupies 2,295.4 sq. ft.; and

WHEREAS, the R7-2 portion fronts on East Third Street and occupies a triangular-shaped part of the site to the east of the C6-1 portion; and

WHEREAS, the C6-1 district permits commercial and residential uses; the R7-2 district permits only residential uses; and

WHEREAS, the site was formerly occupied by a garage, repair shop, and gas station, constructed in the 1950s pursuant to a Board grant made under BSA Cal. No. 291-55-BZ; this service station was expanded pursuant to another Board grant made under BSA Cal. No. 217-73-BZ; and

WHEREAS, the gas station building was recently demolished, and the proposed building is now largely completed; and

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WHEREAS, as noted above, the proposed building will contain, when fully completed, 70,182 sq. ft. of Use Group 5 hotel use, 7,231 sq. ft. of residential use, and 1,130 sq. ft. of community facility use; and

WHEREAS, the applicant represents that by allowing C6-1 use regulations to apply to 25 feet of the total width of the R7-2 portion of the lot, an increase in commercial floor area of 11,454 sq. ft. is allowed; and

WHEREAS, however, a very small triangular-shaped part of the site will remain solely within the R7-2 district, even after the boundary line is moved 25 feet east, and therefore may only be used for community facility or residential use; and

WHEREAS, the Board notes that aside from the floor area for commercial use generated by the extension of the district boundary, all other bulk requirements are presumably as of right; the Board notes that it conditions this grant on review and confirmation of ZR and Building Code compliance of all other aspects of the building by the Department of Buildings; and

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

WHEREAS, as to the threshold single ownership requirement, the applicant has submitted a copy of a deed that reveals that the zoning lot was in single ownership as of 1961; and

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

WHEREAS, as to the threshold 50 percent requirement, as discussed above, approximately 9,788.6 sq. ft. of the site's total lot area is located within the C6-1 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant states that although the R7-2 district allows residential development at an FAR of 3.44, such development is impracticable because of the insufficient lot size and irregular shape of the R7-2 portion, and the corresponding R7-2 height limitation; and

WHEREAS, specifically, the applicant states that construction of an independent residential building on this portion of the site would create massing problems and result in floor plates too small and inefficient to develop effectively and viably, and that a conforming integrated building over the entire site would likewise not result in a reasonable return; and

WHEREAS, the Board acknowledges that use of the site for a hotel, at least in part, is the most economically rational development option, given the location of the site and current demand for hotels; and

WHEREAS, the Board observes that the commercial FAR available on the site is 6.0, whereas the residential FAR available is 3.4, which provides a further incentive to develop the site commercially; and

WHEREAS, the Board further observes that full commercial development is not possible given the R7-2 portion; thus, the entire site may be developed with a mixed-use building or the two portions may be developed with two separate buildings; and

WHEREAS, for a mixed-use development covering the entire site, the Board notes that this necessitates that the commercial FAR be maximized on the lower floors, since residential use cannot be located on a floor lower than the location of commercial use, pursuant to the supplementary use regulations; and

WHEREAS, however, residential use cannot be located on the lower floors, since such residential use cannot be on the same floor as commercial use, again due to the supplementary use regulations; and

WHEREAS, this leaves locating community facility use on the lower floors of a mixed-use building, which as discussed below, would not realize a reasonable return; and

WHEREAS, as to developing the R7-2 portion with a separate residential building, the Board observes that the R7-2 portion has a narrow street frontage of only approximately 35 feet and a trapezoidal shape, which compromises the efficiency of residential floor plates given the requirements of a separate core and egress; and

WHEREAS, finally, the Board observes that while a separate community facility building could be built on the R7-2 portion and not suffer the same constraints that compromise residential development, the revenue produced from such a development would not justify it; and

WHEREAS, additionally, the applicant submitted a financial analysis of five different as of right scenarios to determine whether strict conformity with the ZR would be economically feasible: (1) a hotel development in the C6-1 portion, and a new separate height-factor residential development in the R7-2 portion, with an FAR of 3.44; (2) a hotel development in the C6-1 portion, and a residential conversion of the existing building in the R7-2 portion, also with an FAR of 3.44; (3) a hotel development in the C6-1 portion, and a new community facility building in the R7-2 portion, with an FAR of 3.87; (4) a complying integrated 6.5 FAR building, with 58,693 sq. ft. of hotel use, 13,005 sq. ft. of community facility space, and 6,320 sq. ft. of residential space; and (5) a complying 3.4 FAR residential building; and

WHEREAS, the applicant concluded that none of these as of right scenarios would result in an economically feasible development, which confirms the representation that the R7-2 portion of the site cannot sustain economically feasible development if developed in its entirety with a conforming use; and

WHEREAS, based upon the above, the Board finds that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R7-2, for a permitted use; and

WHEREAS, as to the second finding, the applicant states

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that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant also notes that the developer has worked closely with the community to address concerns regarding the availability of community facility space, the mitigation of noise impacts on the Marble Cemetery and residents on the north side of East 3rd Street, and garbage pick-up schedules; and

WHEREAS, the Board again observes that aside from the increase in floor area devoted to hotel use, the proposed development presumably complies with all other ZR use and bulk provisions, including height and setback; and

WHEREAS, at hearing, the Board asked the applicant to clarify the location of the ground floor entrances to the commercial uses, since it appeared from the plans that a commercial entrance was planned for the R7-2 portion of the site; and

WHEREAS, the applicant clarified that all commercial entrances would be located within the commercially zoned portion of the site, and submitted revised plans reflecting this; and

WHEREAS, the Board also asked the applicant to clarify the proposed use of the open outdoor space on the small triangular-shaped section of the site that would remain R7-2; the Board observes that the majority of the open space would be within the C1-6 portion of the site; and

WHEREAS, the applicant clarified that the proposed restaurant at the cellar and second floors would not use this part of the open area (since such commercial use would be prohibited), and that planters would be installed as barriers to prevent this; and

WHEREAS, the applicant also clarified that the noise from the open area would be buffered through the use of acoustical panels; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C6-1 zoning district portion of the lot into the R7-2 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

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

WHEREAS, as discussed above, the applicant notes that the special permit, if granted, would lead only to more commercial use on the site than what would be permitted as of right; and

WHEREAS, the Environmental Assessment Statement submitted with the application indicates that this increase in commercial use would not have any adverse affect on the surrounding area, including the surrounding historic resources; and

WHEREAS, conversely, the special permit will allow for the development of land that otherwise could not be developed feasibly, and provide for a development with additional hotel units and community facility use; and

WHEREAS, thus, 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 are outweighed by the advantages to be derived by the community; and

WHEREAS, in sum, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-52 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA023M dated September 29, 2006; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-52 and 73-03 and grants a special permit to allow the proposed development of a 16-story mixed-use community facility, residential and commercial (hotel) building, on a lot partially within a C6-1 zoning district and partially within an R7-2 zoning district, which is contrary to Z.R. § 22-10 and which requires a special permit to allow the extension of the commercial use to a 25 foot portion of the lot within the R7-2 zoning district; *on condition* that any and all work shall substantially conform to the drawing as it applies to the objections above noted, filed with this application marked “Received December 22, 2006” – one (1) sheet; and *on further condition*:

THAT, DOB shall review all requirements pertaining to the location and separation of uses; mechanical spaces, and location of commercial entrances and commercial signage;

THAT no commercial signage or entrances shall be located within the R7-2 district;

THAT planters shall be installed on the second floor outdoor space as barriers to restrict access to the portion of the space within the R7-2 zoning district;

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

268-06-BZ

CEQR #07-BSA-025Q

APPLICANT – Omnipoint Communications Inc., for Mokom Sholom Cemetery Assoc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application October 2, 2006 – Special Permit for non-accessory radio tower under (§73-30). In an R-4 district, on a lot consisting of 714,600 SF, and located in a portion of Mokom Sholom Cemetery, permission sought to erect an 80’ stealth flagpole disguised as a radio tower for public utility wireless communications.

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150 east of the intersection of Pitkin Avenue and 80th Street, Block 9141, Lot 20, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Daniel H. Braff, Esq.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 8, 2006, acting on Department of Buildings Application No. 402446652, reads in pertinent part:

“Comply with 73-30 Zoning Resolution for this telecommunication monopole and related equipment in R4 zoning district.”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR §§ 22-00; and

WHEREAS a public hearing was held on this application on January 30, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, the proposed monopole will be located on the grounds of the Mokom Sholom Cemetery; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of an 80-foot high monopole; and

WHEREAS, the proposed monopole has been designed

to resemble a flagpole, with six small panel antennas located inside and completely hidden from view; and

WHEREAS, the stealth design includes an American flag and a decorative gold ball with a maximum height of 82’-0”;

and
WHEREAS, three small equipment cabinets and a battery cabinet will be located at the base of the flagpole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within a six-foot opaque locked fence enclosure; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-025Q, dated October 2, 2006; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and grants a special permit under ZR §73-03 and §73-30, to permit, within an R4 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR §§ 22-00, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received October 2, 2006"- (4) sheets; and on further condition;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 27, 2007.

275-06-BZ

CEQR #07-BSA-028M

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.

SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.

PREMISES AFFECTED – 408-414 West 13th Street and 13-15 Little West 12th Street, south side of West 13th Street, 124.16' west of the corner formed by the intersection of Ninth Avenue and West 13th Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lori Cuisiner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 104539144, reads in pertinent part:

"40' Proposed rear yard equivalent in thru lot (tax lot 35 and 51) and 20' rear yard (tax lot 33) are not provided and is contrary to 43-28 ZR. (combining tax lots 33, 35 and 51)"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5 zoning district comprised of three separate tax lots, the construction of a five-story commercial development without a required rear yard equivalent and rear yard, which is contrary to ZR § 43-28; and

WHEREAS, the following parameters are as of right: a commercial floor area of 58,264, a commercial Floor Area Ratio of 4.44, 100 percent lot coverage, and a wall and total height of 79'-1" ; and

WHEREAS, however, no rear yard or rear yard equivalent will be provided; a 20 ft. rear yard is required on Lot 33, and a 40 ft. rear yard equivalent is required on Lots 35 and 51, which collectively constitute a through lot; and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in the *City Record*, and then to decision on February 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan, informed the Board that it is not opposed to the instant application; and

WHEREAS, as noted above, the site is comprised of three separate tax lots (Lots 33, 35 and 51), which will be merged in anticipation of the proposed development; and

WHEREAS, the applicant states that Lot 33 is 2,136 sq. ft. with 21'-0" of frontage on West 13th Street, and a depth of 107'-3"; the adjacent Lot 35 is 5,834 sq. ft., with 56'-6" of frontage on West 13th Street and a depth of 103'-3"; Lot 51 is adjacent to the rear of Lot 35, is 5,163 sq. ft., with 50'-0" of frontage on Little West 12th Street and a depth of 103'-3"; and

WHEREAS, the site is located within an M1-5 zoning district, within the Gansevoort Market Historic District; and

WHEREAS, the applicant previously approached the Landmarks Preservation Commission (LPC) with a proposal in 2004, which consisted only of Lots 33 and 35, and contemplated a commercial building; and

WHEREAS, the applicant states that the LPC-approved plans for this approval provided for a uniform street wall and a complying rear yard at the first story; and

WHEREAS, however, when Lot 51 was acquired, LPC indicated to the applicant that it would require a recessed fourth floor level along the Little West 12th Street expanse and a uniform street wall along West 13th and Little West 12th Streets;

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and

WHEREAS, the applicant claims that this design constraint eliminated the option to provide a 20'-0" deep open space along the full length of the proposed development's north and south façade, pursuant to ZR § 43-28(c), in lieu of compliance with the rear yard and rear yard equivalent requirements; and

WHEREAS, however, the applicant states, and the Board agrees, that the LPC-imposed design requirements are not a unique physical condition that can be properly claimed as hardship; and

WHEREAS, nor is the mere location of a property in a designated historic district; actual unique physical conditions must be present on a site before it may be eligible for relief through a variance; and

WHEREAS, the applicant represents that the following is a unique physical condition, which creates an unnecessary hardship in developing the site in compliance with applicable regulations: each of the three tax lots is undersized; and

WHEREAS, as to the size of the three lots, the applicant explains that individually, none of the three could sustain a viable conforming development, due to the small floor plates that could be created; and

WHEREAS, accordingly, in order to create sufficient lot area to sustain a viable conforming commercial development, with floor plates that meet modern commercial user expectations, the three lots must be combined; and

WHEREAS, however, adding Lot 51 to the zoning lot imposes a rear yard equivalent requirement that would necessitate the creation of two individual commercial towers, with two cores; and

WHEREAS, this would result in both an inefficient layout and a loss of usable floor area; and

WHEREAS, further, as noted above, the option of providing a rear yard equivalent along the street frontages pursuant to ZR § 43-28(c) is not available, due to the LPC-imposed design constraints reflected in the Certificate of Appropriateness; and

WHEREAS, as to the uniqueness of this condition, the applicant engaged in a thorough study of 41 lots within a 400 ft. radius (within both the M1-5 district and the Historic District), and determined that only three of these lots are in common ownership and could be potentially assembled in a comparable through block configuration; and

WHEREAS, specifically, this study reveals that many of the other small sites within the radius are already in residential use or are significantly developed; and

WHEREAS, the Board agrees that the existence of one other potential comparable lot configuration in the immediate vicinity does not negate the required uniqueness finding; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building; and

WHEREAS, this complying scenario includes rehabilitation of the building on Lot 33 and construction of two separate buildings on Lots 35 and 51, each with its own core; and

WHEREAS, however, as noted by the applicant, the lack of consolidated mechanical systems and cores decreases both the amount and utility of the floor area, resulting in a negative return; and

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

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

WHEREAS, the applicant notes that LPC has approved the design of the proposed development, finding it to be an appropriate addition that will relate well with other commercial, residential and manufacturing buildings in the area; and

WHEREAS, the applicant also notes that the height and the FAR are within the as of right limits within the M1-5 district; and

WHEREAS, the Board observes that any impact resulting from the lack of a rear yard and rear yard equivalent is minimized by the common ownership of the three tax lots, the lack of a rear yard at the adjacent site to the west on both frontages and to the east on the Little West 12th Street frontage, and the fact that the adjacent building to the east is commercially occupied; and

WHEREAS, further, if not for the LPC-imposed requirements, the rear yard equivalent could have been placed on the frontages as of right; and

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

WHEREAS, the applicant states that while the lot configuration is the result of a voluntary merger of the three tax lots, this in of itself does not constitute a self-created hardship; and

WHEREAS, the Board agrees, noting that the applicant has established that each of the three lots are uniquely burdened when standing alone; the merger actually alleviates this hardship, and sets the stage for a conforming development (albeit one that requires yard relief to be viable); and

WHEREAS, under such circumstances, the Board does not consider the merger to constitute a self-created hardship; and

WHEREAS, accordingly, the Board finds that the hardship claimed herein was not created by the owner or a

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predecessor in title; and

WHEREAS, because the proposed conforming development only requires the cited rear yard and rear yard equivalent waivers, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA028M, dated October 11, 2006; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-5 zoning district comprised of three separate tax lots, the construction of a five-story commercial development without a required rear yard equivalent and rear yard, which is contrary to ZR § 43-28, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 11, 2006" – eight (8) sheets and "Received January 25, 2007 - one (1) sheet; 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);

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

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

Adopted by the Board of Standards and Appeals,
February 27, 2007.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail, community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

25-06-BZ

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§ 23-631 & § 24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 & §24-551), FAR (§24-11, 24-162 & 23-141) and lot coverage (§23-141 & §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman, Councilmember Kendall Stuart and Eliot Berry.

For Opposition: Alice Loubaton and Mitchell Fruchter.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story

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commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking.

Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

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

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ron Mandell and Robert Pauls.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. §42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal, Caroline G. Harris, Chuck ? and Doris Diether, CB#2.

For Opposition: Caroline Harris.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

115-06-BZ

APPLICANT– Harold Weinberg, for Saul Mazor, owner.

SUBJECT – Application June 7, 2006 – Special Permit (§73-622) for the enlargement of a single family detached residence. This application seeks to vary open space, floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1820 East 28th Street, west side 140' south of Avenue R, between Avenue R and S, Block 6833, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

For Opposition: Antoinette Vasile, Kathleen Jaworski and ?

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

138-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for RH Realty LLC NY by Ralph Herzka, owner.

SUBJECT – Application July 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3447 Bedford Avenue, between Avenue M and N, Block 7661, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman, R.A.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

237-06-BZ

APPLICANT – Moshe M. Friedman, for Jonathan M. Schwartz, owner.

SUBJECT – Application September 12, 2006 – Special Permit (§73-622) for the enlargement of a single family semi-detached residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1462 East 26th Street, west side 333'-7" north of the intersection formed by East 26th Street and Avenue O, Block 7679, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

100-06-BZ

APPLICANT– Francis R. Angelino, for Old Gowanus Road, LLC, owner.

SUBJECT – Application May 23, 2006 – Variance (§72-21) to allow a proposed residential building to violate regulations for maximum height (§23-633), minimum

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dimensions of inner court (§23-851) and permitted obstructions in courts (§ 23-87). The proposed building will contain five (5) dwelling units and three (3) parking spaces. Site is located in an R6B district.

PREMISES AFFECTED – 638-640 President Street, between 4th and 5th Avenues, Block 958, Lots 35 and 36, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Francis R. Angelino, Jack Freeman, Shael Shapiro, Noah Shapiro, Daniel M. Bernstein and Roslyn Bernstein and Roslyn Bernstein.

For Opposition: Sheila O’Hara and Mira Jones.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

110-06-BZ

APPLICANT – Moshe M. Friedman, for Rochelle Grossman, owner.

SUBJECT – Application June 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district. This application also proposes to convert from a two family to a one family residence.

PREMISES AFFECTED – 1473 East 21st Street, a/k/a Kenmore Place, 325’ north of intersection formed by East 21st Street and Avenue N, Block 7657, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3
Negative:.....0
Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

123-06-BZ

APPLICANT – Rampulla Associates Architects, for Dr. Ronald Avis, owner.

SUBJECT – Application June 13, 2006 – Variance (§72-21) to permit the legalization of the existing one room, one-story addition which encroaches upon the required 30' rear yard of the existing single-family detached house. The Premise is located in an R3X SHPD/LOGMA zoning district. The proposal is contrary to rear yard (23-47).

PREMISES AFFECTED – 21 Cheshire Place, north side 905.04’ to Victory Boulevard, Block 240, Lot 77, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

152-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug, Gregory Montalbano and Carlo Montalbano.

For Opposition: Mary Jane DeSantis, Scott Hall and William Tanzosh; Fire Department.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

272-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for The Media Realty Group, owner; Evolution Sports Club, LLC, lessee.

SUBJECT – Application October 10, 2006 – Special permit (§73-36) to legalize a Physical Culture Establishment on the second floor in a three-story building. The proposal is contrary to Section 42-31. M1-5 zoning district.

PREMISES AFFECTED – 37-11 35th Avenue, between 37th and 38th Streets, Block 645, Lot 1, Borough of Queens.

COMMUNITY BOARD # 1Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3
Negative:.....0
Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 13, 2007, at 1:30 P.M., for decision, hearing closed.

285-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 531 Central Park Avenue Associates, LLC, owner; Serenity Wellbeing Inc., lessee.

SUBJECT – Application October 25, 2006 – Special Permit (§73-36) to permit the operation of a physical culture establishment on the third floor of an existing commercial building located in a C6-4.5 zoning district.

PREMISES AFFECTED – 23 West 45th Street, north side

MINUTES

of West 45th Street, between Fifth and Sixth Avenues, Block 1261, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

318-06-BZ

APPLICANT– Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49th Street, Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Gus Prentros.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 4:30 P.M.

BULLETIN

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March 15, 2007

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283-06-BZ	1372 East 29 th Street, Brooklyn

DOCKETS

New Case Filed Up to March 6, 2007

57-07-BZ

636 Howard Avenue, Approximately 75 feet east of the intersection of Highland Avenue and Howard Avenue., Block 597, Lot(s) 65, Borough of **Staten Island, Community Board: 1.** (SPECIAL PERMIT) 73-30-For a non-accessory radio tower, which is a public utility wireless communications facility and will consist of a 70-foot monopole/light-post, together with antennas (and stadium flood-lights).

58-07-BZ

18-02 Clintonville Street, North west corner of 18th Avenue and Clintonville Street., Block 4731, Lot(s) 9, Borough of **Queens, Community Board: 7.** Under 72-21-To build a new 2 (two) family dwelling on a vacant tax lot.

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

APRIL 10, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 10, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

81-74-BZ

APPLICANT – Martyn & Don Weston, for Bogopa Supermarket, Inc., owner; Food Bazaar Supermarket; lessee.

SUBJECT – Application January 29, 2007 – Extension of Term of a previously granted variance for the operation of a Use Group 6 (Food Bazaar Supermarket) in a C1-2/R6A & R6B zoning district which expired on February 27, 2007.

PREMISES AFFECTED – 97-27 57th Avenue, north side between 97th Place and 98th Street, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

200-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Blans Development Corp., owner.

SUBJECT – Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16 108th Street, southwest corner of 108th Street and 37th Avenue, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

163-04-BZII

APPLICANT – Rothkrug Rothkrug & Spector, for Mylaw Realty Corp., owner; Crunch Fitness, lessee.

SUBJECT – Application August 28, 2006 – Amendment of a special permit (§73-36) to allow the enlargement and expansion of an existing physical culture establishment into an adjoining building, and to reflect a change in the name of the operator. C2-4(R6) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of Fulton Street and St. Felix Street, Block 2096, Lots 66 and 69, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEALS CALENDAR

287-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: 32-42 33 Street, LLC, owner.

SUBJECT – Application September 15, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.

COMMUNITY BOARD #1Q

300-06-A

APPLICANT – Eric Palatnik, P.C., for Tony Wan Yiu Cheng, owner.

SUBJECT – Application November 14, 2006 – Proposed construction of a 4 story mixed use building which extends into the mapped street (44th Avenue) which is contrary to Section 35 of the General City Law. C2-5/R6-Bzoning district.

PREMISES AFFECTED – 43-17 104th Street, north side of the corner formed by the intersection of 44th Street and 104th Avenue, Block 1987, Lot 67, Borough of Queens.

COMMUNITY BOARD #4Q

17-07-BZY, 18-07-BZY, 19-07-BZY & 20-07-BZY thru 31-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., dba Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2 /NA-2. Zoning District.

PREMISES AFFECTED – 5000 & 5020 Iselin Avenue, 421 West 250th Street, Grosvenor Avenue & Goodridge Avenue, Block 5831, 5829, 5830 & 5839, Lots 10, 20, 30, 4018, 4025, 3912, 3920, 3940, 3630, 3635, 40, 50, 60 & 70, Borough of Bronx.

COMMUNITY BOARD #8BX

APRIL 10, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 10, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

CALENDAR

ZONING CALENDAR

65-06-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Zhen Xiang, owner.

SUBJECT – Application April 11, 2006 – Zoning variance under § 72-21 to allow a proposed residential building containing three (3) dwelling units to violate applicable front yard (§ 23-45(a)) and side yard requirements (§ 23-462(a)). R5 district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1357, Lot 46, Borough of Queens.

COMMUNITY BOARD #4Q

108-06-BZ

APPLICANT– Eric Palatnik, P.C., for S & L-G Realty Corp., owner.

SUBJECT – Application May 30, 2006 – Zoning variance under § 72-21 to allow a proposed 15-story residential building (U.G. 2) containing twenty-six (26) dwelling units and ground floor retail use (U.G. 6) to locate in an M1-6 district; contrary to §42-00 (use regulations).

PREMISES AFFECTED – 143 West 30th Street, between 6th and 7th Avenues, Block 806, Lot 4, Borough of Manhattan

COMMUNITY BOARD #5M

114-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (23-141); provides less than the minimum required side yards (23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn

COMMUNITY BOARD #15BK

253-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Jamila Maleh and Asian Azrak, owners.

SUBJECT – Application September 15, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary side yard (23-461) and rear yard (23-47) in an R4 zoning district.

PREMISES AFFECTED – 2243 Homecrest Avenue, east side of Homecrest Avenue between Avenue V and Gravesend Neck Road, Block 7373, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

14-07-BZ

APPLICANT – Ivan Khoury, Esq., for Green Tea Inc., owner; Da Spa, LLC, dba Delluva Day Spa, lessee.

SUBJECT – Application January 11, 2007 – Special Permit (§73-36) to legalize a PCE (spa) located in the Tribeca West Historic District and a M1-5 zoning district. The proposal is contrary to Section 42-10.

PREMISES AFFECTED – 152 Franklin Street, 150.33' east of the intersection of Franklin and Hudson Streets, Block 189, Lot 7506, Borough of Manhattan.

COMMUNITY BOARD #1M

41-07-BZ

APPLICANT– Ellen Hay, Wachtel & Masyr, LLP, for 17th and 10th Associates, LLC, owner; Equinox 17th Street, Inc., lessee.

SUBJECT – Application February 5, 2007 – Special Permit (73-36) to permit the proposed PCE on the cellar, ground, and mezzanine levels of a 24-story building under construction. The Premises is located in a C6-3 zoning district and Sub Area 1 of the Special West Chelsea District. The proposal is contrary to Section 22-00.

PREMISES AFFECTED – 450 West 17th Street, a/k/a 100 Tenth Avenue, east side of Tenth Avenue between West 16th and West 17th Streets, Block 714, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

44-07-BZ

APPLICANT– Francis R. Angelino, Esq., for Lerad Company, owner; Rubin-Lobo LLC d/b/a Bikram Yoga NY, lessee.

SUBJECT – Application February 8, 2007 – Special Permit (§73-36) to legalize a PCE (Yoga Studio) on a portion of the second floor in a six-story mixed-use building. The Premises is located in a C1-9 zoning district.

The proposal is contrary to Section 32-18.

PREMISES AFFECTED – 171-173 East 83rd Street, northwest corner East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 6, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

741-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Hillside Auto Center S.S., Inc., owner.

SUBJECT – Application January 8, 2007 – §11-411 and §11-412 to extend the term of a variance for a gasoline service station with accessory uses for an additional period of ten years from September 23, 2005 and to amend the resolution to permit a portion of the building to be used as an accessory convenience store and to permit a metal canopy and new fuel pump. The site is located in an R-2 zoning district.

PREMISES AFFECTED – 241-15 Hillside Avenue, northwest corner of 242nd Street, Block 7909, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for continued hearing.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E., Charles Winter.

For Opposition: Terri Pouymari, Rhea O’Gorman and Chrissy Voskerichian.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for continued hearing.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of

Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Kathy Grove, Marilyn Stern and Nick Lecakes.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for continued hearing.

98-05-BZ, Vol. II

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for Lauto Group, Limited, c/o Anthony Lauto, owner; 48 Bonhaus Corporation, c/o Dac Bon LLC, lessee.

SUBJECT – Application December 1, 2006 – To reopen and amend a previously-approved zoning variance which allowed a residential multiple dwelling (UG 2) with ground floor retail use (UG 6) in an M1-5B district; contrary to use regulations (§42-10). Proposed modifications include: (1) minor reduction of the ground floor commercial floor area and (2) increase in mechanical space on the ground floor; and (3) the creation of a 143 sq. ft. rooftop "storage cabin."

PREMISES AFFECTED – 46-48 Bond Street, north side of Bond Street 163/5’ west of the corner formed by the intersection of Bond Street and Bowery, Block 530, Lots 44 & 31, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Shelly Friedman and Doris Diether, CB #2.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for decision, hearing closed.

44-06-BZ, Vol. II

APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215’ east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

MINUTES

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

77-06-A & 78-06-A

APPLICANT – Stephen J. Rizzo, Esq., for Block 7092 LLC, owner.

SUBJECT – Application April 27, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the zoning district regulations in effect as of March 1999. R3-2 Zoning District.

PREMISES AFFECTED – 96 Crabtree Avenue, Woodrow Road east of Turner Street, Block 7092, Lot 1, Block 7105, Lots 555 & 561, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Bradley Green.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a multiple-unit residential development under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on January 23, 2007, after due notice by publication in *The City Record*, with a continued hearing on February 13, 2007, and then to decision on March 6, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 3, Staten Island, opposed this appeal, citing concerns about overdevelopment; and

WHEREAS, the appellant states that the subject premises consists of an approximately 65,187 sq. ft. development site on Block 7092 and an approximately 87,500 sq. ft. development site on Block 7105, with proposed private roads connecting the two blocks; and

WHEREAS, the appellant proposes to develop the entire two-block site with 56 two-family homes with garages; and

WHEREAS, when the development commenced in 1996, the site was located within an R3-2 zoning district; and

WHEREAS, in May of 1996, surveys of the site were completed, and in June of 1996, the developer hired an architectural firm to oversee the development; and

WHEREAS, in 1997, the developer proceeded to subdivide the subject blocks into 56 separate tax lots, secured a site plan approval, and sought foundation permits from the

Department of Buildings (DOB) for each proposed home, all of which were obtained by March of 1999; and

WHEREAS, subsequently, foundation work commenced and 32 foundations were completed (eight of 32 on Block 7105 and all 24 on Block 7092); and

WHEREAS, also in 1999, this developer began to install sewer infrastructure, which would service the entire development; and

WHEREAS, however, full sewer approvals took longer than expected to obtain and work ceased in 1999 after the 32 foundations were constructed; and

WHEREAS, in June of 1999, the developer hired an engineering firm to obtain the needed sewer approvals, and more sewer work was performed; and

WHEREAS, on February 6, 2002, the City Planning Commission (CPC) enacted a text change to ZR §26-21, which changed the minimum private road width regulation for the site from 30 to 35 feet; and

WHEREAS, the proposed private road street did not comply with the new width requirement; and

WHEREAS, nevertheless, since foundation work that constrained the width of the private road was completed prior to the enactment of the text change, the developer was able to obtain a reconsideration from DOB that vested the existing street width, dated March 8, 2002 (the “Reconsideration”); and

WHEREAS, after the Reconsideration was issued, the developer continued to attempt to obtain further sewer approvals, necessary in order to obtain new building permits; and

WHEREAS, however, on August 14, 2004 (the “Enactment Date”), CPC enacted the Lower Density Growth Management text amendment (the “LDGMA”), which rendered the proposed development non-complying in terms of minimum lot area (the requirement is now 3,800 sq. ft.) and minimum lot width (the requirement is now 40 feet); and

WHEREAS, accordingly, the appellant seeks a Board determination that it has vested its right to complete the development as originally proposed based upon the already completed work, without regard to the LDGMA; and

WHEREAS, the Board has reviewed this chronology of events as stated by the appellant, and notes that DOB recently limited the scope of the Reconsideration in a decision dated April 17, 2006, finding that it concerned only the width of the street but not the development in its entirety; and

WHEREAS, however, the Board observes that while the appellant cited to the April 17 decision as the basis for the Board’s jurisdiction to hear the common law vesting claim, the substance of the determination, as well as the substance of the Reconsideration, is not before it; and

WHEREAS, having discussed the chronology of events, the appellant then must establish whether work proceeded under valid permits; and

WHEREAS, the appellant represents it obtained the requisite work permits on March 8, 1999; and

WHEREAS, the Board observes that there is no evidence in the record that indicates these permits were invalid upon issuance, and further observes that DOB has not indicated to the Board that they are invalid; and

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

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

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

WHEREAS, further, the Board notes that where a multi-unit development is planned as a single integrated development, it may be subject to a separate line of cases that establish the Single Integrated Project Theory (or "SIPT"); and

WHEREAS, the SIPT allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep't, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep't, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applicable to a vesting determination if the following requirements are met: (1) the reviewing approval body was on notice that the various buildings were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, as established below, the appellant addressed both the typical vesting concerns as to work, expenditure, and serious loss, as well as the SIPT factors; and

WHEREAS, as to substantial construction, the appellant states that before the Enactment Date, the developer prepared the site, conducted test borings, installed

some sewer infrastructure, excavated over 155,500 sq. ft. on both blocks, and poured concrete for 32 foundations over a three-month period; and

WHEREAS, specifically, the developer showed that approximately 1,073 yards of concrete were poured prior to the Enactment Date; and

WHEREAS, in support of the assertion that substantial construction was performed, the appellant submitted the following evidence: photographs of the site, a site plan showing the amount of work completed, affidavits, and copies of pour tickets; and

WHEREAS, based upon the above evidence, the Board concludes that a significant amount of work was performed at the site prior to the Enactment Date; and

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

WHEREAS, the appellant states that prior to the Enactment Date, the owner expended a total of approximately 1.65 million dollars out of a total of approximately 3.9 million dollars required for the project (or 42 percent); and

WHEREAS, said expenditures related to excavation, foundation, labor and materials costs, as well as architectural, engineering and expediting costs; and

WHEREAS, as proof of the expenditures, the appellant has submitted invoices, cancelled checks, and accounting reports; and

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

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

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning and in part upon a showing that income would be reduced due to lost units or density; and

WHEREAS, the appellant explains that all of the 56 proposed lots – including the 32 already developed with foundations – are substandard in terms of lot area and width as to the LDGMA; and

WHEREAS, the appellant explains that compliance with the present minimum lot area and width provisions would reduce the amount of proposed units to 37, resulting in the need for new surveys, lot subdivisions, street redesign, and new architectural plans, at an estimated cost of \$185,000; and

WHEREAS, further, the appellant explains that the existing foundations would have to be removed at a cost of \$400,000 in hard costs, and approximately \$800,000 in carrying and reconstruction costs; and

WHEREAS, additionally, the appellant contends that the reduced unit count would lead to a diminished profit over the entire development site; and

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WHEREAS, the Board agrees that the non-recoupable expenditures related to the existing foundations, the demolition and reconstruction costs, and the lost revenue arising from the reduced unit count, when viewed in the aggregate, constitute a serious economic loss, and that the supporting data submitted by the appellant supports this conclusion; and

WHEREAS, finally, the Board asked why that portion of Block 7105 where no foundation work was performed could not be developed with homes that complied with the LDGMA; and

WHEREAS, the appellant responded that under the SIPT, the developer was entitled to treat the entire development site as one, and that through construction of the 32 foundations and other global site preparation, including the installation of infrastructure benefiting the entire development, it was entitled to continue construction of all initially proposed homes; and

WHEREAS, the Board agrees that the appellant has established that the development qualifies as an integrated development under the SIPT, since all factors enumerated above have been satisfied; and

WHEREAS, specifically, the applicant showed that: (1) DOB approved a site plan showing the entire 56-unit development, and was therefore on notice that it was intended to be a single integrated residential project; (2) significant excavation, site preparation and foundation work has been performed; (3) expenditures were made and work was conducted on infrastructure that benefits the entire development, namely the sewer expenditures and construction, and expenditures related to the private roads; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the completed foundation work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, as to this last factor, the Board observes that while the LDGMA reflects a serious legislative concern about perceived overdevelopment on Staten Island, the fact that the proposed development was planned and acted upon well prior to the Enactment Date negates any argument that the pertinent LGDMA provisions override the developer's otherwise strong vested rights claim, especially in light of the developer's diligence in attempting to obtain sewer approvals that unexpectedly delayed further development; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, the supporting documentation for such representations, as well as the discussion of the SIPT, and agrees that the appellant has satisfactorily established that a vested right to complete construction of all 56 of the proposed homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit Nos. 500343755-01 EQ-FN 500253637, 500253628, 500253619, 500253593, 500253824,

500253815, 500253806, 500253799, 500253780,
500253762, 500253753, 500253726, 500253735,
500253744, 500253717, 500353307, 500253646,
500253664, 500253673, 500253682, 500253691,
500253708, 500253272, 500253290, 500253281,
500253316, 500253325, 500253334, 500253343,
500253352, 500253361, 500253370, 500253389,
500253398, 500253405, 500253414, 500253423,
500253432, 500253441, 500253450, 500253469,
500253478, 500253487, 500253496, 500253502,
500253511, 500253520, 500253539, 500253557,
500253566, 500253548, 500253575, 500253584,
500253600, 500253655, 500253711, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 6, 2007.

305-06-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Incorporated, owner, Thomas Neary, lessee.

SUBJECT – Application November 21, 2006 – Proposed reconstruction and enlargement of an existing one family dwelling not fronting on a mapped street, Roosevelt Walk, contrary to Article 3, Section 36 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 9 Roosevelt Walk, Eastside 171.22' south of Oceanside Avenue. Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 8, 2006, acting on Department of Buildings Application No. 402488571, reads in pertinent part:

“1 - Proposal to enlarge the existing first floor and construct a new second floor at home which lies within an R4 zoning district but does not front on mapped street (Roosevelt Walk) is contrary to Art. 3, Sect. 36 (2) of the General City Law; and must, therefore, be referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, a public hearing was held on this

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application on March 6, 2007 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated March 6, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated November 8, 2006, acting on Department of Buildings Application No. 402488571, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 21, 2006"-(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 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, March 6, 2007.

232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard, Block 3122, Lot 213, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for continued hearing.

12-07-A

APPLICANT – David L Businelli, R.A., AIA, for Mr. Thomas Tuminello, owner.

SUBJECT – Application January 10, 2007 – Proposed construction of a one family dwelling not fronting on mapped street, contrary to Article 3, Section 36 of the General City Law. R3X Zoning District.

PREMISES AFFECTED – 25 Allegro Street, North side of Allegro Street, 101.33 southwest corner of Bertram Avenue and Allegro Street. Block 6462, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 20, 2007, at 10 A.M., for postponed hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, MARCH 6, 2007 1:30 P.M.

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

ZONING CALENDAR

82-06-BZ

CEQR #06-BSA-081Q

APPLICANT – Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 – Pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. §22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ). The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson.....3

Negative: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 20, 2006, acting on Department of Buildings Application No. 402367185, reads in pertinent part: "Application pursuant to ZR Section 72-21 to vary ZR Section 22-00 to re-instate the previous variance

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to permit the proposed redevelopment of the existing Use Group 6 eating and drinking establishment with accessory drive through within this R3-2 zoning district.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a one-story commercial building to be occupied as a Use Group 6 eating and drinking establishment with a drive-through facility, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 17, 2006, after due notice by publication in the *City Record*, with continued hearings on November 21, 2006, January 9, 2007, and February 6, 2007, and then to decision on February 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of the application on the condition that: (1) removable bollards be installed in the parking area adjacent to the home on Utopia Parkway to close off that area from 10 p.m. to 10 a.m.; (2) guardrails be installed along the perimeter of the property adjacent to residential uses; (3) traffic control measures, including signage, be installed; (4) a sound wall be installed around the perimeter of the site; (5) all lighting be directed down and away from adjacent residences; (6) a sound wall be installed along a portion of the 172nd Street frontage and a wrought iron fence be installed along the remainder; (7) fencing along Utopia Parkway, south of the curb cut, be six feet in height; (8) landscaping and screening be installed adjacent to residences; (9) hours of operation be limited to 10 a.m. through midnight for the dining room and 10 a.m. to 4 a.m. for the drive-through; (10) the site be well maintained; (11) security be provided, if required; and (12) rodent control measures be followed during construction; and

WHEREAS, at hearing, the Community Board provided testimony in support of the application, stating that the proposed changes would improve the area; and

WHEREAS, the site is located on the south side of Northern Boulevard between 172nd Street and Utopia Parkway; and

WHEREAS, the site has a lot area of 23,032 sq. ft.; and

WHEREAS, the site is the subject of a prior Board variance, under BSA Cal. No. 168-92-BZ, permitting a drive-through facility accessory to an existing non-conforming eating and drinking establishment (UG 6); and

WHEREAS, the building is a one-story 2,171.8 sq. ft. (0.09 FAR) commercial structure, with an accessory parking lot with 26 parking spaces; and

WHEREAS, the building remains occupied by an eating and drinking establishment with a drive-through facility; and

WHEREAS, the eating and drinking establishment is operated as a Taco Bell; and

WHEREAS, the applicant proposes to demolish the existing building; and

WHEREAS, the applicant proposes to build a one-story commercial building to be occupied by the same use; and

WHEREAS, the new building will have approximately 3,450 sq. ft. of floor area (0.15 FAR); the R3-2 zoning district regulations permit a maximum floor area of 11,516 sq. ft. (0.5 FAR or 0.6 with attic) for a residential use; and

WHEREAS, additionally, the applicant proposes to provide 25 accessory off-street parking spaces; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is located at the intersection of two heavily-trafficked four lane arterial roadways and is not marketable for residential use, (2) the irregularity of the lot, and (3) the obsolescence of the building for modern restaurant or retail use; and

WHEREAS, as to the location of the site and its impact on conforming residential development, the applicant states that both Northern Boulevard and Utopia Parkway are heavily-trafficked four lane arterial roadways and that the site has frontage on both, as well as on 172nd Street; and

WHEREAS, the applicant asserts that the adjacency of such arterials, as well as the occupancy of the three other corners at the intersection by a gasoline service station, commercial office building, and retail businesses, render the site unmarketable for residential use given the general undesirability of the proximity to highly trafficked roads and a concentration of commercial uses; and

WHEREAS, at the request of the Board, the applicant provided a land use map illustrating the uses on the seven blocks on each side of Northern Boulevard surrounding the site, in order to establish the frequency of commercial uses; and

WHEREAS, this map shows that 25 out of 29 sites fronting on Northern Boulevard are occupied by commercial uses, industrial uses, or parking lots that were developed before 1972; the four residential uses were developed prior to 1966; and

WHEREAS, the Board also observes that the lot is L-shaped and that this creates additional frontage along a second major thoroughfare (Utopia Parkway) which makes it even less marketable for residential use; and

WHEREAS, further, because of the site's shape, it occupies a full blockfront along Northern Boulevard at a major intersection (Northern Boulevard and Utopia Parkway); and

WHEREAS, the Board concludes that these locational concerns, which are magnified due to the lot's shape, compromise conforming residential development, as evidenced by the historical pattern of development in the vicinity along Northern Boulevard; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that this is the only L-shaped lot completely within a 400-ft. radius of the site; there is one other L-shaped lot at the edge of the radius, which is significantly larger and not at the intersection of two wide streets; and

WHEREAS, the applicant represents that the location at the intersection of Northern Boulevard and Utopia Parkway – two 100 ft. wide major thoroughfares – is not a viable condition for residential use; and

WHEREAS, further, the applicant notes that because the lot occupies a full blockfront and is L-shaped, the result is that

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approximately 344 feet out of a total of 444 feet (77 percent) of frontage are located on either Northern Boulevard or Utopia Parkway, with only approximately 100 feet of frontage on 172nd Street, the least trafficked of the three thoroughfares; and

WHEREAS, as to the obsolescence of the building, the applicant represents that the deficiencies in the building render it infeasible either for its current use as an eating and drinking establishment with accessory drive-through, or as retail use; and

WHEREAS, first, the applicant represents that the existing building could not be used efficiently by another similar eating and drinking establishment since such uses now universally require a larger building in order to accommodate modern facilities; and

WHEREAS, specifically, the applicant represents that (1) the kitchen is too small and cannot be used safely or efficiently, (2) the cellar is inefficient for storage and is not handicapped-accessible, (3) the dining area and restrooms do not meet American with Disabilities Act accessibility guidelines, and (4) the drive-through configuration, limited to a single window, is inefficient; and

WHEREAS, the applicant also represents that the building is too small to be retrofitted within the existing envelope to accommodate these modern requirements; and

WHEREAS, the applicant represents that the building is also not suitable for retail use because there is not enough pedestrian traffic to make a retail use at the site financially viable within the existing building, given its size and the minimum rent required for a retail establishment; and

WHEREAS, additionally, the physical limitations noted above would also limit the viability of the existing building for a modern retail use; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant also suggested that the history of non-conforming use at the site contributes to the hardship; and

WHEREAS, the Board does not find that the applicant has established that this condition contributes to the hardship at the site, particularly given the fact that the applicant plans to demolish the existing building, and has not considered it in its determination; and

WHEREAS, the applicant asserts that because of the cited unique physical conditions, there is no reasonable possibility that the development of the property in strict conformance with zoning district regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming residential use at the site and continued non-conforming use of the existing building; both the existing eating and drinking establishment and UG 6 retail were analyzed; and

WHEREAS, the applicant concluded that none of these scenarios would be financially viable; and

WHEREAS, at hearing, the Board asked the applicant to

provide additional evidence to support the claim that a feasible return could not be achieved by maintaining the current eating and drinking use or re-using the existing building for a UG 6 retail tenant; and

WHEREAS, in response, the applicant provided information about the required rate of return for the existing use which reflects that the owner cannot achieve its minimum required rate of return, set by a corporate standard, and would cease operations at the site; and

WHEREAS, further, as noted above, the applicant represents that the site could not sustain a use comparable to the existing one, because the building is functionally obsolete; and

WHEREAS, additionally, the applicant provided information that shows that the anticipated rental income for a retail use in the existing building would not realize a reasonable return; and

WHEREAS, specifically, the applicant represents that the only kind of retail use that might realize a sufficient return would be one such as a 24-hour national brand convenience store which would be less compatible with the neighborhood; and

WHEREAS, the applicant asserts that because the site is significantly underdeveloped, the rent required to maintain the entire site is higher, and not in proportion with the amount of floor area available for rent in the existing building; and

WHEREAS, the Board also asked the applicant to justify the necessity of the drive-through facility; and

WHEREAS, the applicant represents that the drive-through represents a significant portion of this business and generates the income necessary to make the site viable; and

WHEREAS, as noted above, the applicant states that the existing one-window drive-through configuration is inefficient and cannot compete with modern two-window drive through operations; and

WHEREAS, the Board notes that the prior variance, under BSA Cal. No. 168-92-BZ, established that a drive-through was necessary for the restaurant at the site to realize a reasonable return; and

WHEREAS, based upon its review of the above-mentioned submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that the site is located in a mixed-use area characterized by commercial uses along Northern Boulevard, with residential uses primarily on the side streets behind them; and

WHEREAS, the applicant represents that all of the Community Board's concerns about the proposed development have been addressed and resolved to the Community Board's satisfaction; and

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WHEREAS, these concerns include measures that address: (1) traffic circulation and parking lot usage, (2) noise control, and (3) site planning; and

WHEREAS, as to traffic control, the applicant proposes to re-design the traffic pattern at the site by re-orienting the drive-through facility to provide a clear path from entrance to exit and eliminating one of the curb cuts on Northern Boulevard; and

WHEREAS, the applicant also proposes to install guardrails and signage to direct traffic, as requested by the Community Board; and

WHEREAS, further, the applicant redesigned the parking layout and will limit the hours of use of the parking area on the Utopia Parkway side of the site; and

WHEREAS, as to noise control measures, the applicant proposes to install a sound wall along a portion of the Utopia Parkway frontage, a portion of the 172nd Street frontage, and at the rear lot line adjacent to the residential use; and

WHEREAS, the applicant analyzed several wall heights and concluded that a wall of six feet in height would be sufficient to block the sound and screen the drive-through window from the adjacent residential uses, yet not be too obtrusive; and

WHEREAS, as to site design, the applicant also proposes to provide landscaping and screening above the wall in order to be more compatible with the adjacent residential uses; and

WHEREAS, additionally, the applicant relocated the garbage enclosure further away from residential uses and closer to Northern Boulevard; and

WHEREAS, the Board notes that the applicant analyzed reorienting the building on the site, but determined that the current location allows for the most efficient traffic pattern and parking layout; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the applicant represents that the requested site modifications to allow for a continued nonconforming use are the minimum required to realize a reasonable rate of return; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA091Q, dated

August 23, 2006; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R3-2 zoning district, the construction of a one-story commercial building to be occupied as a UG 6 eating and drinking establishment with a drive-through facility, which is contrary to ZR § 22-00; and *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 5, 2007"-(7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the new building: two stories, a total floor area of 3,450 sq. ft. (0.15 FAR), a street wall height of 19'-8 1/2", a total height of 24'-3 3/4", one side yard of 13.1 feet, one front yard of 44.6 feet, and 25 parking spaces, all as indicated on the BSA-approved plans;

THAT the hours of operation for the dining room shall be limited to 10 a.m. through midnight, daily and the hours of operation for the drive through shall be limited to 10 a.m. to 4 a.m., daily;

THAT all parking lot lighting shall be directed towards the ground and away from adjacent residential uses;

THAT landscaping, fencing, and sound walls be provided as indicated on the BSA-approved plans;

THAT all signage shall comply with C1 zoning district regulations and be as indicated on the BSA-approved plans;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the hours of the Utopia Parkway parking area shall be limited to 10 a.m. to 10 p.m., daily, and shall be closed off at other times;

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

THAT this approval is limited to the relief granted by the

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, March 6, 2007.

96-06-BZ

CEQR #06-BSA-086M

APPLICANT – Stuart A. Klein, Esq., for West Properties, Inc., owner; Acqua Beauty Bar NY, Inc., lessee.

SUBJECT – Application May 15, 2006 – Special Permit (§73-36) to permit, in a C5-P zoning district located within the Midtown Special District and Preservation Subdistrict, the placement of a Spa within the cellar, first and second floors of an existing six (6) story commercial building. The proposal is contrary to section 32-10.

PREMISES AFFECTED – 39 West 56th Street, north side of 56th Street between 5th and 6th Avenues, Block 1272, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 24, 2006, acting on Department of Buildings Application No. 104265368, reads in pertinent part:

“Proposed use physical cultural or health establishment is not permitted as of right and is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5P zoning district within the Special Midtown District and the Preservation Subdistrict, the establishment of a physical culture establishment (PCE) on portions of the cellar level and the first and second floors of a five-story and penthouse commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in *The City Record*, and then to decision on March 6, 2007; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 56th Street, between Fifth Avenue and Sixth

Avenue; and

WHEREAS, the site is occupied by a five-story with penthouse commercial building, with offices and retail use; and

WHEREAS, the PCE will be operated as Townhouse Spa; and

WHEREAS, the PCE will occupy a total of 5,708.37 sq. ft. of floor space in the cellar level and on the first and second floors; and

WHEREAS, the applicant represents that the PCE will offer spa services including massages; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA086M dated June 23, 2006; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each

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and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5P zoning district within the Special Midtown District and the Preservation Subdistrict, the establishment of a physical culture establishment on portions of the cellar level and the first and second floors of a five-story and penthouse commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 27, 2006"-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 6, 2017;

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

THAT the hours of operation shall be limited to: Monday through Friday, 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 6, 2007.

97-06-BZ

CEQR #06-BSA-087M

APPLICANT – Stuart A. Klein, Esq., for BFB Partners, LLC, owner; Thai Privilege Spa Company (NY), Limited, lessee.

SUBJECT – Application May 15, 2006 – Special Permit (§73-36) to permit, in an M1-5A zoning district located within the Landmark's Preservation Commission's Shoh Cast Iron District, the placement of a physical culture establishment (PCE) within a portion of an existing six (6) story commercial building.

PREMISES AFFECTED – 153-155 Spring Street, a/k/a 411 West Broadway, frontage east side of West Broadway, Block 501, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 13, 2006, acting on Department of Buildings Application No. 104335015, reads in pertinent part:

“Proposed Physical Cultural Establishment is not permitted as of right in M1-5 zoning district and it is contrary to ZR 42-10.”; and

WHEREAS, this is an application under ZR §§73-36 and 73-03, to permit, on a site within an M1-5A zoning district within the Soho Cast Iron Historic District, the establishment of a physical culture establishment (PCE) on the second floor of an existing six-story commercial building, contrary to ZR §42-00; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in *The City Record*, and then to decision on March 6, 2007; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Spring Street, between Wooster Street and West Broadway; and

WHEREAS, the site is occupied by a six-story commercial building, with offices and retail use; and

WHEREAS, the PCE will occupy a total of 5,500 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the PCE will offer spa services including massages; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.; and

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

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

WHEREAS, the Landmarks Preservation Commission issued a Certificate of No Effect, dated November 11, 2005; and

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

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

WHEREAS, therefore, the Board has determined that

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the evidence in the record supports the requisite findings pursuant to ZR §§73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA087M dated June 3, 2006; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5A zoning district within the Soho Cast Iron Historic District, the establishment of a physical culture establishment on the second floor of an existing six-story commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 4, 2007"-(2) sheets and "Received December 13, 2006"-(4) sheets and *on further condition*:

THAT the term of this grant shall expire on March 6, 2017;

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

THAT the hours of operation shall be limited to: Monday through Friday, 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, March 6, 2007.

180-06-BZ

CEQR #07-BSA-009M

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Yeshiva University, owner.

SUBJECT – Application August 18, 2006 – Zoning variance to allow a new six (6) story academic building (UG3) for Yeshiva University that would violate applicable lot coverage (§24-11), rear yard (§24-36 and §24-391) and height and setback requirements (§24-522).

PREMISES AFFECTED – 515 West 185th Street, northwest corner of Amsterdam Avenue and West 185th Street, Block 2156, Lots 46, 61, 64, 146, 147, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Al Fredericks.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 16, 2006, acting on Department of Buildings Application No. 104478815, reads in pertinent part:

- “1. Proposed lot coverage is contrary to ZR 24-11 in that it exceeds the permitted lot coverage.
2. Proposed rear yard at interior lots with frontage on West 185th Street is contrary to ZR 24-36 and ZR 24-391 in that minimum 30’ rear yard is required.
3. Proposed portion of the building is contrary to ZR 24-51 in that it is not a permitted obstruction in the sky exposure plane and required setback.
4. Proposed height of front wall portion of the building located at the West 185th Street line is contrary to ZR 24-522 in that it exceeds the maximum height of 60 ft. and it is not permitted in the initial setback of 15 ft. on the wide street and shall not penetrate the sky exposure plane.
5. Proposed height of front wall portion of the building located at the Washington Terrace street line is contrary to ZR 24-522 in that it exceeds the maximum height of 60 ft. and is not permitted in the initial setback of 20 ft. on the narrow street

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and shall not penetrate the sky exposure plane.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-2 zoning district, the construction of a new six-story academic building (the “New Building”) and the legalization of an existing library building (the “Library”), which results in non-compliances with zoning requirements related to lot coverage, rear yard, sky exposure plane permitted obstructions, front wall height, setback, and sky exposure plane, contrary to ZR §§24-11, 24-36, 24-391, 24-51, and 24-522; and

WHEREAS, a public hearing was held on this application on December 5, 2006, after due notice by publication in the *City Record*, and then to decision on March 6, 2007; and

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

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

WHEREAS, the application is brought on behalf of Yeshiva University (the “University”), a not for profit education institution; and

WHEREAS the site is located on the block bounded by Audubon Avenue, Amsterdam Avenue, 185th Street and 186th Street; and

WHEREAS, the site is an irregular “L”-shaped parcel located on the northwest corner of Amsterdam Avenue and West 185th Street, and has a total lot area of 31,929.16 sq. ft., with 214’-10” of frontage on Amsterdam Avenue, and 250’-0” of frontage on West 185th Street; the rear of the site also has 50’-0” of frontage on a private street known as Washington Terrace; and

WHEREAS, the site is occupied by the Library, the vacant site on which the New Building will be constructed, as well as two smaller parcels fronting on Washington Terrace; and

WHEREAS, the Library is located on the west side of Amsterdam Avenue between 185th Street and 186th Street; and

WHEREAS, the New Building will be located adjacent to the Library to the west, with frontage on the north side of 185th Street between Audubon Avenue and Amsterdam Avenue; and

WHEREAS, the New Building is proposed to be a six-story building, with a mechanical penthouse; the first through sixth floors will rise without setback to a height of 74’-11” in the front; and the mechanical penthouse will rise an additional 15 ft. with setbacks along all faces of the building; and

WHEREAS, specifically, as to the New Building, 19 foot rear yards will be provided on the interior lot portions of the site (30 foot rear yards are required); portions of the fifth and sixth floors encroach upon the applicable height and setback envelope at the front, small portions of the sixth floor and the mechanical penthouse exceed the permitted height and setback restrictions at the rear; and these offending building elements are not permitted obstructions that may penetrate the required sky exposure plane; and

WHEREAS, the applicant states that the only change to

the Library, an existing six-story structure, is the addition of a new glass enclosed entrance at the corner of West 185th Street and Amsterdam Avenue; and

WHEREAS, however, the applicant notes that it discovered that the Library as it currently exists does not comply with applicable lot coverage provisions as to corner lots, though the degree of non-compliance is minor; and

WHEREAS, upon construction of the New Building, the entire zoning lot will have the following parameters: a community facility and total floor area of 147,814 sq. ft., a community facility and total Floor Area Ratio of 4.6, a total lot coverage of 78 percent, buildings with wall heights of 95 ft. (the Library) and 74’-11” (the New Building), 19 foot rear yards, and 22 parking spaces; and

WHEREAS, the applicant represents that the New Building will fulfill significant programmatic needs of the University; and

WHEREAS, specifically, the applicant notes that the University requires more academic classroom space for its Jewish studies program, and the New Building will house an increased amount of classrooms, study halls, faculty halls, office space and larger lecture rooms devoted to this program; and

WHEREAS, in addition, because the New Building will be connected to the Library at the ground and second floors, useful access to the Library will increase; and

WHEREAS, the applicant also notes that the construction of the New Building will free up space elsewhere on the University main campus for general academic programs; and

WHEREAS, the applicant submitted a letter from a University official, outlining in detail these programmatic needs and how the New Building will assist in their fulfillment; and

WHEREAS, the Board agrees that the cited programmatic needs are legitimate; and

WHEREAS, the Board notes that as an educational institution, the University is entitled to special treatment under applicable zoning ordinances; and

WHEREAS, in addition to the cited programmatic needs, the applicant states that the following is a unique physical conditions which, in light of the programmatic needs, creates unnecessary hardship and practical difficulties in developing the site in compliance with the applicable bulk regulations: the irregular shape of the lot and the resulting shallow depth of the portion of the site where the New Building is proposed to be located; and

WHEREAS, specifically, the applicant notes that this portion of the site has a depth of only 53’-10”, but is considered a through lot in part, due to its adjacency to Washington Terrace; thus, this portion of the site is subject to height and setback restrictions at its front and rear; and

WHEREAS, the applicant notes that in order to comply with such restrictions, the depths of the floor plates of a complying building at the third through fifth floors would only be 33’-6”, and the depths of the floor plates of the floors above would only be 18’-6”; and

WHEREAS, the applicant notes that this would result in a building that would lack the functional space that the

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University's program requires; and

WHEREAS, in support of this discussion, the applicant provided an analysis of a complying scheme, as illustrated in plan form and as discussed in narrative; and

WHEREAS, the applicant notes that while the interior configuration of a complying building could be rearranged somewhat to ameliorate the effect of the constrained floor plates, the resulting building would not be able to accommodate the program's current enrollment; and

WHEREAS, the applicant also notes that the complying scheme would require structural alterations to the Library, which would eliminate the proposed new entrance as well as existing usable square footage; and

WHEREAS, based upon its consideration of the above, the Board finds that the aforementioned unique physical condition, when considered in conjunction with the programmatic needs of the University, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the University is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, specifically, the applicant notes that the New Building, in terms of its scale and massing, would be compatible with the existing five-story and six-story residential buildings in the immediate area; and

WHEREAS, additionally, the applicant notes that there are much taller University buildings on the east side of Amsterdam Avenue between 183rd and 186th Streets; and

WHEREAS, the applicant also notes that most of the properties surrounding the New Building and the Library are owned by the University, including 10 of the 18 parcels that front on Washington Terrace; and

WHEREAS, the applicant notes that two of these parcels will remain vacant, to act as a buffer between the New Building and the other parcels; and

WHEREAS, the applicant contends that the University ownership of most of the surrounding parcels greatly mitigates any effect of the waivers; and

WHEREAS, finally, the applicant cites to the Environmental Assessment Statement submitted with the application, which concludes that there will be no significant vehicular or pedestrian traffic impacts, or other negative community impacts, related to the proposed action; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet

the programmatic needs of the University could occur on the subject site given the site's configuration; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum waivers necessary to accommodate the University's programmatic needs; and

WHEREAS, the applicant also notes that the degree of the waivers is minor in most cases, and that the total amount of floor area on the site is well within what is permitted; and

WHEREAS, the Board agrees that the requested relief is the minimum necessary to allow the University to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA009M, dated August 18, 2006; and

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

WHEREAS, the Department of Environmental Protection (DEP) has reviewed the following submissions from the Applicant: an August, 2006 Environmental Assessment Statement, a September, 2006 Phase I Report and February, 2007 Subsurface Phase II Investigative Report and February, 2007 Remedial Action and Construction Health and Safety plans; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

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1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R7-2 zoning district, the construction of a new six-story academic building and the legalization of an existing library building, which does not comply with zoning requirements related to lot coverage, rear yard, sky exposure plane permitted obstructions, front wall height, setback, and sky exposure plane, contrary to ZR §§ 24-11, 24-36, 24-391, 24-51, and 24-522, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 18, 2006"—one(1) sheet and marked "Received December 1, 2006"—eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the buildings on the zoning lot shall be 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 objection(s) only;

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

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, March 6, 2007.

327-05-BZ

APPLICANT— Rothkrug Rothkrug Weinberg & Spector, for John Damiano, owner.

SUBJECT – Application November 11, 2005 – Special Permit (§73-125) to allow a proposed ambulatory diagnostic treatment care facility (Use Group 4) limited to less than 10,000 sf of floor area to locate in an R3X district. The proposal calls for a one-story and cellar building and fourteen (14) accessory parking spaces.

PREMISES AFFECTED – 5135 Hylan Boulevard, between Wendy Drive and Bertram Avenue, Block 6499, Lot 95, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Ludwig D'Angelo, Gasper Vultaggio and Lisa Vultaggio.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

23-06-BZ

APPLICANT— Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

29-06-BZ

APPLICANT— Sheldon Lobel, P.C., for Iliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.

PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

75-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to §72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§23-142 and §35-22), open space ratio (§23-142, §35-22 and §35-33) and sky exposure plane (§23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

86-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Emil Moshkovich,

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owner.

SUBJECT – Application May 5, 2006 – Variance (§72-21) to allow Use Group 7 (tire sales with installation services) and Use Group 16 (automotive repair) in an R3-2/C1-2 district; contrary to use regulations (§32-10). An as-of-right eating and drinking establishment (Use Group 6) is also proposed. Additionally, a Special Permit under §73-44 is requested to allow the reduction of required off-street parking requirements.

PREMISES AFFECTED – 145-70 Guy R. Brewer Boulevard, northwestern corner of the intersection between Guy Brewer and Farmers Boulevards, Block 13309, Lots 36, 42, 44, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most, Emil Moshkovich and Robert Pauls.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for continued hearing.

118-06-BZ

APPLICANT– Harold Weinberg, P.E., for Moshe Cohn, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage, open space and floor area, ZR §23-141(a) and rear yard, ZR §23-47 in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beaumont Street, east side, 220’ north of Hampton Avenue and Shore Boulevard, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.

SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte and Beaheer Ally.

ACTION OF THE BOARD – Laid over to May 8,

2007, at 1:30 P.M., for continued hearing.

177-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 1840 EMAB LLC, owner.

SUBJECT – Application August 16, 2006 – Special permit (§§ 11-411, 11-413). On a lot consisting of 9,700 SF, in a C2-2 in R3A district, permission sought to legalize auto repair and sale of used cars (UG 16). The existing and proposed FAR is .14 for the one-story commercial building.

DOB Objection: Section 32-25: Auto repair and auto sales (UG16) not permitted in C2-2 district.

PREMISES AFFECTED – 1840 Richmond Terrace, Clove Road and Bodine Street, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Irving Minkin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

214-06-BZ

APPLICANT– Walter T. Gorman, P.E., for Sidney Esikoff & Norman Fieber, owners.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1953. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, northwest corner of 197th Street, Block 10509, Lot 265, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

216-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 and §11-412) for the re-establishment and extension of term for an existing automotive service station, which has been in continuous operation since 1961 and legalization of certain minor amendments to previously

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approved plans. C1-4/R6-A zoning district.
PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 15, 2007, at 1:30 P.M., for decision, hearing closed.

260-06-BZ

APPLICANT – J Owen Zurhellen, III, for Charlton Cooperative Corp., owner; TRI IPPON, LLC, lessee.

SUBJECT – Application September 26, 2006 – Special Permit (§73-36) to allow the proposed PCE on the first floor in a six-story (plus basement) building located in a M1-6 zoning district. The proposal is contrary to Sections 42-00 and 42-31.

PREMISES AFFECTED – 547 Greenwich Street, a/k/a 112 Charlton Street, southeast corner of Greenwich and Charlton Streets, Block 597, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: J. Owen Zurhellen, III; Doris Diether, CB #2 and Phil Mouquinho.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

263-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area §23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district. PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

For Opposition: Jack H. Cooperman, Sol Mermelsion, Marion Setton and Ed Jaworski.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

283-06-BZ

APPLICANT – Moshe M. Friedman, for Tammy Hirsch, owner.

SUBJECT – Application October 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1372 East 29th Street, for 190' north of intersection formed by East 29th Street and Avenue N, Block 7664, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:00 P.M.

BULLETIN

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March 22, 2007

DIRECTORY

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Tuesday, March 13, 2007**

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200-01-BZ	182-15 Hillside Avenue, Queens
124-02-BZ	8000 Utopia Parkway, Queens
597-39-BZ	84-04 Parsons Boulevard, Queens
52-55-BZ	1255 East Gun Hill Road, Bronx
717-60-BZ	2052 Victory Boulevard, Staten Island
854-60-BZ	188-02 to 188-10 Hillside Avenue, Queens
58-96-BZ	277 Park Avenue, Manhattan
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346-98-BZ	3701 Amboy Road, Staten Island
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128-06-BZ	415 Washington Street, Manhattan
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262-06-BZ	71-13 60 th Lane, Queens
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163-06-BZ	72-36 and 72-38 43 rd Avenue, Queens
278-06-BZ	871 Bergen Street, Brooklyn
294-06-BZ	31-11 Broadway, Queens
303-06-BZ	1081 Tompkins Avenue, Staten Island

DOCKETS

New Case Filed Up to March 13, 2007

59-07-A

71-13 60th Lane, Between 71st Avenue and Myrtle Avenue., Block 3538, Lot(s) 67 Borough of **Queens, Community Board: 5**. Appeal-To allow the residential conversion of an existing four-story industrial building. The proposed project will include 55 dwelling units and 27 accessory parking spaces.

60-07-BZ

150 Delancey Street, East of north east corner of Delancey & Suffolk Streets., Block 348, Lot(s) 36 Borough of **Manhattan, Community Board: 3**. Under 72-21-To vary lot coverage requirements for three floors of the residential portion of a mixed commercial/residential building from the required 65% lot coverage to the proposed 92% lot coverage.

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

APRIL 17, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 17, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

878-62-BZ & 879-62-BZ

APPLICANT – Sheldon Lobel, P.C., for Sutton House, Inc., owner.

SUBJECT – Application February 20, 2007 – Extension of Term of a Variance for the use of transient parking for the unused and surplus car spaces in an existing multiple dwelling accessory garage which will expire on July 5, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 23, 1999 in an R10/C1-5 zoning district.

PREMISES AFFECTED – 399-423 East 52nd Street; 404-20 East 53rd Street, north side of 52nd Street, between 1st Avenue and FDR Drive, Block 1364, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #6M

1059-84-BZII

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for BMS Realty Co., LLC, owner; Bally Total Fitness Corp., lessee.

SUBJECT – Application December 22, 2006 – Extension of term of a special permit for the operation of a physical culture establishment (PCE) in a C4-2 zoning district within the Special Ocean Parkway District.

PREMISES AFFECTED – 943/61 Kings Highway, a/k/a 2032 Coney Island Avenue, northwest corner of intersection Kings Highway and Coney Island Avenue, Block 6666, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

21-91-BZ

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEALS CALENDAR

332-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Keith Matone, lessee.

SUBJECT – Application December 28, 2006 – Proposed reconstruction and enlargement of an existing one family home located and the upgrade of an existing private disposal system within the bed of mapped street which is contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 636 Bayside Avenue, north of Bayside Avenue, east of Bayside Drive, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APRIL 17, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 17, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.

PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

259-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application September 22, 2006 – Variance (§72-21) to permit the enlargement of an existing synagogue located in an R5 (OP) zoning district. The proposal is contrary to open space coverage (24-11), side yards (24-35), front yards (24-34), height and setback (24-50 and 24-521), parking (25-18 and 25-31), and front yard not fully landscaped (113-30).

PREMISES AFFECTED – 1885-1891 Ocean Parkway aka 601 Avenue S, Block 6682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #15BK

265-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rev. Heung C. Rha,

CALENDAR

owner.

SUBJECT – Application September 28, 2006 – Variance (§ 72-21) to allow accessory use to U.G. 2 (multiple dwellings) on an R2 portion of a zoning lot split by district boundaries (R2 and R6); R6 portion of the lot will be developed with an as-of-right multiple dwelling and house of worship; contrary to use regulations (§ 22-00 and § 22-12).

PREMISES AFFECTED – 141-48 33rd Avenue, south side of 33rd Avenue between Parsons Boulevard and Union Street, Block 4981, Lot 37, Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

279-06-BZ

APPLICANT– Gerald J. Caliendo, R.A., AIA, for Richard N. Seemungal, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to construct a two story, two family residential building on a corner lot that does not comply with the front yard requirement (23-45) and is less than the minimum required side yard (23-461(b)) in an R4 zoning district.

PREMISES AFFECTED – 144-29 South Road, corner formed by the southeast side of South Road and Inwood Street, Block 10045, Lot 18, Borough of Queens.

COMMUNITY BOARD #12Q

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (Section 24-162a), side yards (Section 24-35), and the number of stories (Section 24-33).

PREMISES AFFECTED – 1847 60th Street, north side of 60th Street, between 18th Avenue and 19th Avenue, Block 5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

315-06-BZ

APPLICANT– Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to Sections 24-11, 24-34, 24-35, 24-36, and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 13, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

60-82-BZ

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

SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to §11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, and an extension of term for a previously granted variance for a gasoline service station, which expired on July 7, 2006; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in *The City Record*, with continued hearings on January 9, 2007 and February 27, 2007, and then to decision on March 13, 2007; and

WHEREAS, Community Board 2, Queens, recommends approval of this application on the condition that the chain link fence be repaired and additional shrubs be planted; and

WHEREAS, the site is located on the block bounded by 60th Street, 61st Street, 44th Avenue, and Queens Boulevard; and

WHEREAS, the site is located in a C2-3 (R7X) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1952 when, under BSA Cal. No. 570-52-BZ, the Board granted a variance for the alteration of an existing gasoline service station with accessory uses; and

WHEREAS, on July 7, 1982, under the subject calendar number, the Board amended the grant to permit the reconstruction of the service station and the elimination of

automotive repairs at the site; and

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

WHEREAS, most recently, on September 27, 2005, the grant was amended to permit an extension of time to obtain a certificate of occupancy; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

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

WHEREAS, in response to the Community Board's requests, the applicant agreed to repair the fence and plant additional shrubs at the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy 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 July 7, 1982, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 7, 2006, to expire on July 7, 2016, and to permit an extension of time to obtain a certificate of occupancy, to expire on December 13, 2007, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received August 1, 2006' –(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 7, 2016;

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

THAT the fence around the site be repaired and maintained;

THAT shrubs be planted and maintained at the site;

THAT a certificate of occupancy shall be obtained within nine months of the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 402380071)

Adopted by the Board of Standards and Appeals, March 13, 2007.

244-01-BZ

MINUTES

APPLICANT– Sheldon Lobel, P.C., for Gregory Pasternak, owner.

SUBJECT – Application October 24, 2006 – Extension of Time to complete construction which expired on September 24, 2006 for the legalization of residential units in an existing building located in an M1-2/R6A zoning district.

PREMISES AFFECTED – 325 South 1st Street, a/k/a 398/404 Rodney Street, northeast corner of intersection formed by Rodney Street and South First Street, Block 2398, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Adopted by the Board of Standards and Appeals, March 13, 2007.

200-01-BZ

APPLICANT – Davidoff Malito & Hutcher by Howard S. Weiss, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 9, 2007 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for the enlargement of a community use facility (Hillside Manor) in a C2-2/R-5 zoning district which expired on January 11, 2007.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, and an extension of the time to complete construction and obtain a certificate of occupancy for the enlargement of a community facility, which expired on January 11, 2007; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and then to decision on March 13, 2007; and

WHEREAS, Community Board 8, Queens, does not object to this application; and

WHEREAS, the subject premises is located on the northeast corner of Hillside Avenue and Avon Street; and

WHEREAS, the site is occupied by a 12-story community facility building, located within a C2-2 (R5) zoning

district; and

WHEREAS, on April 16, 2002, under the subject calendar, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of the twelfth floor of the community facility building; and

WHEREAS, on January 11, 2005, the Board granted an extension of time to obtain a certificate of occupancy for an additional two-year term; and

WHEREAS, the instant application seeks a two-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that the enlargement was not completed due to a funding delay; and

WHEREAS, the Board finds that a two-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 16, 2002, 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 two years from the expiration of the last grant; *on condition:*

THAT substantial construction shall be completed and a certificate of occupancy be obtained by January 11, 2009;

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. 401196031)

Adopted by the Board of Standards and Appeals, March 13, 2007.

124-02-BZ

APPLICANT – Law Office of Howard Goldman, for St. John’s University, owner.

SUBJECT – Application January 9, 2007 – Reopening of a previously approved variance to grant an extension of time to complete substantial construction of two parking facilities for St. John’s University. R4 zoning district.

PREMISES AFFECTED – 8000 Utopia Parkway, bounded by Union Turnpike, 82nd Street and 180th Street, Block 7021, Lots 1 and 50, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

MINUTES

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction of two parking facilities, which expired on December 17, 2006; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and then to decision on March 13, 2007; and

WHEREAS, the applicant is brought on behalf of St. John's University (the "University"); and

WHEREAS, the subject premises is located on the block bounded by Union Turnpike, Utopia Parkway, 82nd Street, and 170th Street; and

WHEREAS, the site is occupied by three parking facilities, accessory to the University, with approximately 675 parking spaces, located within an R4 zoning district; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the combination of these three accessory parking facilities into one facility with rooftop parking, and the construction of a new accessory garage with rooftop parking; and

WHEREAS, the applicant represents that due to funding constraints, the proposed project has not been constructed; and

WHEREAS, the instant application seeks a four-year extension of time to complete construction; and

WHEREAS, the Board finds that a four-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated December 17, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years from the expiration of the last grant; *on condition* that the use and operation of the parking garage shall substantially conform to BSA-approved plans; and *on condition*:

THAT substantial construction shall be completed by December 17, 2010;

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. 401425/50)

Adopted by the Board of Standards and Appeals, March 13, 2007.

597-39-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon

Mobil Corporation, owner; Kings Parsons Car Care Inc., lessee.

SUBJECT – Application December 11, 2006 – 11-412 Amendment to a gasoline service station (Exxon Mobil) for the erection of a new steel canopy and to legalize the conversion from one pump island to two pump islands, conversion of a portion of the service building to a convenience store, the installation of a car vacuum and public telephone on site, four curb cuts and wood planters in a C1-4/R5D zoning district.

PREMISES AFFECTED – 84-04 Parsons Boulevard, aka 152-16 84th Avenue, southwest corner of 84th Avenue, Block 9751, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for decision, hearing closed.

52-55-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bouck Oil Corp., owner.

SUBJECT – Application November 28, 2006 – Amendment, filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.

PREMISES AFFECTED – 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for continued hearing.

717-60-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.

PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
ACTION OF THE BOARD – Laid over to April 10,
2007, at 10 A.M., for decision, hearing closed.

854-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Company, Inc.
R & M, owner.

SUBJECT – Application January 22, 2007 – Extension of
Time to obtain a Certificate of Occupancy and waiver of the
Rules of Practice and Procedure which expired on
September 21, 2000 in a C2-2/R3-2 zoning district.

PREMISES AFFECTED – 188-02 to 188-10 Hillside
Avenue, 88-01 to 88-09 188th Street, Block 10453, Lot 19,
Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10,
2007, at 10 A.M., for decision, hearing closed.

58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for
277 Park Avenue, LLC, owner; Manhattan Athletic Club,
LLC, lessee.

SUBJECT – Application December 8, 2006 – Extension of
Term/Amendment-For the operation of a Physical Culture or
Health Establishment for an additional ten (10) years, and to
add 479 square feet to the club for the purposes of a boxing
room. The site is located in a C5-3(SMD) &C6-6 zoning
district.

PREMISES AFFECTED – 277 Park Avenue, east side of
Park Avenue and 47th Street, Block 1302, Lot 1, Borough of
Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elisabeth Larsen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10,
2007, at 10 A.M., for decision, hearing closed.

97-97-BZII

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

SUBJECT – Application February 12, 2007 – Extension of

Time and a waiver of the rules, to obtain a Certificate of
Occupancy for a previously granted variance to allow in an
R-5 zoning district; the construction and maintenance of a
gasoline service station with an accessory convenience store
which expired April 19, 2006.

PREMISES AFFECTED – 1730 Cross Bronx Expressway,
aka 1419/21 Rosedale Avenue, Block 3894, Lot 28,
Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10,
2007, at 10 A.M., for decision, hearing closed.

346-98-BZ

APPLICANT – Vito J. Fossella, P.E., for Amboy Service
Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an
expired amendment granted on October 12, 1999 to permit
the proposed conversion of an existing building accessory to
a gasoline service station, into a convenience store, by
enlarging the existing building and eliminating the use of the
lubritorium, car wash, motor adjustments and minor repairs,
as well as the relocation and increase in the number of pump
islands from two to four, with a metal canopy over the new
pump islands; an extension of Time to obtain a Certificate of
Occupancy and a waiver of the rules in an R3-2 (South
Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645,
Lot 140, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to April 24,
2007, at 10 A.M., for continued hearing.

150-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Yeshiva of Far
Rockaway, owner.

SUBJECT – Application February 15, 2007 – Extension of
Time to complete construction and obtain a certificate of
occupancy for a variance for additional floor area on the
second floor to an existing two story synagogue and yeshiva
which expired January 25, 2007 in an R-2 zoning district.

PREMISES AFFECTED – 802 Hicksville Road, corner of
Beach 9th Street, Block 15583, Lot 16, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

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Negative:.....0
ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for decision, hearing closed.

150-06-A & 151-06-A

APPLICANT – Kathleen R. Bradshaw, for Frank Gallo, owner.

SUBJECT – Application July 7, 2006 – Proposed construction of two, two – family dwellings located within the bed of a mapped street contrary to General City Law Section 35. R4A Zoning District.

PREMISES AFFECTED – 2550 & 2552 Kingsland Avenue, between Mace Avenue and Allerton Avenue, Block 4488, Lots 30 & 32, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Kathleen Bradshaw.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for decision, hearing closed.

6-07-A thru 9-07-A

APPLICANT – Sheldon Lobel, P.C., for College Point Holding, LLC, owner.

SUBJECT – Application January 8, 2007 – Proposed construction of four two family homes not fronting on mapped street which is contrary to Article 3, Section 36 of the General City Law. R4A Zoning District.

PREMISES AFFECTED – 127-09, 127-11, 127-15 and 127-17 Gurino Drive, (*Former 25th Road*) between 127th Street and Ulmer Street, Block 4269, Lots 1 & 27 (*to be known as New Tax Lots 1, 2, 3 & 4*), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Zara F. Fernandes.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 12:00 P.M.

REGULAR MEETING
TUESDAY AFTERNOON, MARCH 13, 2007
1:30 P.M.

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

ZONING CALENDAR

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. §42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal and Doris Diether, CB#2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2006, acting on Department of Buildings Application No. 104339039, reads, in pertinent part:

- “1 – Proposed Use Group 2 (Residential use) is not permitted as-of-right in an M1-5B as per 42-10. (There are no bulk regulations for a M1-5B.)
- 2 – Proposed Use Group 6 below the second story in an M1-5B is not permitted as per Section 42-14(d)(2)(b) ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district, the construction of an eight-story, 17-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in the *City Record*, with a continued hearing on February 27, 2007, and then to decision on March 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan, provided testimony in support of the application on condition that the upper floors be used for Joint Live/Work Quarters for Artists (JLWQA) space; and

WHEREAS, certain residents of the adjacent building at 20 Bond Street and their counsel submitted testimony and appeared in opposition to the variance in its earlier iteration; and

WHEREAS, representatives from a number of civic organizations and art institutions, as well as several individual

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artists and community members, provided written testimony and appeared in opposition to the variance in its earlier iteration; and

WHEREAS, after the plan was revised to the current proposal, as discussed below, the opposition did not submit any objections; and

WHEREAS, the site is the subject of a prior Board grant, under BSA Cal. No. 301-01-BZ, which permitted the construction of a three-story building with an eating and drinking establishment on the first two floors and private function space above; the proposal required waivers for an eating and drinking establishment with a floor area of more than 5,000 sq. ft. and its proposed occupancy on the first floor; and

WHEREAS, this building was never constructed; and

WHEREAS, the site is located on the eastern blockfront of Lafayette Street between Great Jones Street and Bond Street, within an M1-5B zoning district; and

WHEREAS, the lot has an area of 5,549 sq. ft.; and

WHEREAS, the current Lot 17 is the result of the merger of historic lot 17, which was a long, narrow lot along Lafayette Street, and historic lot 18, the approximately 26-foot wide adjacent interior lot to the east, fronting on Great Jones Street; and

WHEREAS, accordingly, the site has 201 feet of frontage on Lafayette Street, extending from Great Jones Street to Bond Street; 49 feet of frontage on Great Jones Street; and 6.5 feet of frontage on Bond Street; and

WHEREAS, the site has the shape of an irregular rectangle with frontage on Great Jones Street and Lafayette Street, with a long, narrow "tail" that extends south along Lafayette Street to Bond Street; and

WHEREAS, because Lafayette Street runs at an angle to Great Jones Street and Bond Street, the lot is somewhat wedge-shaped; and

WHEREAS, the proposed building will have a total floor area of 30,519 sq. ft. (5.5 FAR), a residential floor area of 26,054.5 sq. ft. (4.72 FAR), a commercial floor area of 4,465 sq. ft. (.78 FAR), a street wall height of 79 feet, a total height of 103 feet, without bulkheads, a maximum total height of 117'-4", with bulkheads; and

WHEREAS, the 4,990 sq. ft. cellar will be occupied with mechanicals and storage space; and

WHEREAS, the 5,414 sq. ft. first floor will be occupied by 4,255 sq. ft. of retail space, the residential lobby, and a sky light in the "tail" portion of the lot adjacent to 20 Bond Street in order to provide light to the ground floor windows in that building; and

WHEREAS, the residential entrance will be located at the eastern edge of the Great Jones Street frontage; and

WHEREAS, the second and third floors will set back approximately 21 feet from the southern lot line on the interior portion of the lot and will each have a floorplate of 3,823 sq. ft. with two residential units per floor; and

WHEREAS, the fourth through sixth floors will cantilever over a portion of the ground floor "tail" of the

building; each floor will have approximately 4,438 sq. ft. of floor area with three units per floor; and

WHEREAS, the seventh and eighth floors, which will have each have two residential units, will set back approximately 9'-4 3/4" from Great Jones Street and 5'-0" from Lafayette Street at the seventh floor and 16'-3 1/2" from Great Jones Street and 10'-0" from Lafayette Street at the eighth floor; and

WHEREAS, the applicant initially proposed a seven-story building with an FAR of 5.0; and

WHEREAS, after meeting with residents of the adjacent building at 20 Bond Street, the applicant revised the proposal to include design elements such as a cutout and setback on the Lafayette Street façade, and a skylight to help minimize impact on the adjacent building's access to light and air; and

WHEREAS, the initial plan provided for twelve windows at 20 Bond Street to be blocked by the new building; the revised plan provides for only three to be blocked, three to be covered with opaque glass panels, and two ground floor windows to be provided light through a new skylight; and

WHEREAS, the Board notes that there is no prohibition on blocking the lot line windows of the adjacent building; and

WHEREAS, however, the Board notes that the re-design of the building, including the noted cutout and setback, minimizes the impact on the adjacent building, which is occupied as JLWQA; and

WHEREAS, the applicant represents that the complicated design components, including the cantilevering of the fourth through sixth floors above the ground floor, required that an additional floor be added on top of the building to help recover the significant additional construction costs associated with the current proposal; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is irregularly-shaped; (2) the site is small; (3) the site is adjacent to the Lexington Avenue subway line, and (4) the historic use of the site as an automotive repair shop has likely resulted in soil contamination; and

WHEREAS, as to the site's shape, the applicant states that the larger portion of the lot has an irregular wedge-shape; and

WHEREAS, additionally, a large portion of the site consists of a very narrow irregularly-shaped "tail" that tapers to a width of only 6.5 feet on Bond Street, making it significantly wider on Great Jones Street than on Bond Street; and

WHEREAS, the applicant represents that the irregular shape creates difficulties in developing the site because it is difficult to use the full depth of the lot, particularly on the upper floors; and

WHEREAS, further, there is a high ratio of exterior walls to usable interior space for such a long and narrow site; and

WHEREAS, the applicant documented additional construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, as to size, the applicant represents that the

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size is small, which results in a disproportionate share of it being devoted to the building core, which includes elevators, stairways, and bathrooms and which is comparable in size to a core that could serve a building twice the size; and

WHEREAS, the applicant represents that this condition results in a higher percentage of lost floor space than for a larger building with the same core; and

WHEREAS, the applicant represents that the small size of the site and its irregular configuration would not provide efficient floorplates for conforming development at the site; and

WHEREAS, the applicant submitted a 400-ft. and 800-ft. radius diagram and land use map which illustrate that the site is the only vacant lot, not currently being developed, within either radius with such an unusual shape and small size; and

WHEREAS, as to the adjacency to the subway, the applicant represents that additional measures must be taken to protect the subway during construction; and

WHEREAS, these measures include: additional underpinning, sheeting, and shoring along the boundary with the subway walls; drilling, rather than driving piles; isolation of construction equipment from the tunnel ceiling (which may prohibit cranes on Lafayette Street); and significant inspection and monitoring measures; and

WHEREAS, the applicant submitted a subway diagram prepared by an engineer and a memo from the MTA in support of these assertions; and

WHEREAS, as to the subsurface conditions, the applicant represents that it is likely that there will be significant costs associated with the clean up of the site due to the historic use of a portion of the site as a gasoline service station; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right retail/office building; and

WHEREAS, the applicant concluded that such a scenario would result in a loss, due to the size of the lot, as well as premium construction costs associated with the irregular lot conditions; and

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

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

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

WHEREAS, the applicant notes that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses, some of which occupy the subject block; and

WHEREAS, the applicant also notes that there are several residential buildings larger and of comparable size being constructed in the vicinity; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 17 dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, the applicant represents that the building's height is comparable to building heights in the immediate vicinity; and

WHEREAS, additionally, the applicant represents that the façade materials will be chosen to be compatible with the area's historic masonry buildings; and

WHEREAS, the applicant represents that 20 Bond Street is one of the last remaining true JLWQA buildings in the area and that the redesign of the subject building, as discussed above, supports the continued use and occupancy of 20 Bond Street by artists; and

WHEREAS, the Board notes that the considerable design changes help mitigate any impact on the adjacent building; and

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

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

WHEREAS, the Board observes that the proposed building of 17 dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Board also notes that the proposed FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the lot and of the building envelope, which has been modified to minimize impact on the adjacent conforming use; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA073M, dated April 11, 2006; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land

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Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-5B zoning district, the construction of an eight-story, 17-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 16, 2007"–(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: eight stories, 17 residential units, a total floor area of 30,519.5 sq. ft. (5.5 FAR), a residential FAR of 4.72, a commercial FAR of .78, a streetwall height of 79 feet, a total height of 103 feet, without bulkheads, a maximum total height of 117'-4", with bulkheads;

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

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

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

Adopted by the Board of Standards and Appeals, March 13, 2007.

110-06-BZ

APPLICANT – Moshe M. Friedman, for Rochelle Grossman, owner.

SUBJECT – Application June 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district. This application also proposes to convert

from a two family to a one family residence.

PREMISES AFFECTED – 1473 East 21st Street, a/k/a Kenmore Place, 325' north of intersection formed by East 21st Street and Avenue N, Block 7657, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosef Gottdienv.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 10, 2006, acting on Department of Buildings Application No. 302163637, reads in pertinent part:

“Proposed extension of existing one-family dwelling is contrary to:

ZR Sec 23-141 Floor Area Ratio

ZR Sec 23-141 Open Space Ratio

ZR Sec 23-461 Side Yard

ZR Sec 23-47 Rear Yard.”;

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

WHEREAS, the Board notes that the home has been occupied illegally as a two-family dwelling, but that the application reflects plans for a single-family dwelling and the applicant represents that it will be returned to the conforming use; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in *The City Record*, and then to decision on March 13, 2007; and

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

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

WHEREAS, the subject lot is located on the east side of East 21st Street (aka Kenmore Place), between Avenue M and Avenue N; and

WHEREAS, the subject lot has a total lot area of 3,750 sq. ft., and is occupied by a 2,519.89 sq. ft. (.67 FAR) legal single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,519.89 sq. ft. (.67 FAR) to 3,693.17 sq. ft. (.98 FAR); the maximum floor area permitted is 1,875 sq. ft.

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(.50 FAR); and

WHEREAS, the proposed enlargement will reduce the open space ratio from 94 percent to 59 percent (150 percent is the minimum permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 4'-11" and the complying side yard of 8'-0" (side yards totaling 13'-0" are required with a minimum width of 5'-0" for each); and

WHEREAS, the proposed enlargement will reduce the rear yard from 29'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the Board notes that the driveway and all porches shall be as approved by DOB; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a legal single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 16, 2007" -(7) sheets and "February 28, 2007"-(3) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area in the attic shall be limited to 557.17 sq. ft.;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 3,693.17 sq. ft., a total FAR of 0.98, one side yard of 8'-0", one side yard of 4'-11", a rear yard of 20'-0", and an open space ratio of 59 percent, as

illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the driveway and all porches shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, March 13, 2007.

128-06-BZ

APPLICANT- Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT - Application June 16, 2006 - Zoning variance pursuant to ZR §72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and §42-10), height and setback (Z.R. §43-43), and floor area ratio regulations (Z.R. §111-104(d) and §43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. §13-12.

PREMISES AFFECTED - 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES -

For Applicant: Juan Reyes.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 104147317, reads in pertinent part:

"1. The proposed number of stories within the front wall is contrary to ZR 111-104(d)1 and ZR 43-

1 The Board notes that ZR § 111-104(d) has been re-

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43.

3. The proposed residential use (UG2) M1-5 in TMU, area B2 is contrary to ZR 111-104(d) and ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5 zoning district within Area B-2 of the Special Tribeca Mixed Use District, the construction of a nine-story with cellar, 22-unit residential condominium building, which is contrary to ZR §§ 111-104(d), 43-43 and 42-10; and

WHEREAS, at the conclusion of the hearing process, the applicant proposed a building that would have a residential floor area of 51,172 sq. ft., a Floor Area Ratio (FAR) of 5.5, a height of 105 ft., a street wall height of 85 ft., complying setbacks, lot coverage of 80 percent, and a 30 ft. rear yard; and

WHEREAS, the applicant originally proposed a nine-story building with a cellar and sub-cellar, an FAR of 6.02, a lot coverage of 85.97 percent, and 26 parking spaces (located in the cellars), and

WHEREAS, this proposal would have required additional waivers for maximum FAR and maximum number of parking spaces, and also would have had non-complying lot coverage and a non-complying rear yard; and

WHEREAS, in response to concerns of the Board about the proposed FAR not being consistent with the degree of hardship present on the site, the construction costs associated with the proposed parking in the sub-cellar, and the lack of a complying rear yard, the applicant revised the proposal to the current version; and

WHEREAS, however, as reflected below, the Board disagrees that an FAR of 5.5 devoted to residential use (which does not comply with the underlying zoning district maximum), reflects the minimum variance necessary for the owner to obtain relief; and

WHEREAS, the Board notes that the applicant provided a revised 5.0 FAR scenario, the plans of which reflect a reasonable unit layout; and

WHEREAS, the Board has reviewed this scenario, and as further explained below, it concludes that it will realize a reasonable return and is therefore the minimum variance necessary; and

WHEREAS, accordingly, the Board approves a building with the following parameters: 22 units, nine stories, a maximum residential and total FAR of 5.0, zoning floor area of 46,520 sq. ft., a total height of 105'-6", a street wall height of 85'-0", a setback of 20'-0", and a rear yard of 30 feet; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in the *City Record*, with continued hearings on December 12, 2006 and January 23, 2007, and then to decision on March 13, 2007; and

WHEREAS, the premises and surrounding area had a site

designated ZR § 111-104(e) in a recent text amendment; however, the text of the provision remains the same and this has no bearing on the Board's waiver of the provision.

and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson and Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the proposed use change, but only for a building with an FAR of 5.0, not the initially proposed FAR of 6.02; and

WHEREAS, certain neighbors and civic associations provided testimony in opposition to this application, citing concerns about the suggested findings and construction-related issues; the relevant concerns are discussed below; and

WHEREAS, the site is approximately 9,304 sq. ft., and is located at the corner of Washington Street and Vestry Street; and

WHEREAS, the site is located in the Tribeca North Historic District (the "TNHD"); and

WHEREAS, the applicant notes that on August 23, 2006, the City's Landmarks Preservation Commission ("LPC") issued a Certificate of Appropriateness (the "CA") for the originally proposed building; and

WHEREAS, the site has most recently been used as a parking lot, but was historically developed with seven-story manufacturing buildings (from approximately 1900 to 1950) and then a gas station (from 1950 to approximately 1976); and

WHEREAS, the applicant represents that the foundations of the prior manufacturing buildings, including below-grade party walls, remain on the site; and

WHEREAS, additionally, the site is currently undergoing remediation under the supervision of the State's Department of Environmental Conservation; and

WHEREAS, because the proposed residential development does not conform to permitted uses in the subject zoning district, and because the street wall height is non-complying, the above-noted waiver requests are necessitated; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance and conformance with applicable regulations: (1) costs related to poor soil conditions on the site; (2) costs associated with addressing the existing foundations from the prior buildings; (3) foundation construction costs related to the presence of the site within the 100 and 500-year flood plains; and (4) environmental remediation costs; and

WHEREAS, as to the poor soil conditions, the applicant notes that the site's soil consists of loose fill material underlain by loose to medium dense sand at depths below the groundwater level; and

WHEREAS, the applicant claims that this condition afflicts less than 20 percent of the properties within the TNHD, as evidenced by a graph submitted with the applicant's engineering report (the "Report"); and

WHEREAS, the applicant claims that because of this condition, shallow footings, which are less expensive, cannot be used; instead, a deep foundation system using piles must be installed; and

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WHEREAS, as to the pre-existing party walls, the applicant notes that they must remain in place as they support adjacent buildings; and

WHEREAS, the applicant claims that the existing party walls will require special structural details to allow the proposed building's foundation system to cantilever over the party walls above surface grade; and

WHEREAS, further, at hearing, the project engineer stated that the buildings to the east and west are on shallow foundation systems, which must be protected through the use of drilled piles at this location; and

WHEREAS, the engineer also stated that underpinning is more difficult and expensive since its double-width in depth due to the shared foundation walls; and

WHEREAS, as to the location of the site within the flood zone, the applicant states that 10 percent of sites within the TNHD are part of the 100 year flood plain and 15 percent are part of the 500 year flood plain; and

WHEREAS, the applicant states that the 100-year flood level is more than 4 to 5 feet above the design groundwater level for the upland buildings, and, at the subject site, this will require resistance in the form of dead weight or uplift anchors; and

WHEREAS, as to environmental contamination, the applicant notes that a large portion of the soil mass is contaminated with volatile organic compounds that must be removed prior to residential development; and

WHEREAS, the applicant also notes that the presence of contaminated soil is relatively uncommon in the TNHD; and

WHEREAS, the Board agrees that the site is burdened by a convergence of sub-surface factors that increase construction and site preparation costs; and

WHEREAS, the Board observes that the Report provides a cost comparison between a site not similarly burdened based on factors such as dewatering, excavation and disposal of contaminated soil, underpinning, piles, pressure slab, waterproofing, and engineering support; and

WHEREAS, the applicant established that the premium costs related to the cited physical conditions are approximately 1.9 million dollars; and

WHEREAS, the Board agrees that these costs compromise the viability of a conforming development on the site; and

WHEREAS, the Board notes that the cited unique conditions and the costs associated with them were questioned by an engineer hired by those in opposition to the application; and

WHEREAS, however, the Board finds that these concerns were satisfactorily answered in a response from the project engineer, submitted as an attachment to the applicant's November 21, 2006 submission; and

WHEREAS, the Board further notes that counsel to the opposition suggests that the Board should not credit the presence of environmental contamination as a unique physical condition; and

WHEREAS, the Board agrees that not every instance of

environmental contamination should form the basis, or a part thereof, of a variance application; and

WHEREAS, nevertheless, where the contamination was the result of a lawful commercial operation, was not intentional but merely a cumulative by-product of such operation, and occurred in an era that predates extensive environmental protection regimes, the Board has considered such contamination to be a legitimate hardship; and

WHEREAS, further, the Board notes that even without consideration of the environmental contamination, the other cited unique physical conditions would still prevent a viable conforming development; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a feasibility study that analyzed an as of right 5.0 FAR commercial building; and

WHEREAS, the applicant concluded that such a scenario would result in a negative return, due to the above-cited physical conditions; and

WHEREAS, however, the Board had concerns about the claimed site valuation; and

WHEREAS, specifically, the Board felt that the site valuation was inflated due to the use of certain recent sale comparables that skewed the valuation; and

WHEREAS, the Board also notes that the site valuation was high relative to other recent variance cases in the vicinity; and

WHEREAS, the Board suggested that the applicant review comparable sales with the Area B-2 of the Special Tribeca Mixed Use District for undeveloped or underdeveloped sites, and not include variance-affected sites; and

WHEREAS, in a subsequent submission, the applicant reduced the site valuation based on comparables that the Board finds acceptable; and

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

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

WHEREAS, as to use, the Board observes that the site is on a block with buildings that contain Joint Work/Living Quarters for Artists; and

WHEREAS, the Board also observes that there are residential buildings across Greenwich Street directly to the east and northeast, and a new residential building under construction across Washington Street; and

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WHEREAS, the Board finds that the introduction of 22 residential units in this location will not negatively affect the mixed-use character of the immediate neighborhood; and

WHEREAS, further, the Board notes that the proposed residential use of the site will not negatively affect any conforming uses in the neighborhood, which are already accustomed to a considerable residential presence; and

WHEREAS, as to bulk, the Board notes at the outset that the building approved herein reflects a reduced FAR and lot coverage and an increased rear yard from the original proposal, which makes it more compatible with the character of the neighborhood; and

WHEREAS, the Board also observes that the design of the originally proposed building was approved by LPC, as reflected by the C of A; and

WHEREAS, the applicant also states that the proposed building would be compatible in terms of height with existing buildings adjacent or very close to the site; and

WHEREAS, specifically, on the subject block, the applicant cites to a 99'-11" tall building to the east, a 116'-0" tall story building to the south, and an 83'-10" tall building on the corner of Laight and Greenwich Streets; and

WHEREAS, the applicant also cites to new nine and twelve-story buildings located to the west of the site, also on the same block; and

WHEREAS, the Board agrees that the proposed height and street wall height of the building will be compatible with existing buildings in the vicinity; and

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

WHEREAS, during the course of the hearing process, the opposition suggested that the site conditions should have been known to the developer prior to purchase of the site, and that any hardship subsequently discovered should be characterized as self-created; and

WHEREAS, the Board disagrees, noting that the finding set forth at ZR § 72-21(d) specifically provides that purchase with knowledge of a site's hardships does not preclude the grant of a variance; and

WHEREAS, in any event, the opposition did not provide conclusive proof that the developer knew of all hardships related to the site prior to purchase; and

WHEREAS, thus, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the Board is granting a residential variance to the applicant at a lesser FAR than is proposed; and

WHEREAS, this is due to serious concerns the Board has regarding the sell-out value per square foot of the proposed condominium units (the applicant claims that for a 5.0 FAR residential building, the sell out value would be approximately

\$1,080 per sq. ft.); and

WHEREAS, at the outset of the hearing process, the Board observed that the claimed sell-out value is low relative to the sell-out value cited in other recent variance applications in the vicinity; and

WHEREAS, for instance, in BSA Cal. No. 297-05-BZ, granted on July 11, 2006, which was a variance application for a residential building at 31-33 Vestry Street (also in Area B2 of the Special Tribeca Mixed Use District), the claimed sell-out value per square foot was \$1,137; and

WHEREAS, likewise, in BSA Cal. No. 181-06-BZ, granted on February 13, 2007, which was a variance application for a residential building at 471 Washington Street (again, in Area B2), the claimed sell-out value per square foot was \$1,246; and

WHEREAS, both of these applications were for buildings with a total FAR of 5.0; and

WHEREAS, further, the Board questioned the comparables of recent sales used by the applicant to arrive at the claimed sell-out value; and

WHEREAS, the initial set of comparables submitted by the applicant consisted of many properties that were geographically distant from the subject site, and thus were not appropriate comparables; and

WHEREAS, accordingly, the Board directed the applicant to submit a set of comparables that are similar to the proposed units in terms of date of construction, views, location, and other pertinent factors, or to justify why the existing set of comparables were in fact similar; and

WHEREAS, after the Board brought this to the applicant's attention, a second set of comparables was submitted that reflected more geographically comparable recent sales; and

WHEREAS, these comparables ranged from 813 dollars to 1,538 dollars per square foot, which is a significantly broad range; and

WHEREAS, in addition to this second set of comparables, the Board received a submission from a marketing executive familiar with the Tribeca residential market in support of the opposition (the "Opposition Report"), which provided a list of recent condominium sales in the area; and

WHEREAS, the Opposition Report indicated that the average per sq. ft. price of units recently sold primarily in the immediate vicinity of the subject site was significantly higher per sq. ft. than that proposed by the applicant; and

WHEREAS, the Board asked the applicant to address the comparables cited by the opposition; and

WHEREAS, the applicant, in a submission dated February 6, 2007, states that the majority of the comparables used by the opposition are not truly comparable in that they are either on higher floors than the proposed units and have views or are appointed with high-end finishes that increase the sell-out value; and

WHEREAS, the applicant suggests that the claimed sell-out value for the proposed units reflects that they are

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predominantly at lower floors and don't have views and that high-end finishes have not been added to the proposed valuation; and

WHEREAS, however, the Board notes that the applicant's response fails to refute with any specificity each and every comparable cited in the Opposition Report; and

WHEREAS, consequently, the applicant's blanket refutation of all the comparables is without any basis; and

WHEREAS, further, the Board has reviewed the Opposition Report and notes that most of the cited units, with the exception of those located at 145 Hudson Street, are at the 9th floor or lower, which calls into question the argument that they are all superior to the proposed units in terms of height and views; and

WHEREAS, even when excluding the 145 Hudson Street comparables, the average sell-out value reflected in the Opposition Report is still significantly higher than the applicant's; and

WHEREAS, based upon its personal knowledge of the claimed sell-out value in other recent matters, as well as upon its review of the Opposition Report and the applicant's response, the Board finds that the claimed sell-out value for the 5.0 FAR residential building was underestimated; and

WHEREAS, the Board concludes that with more reasonable sell-out values ascribed to the proposed units, a 5.0 FAR building will realize a reasonable return; and

WHEREAS, in addition to the serious concerns about the proposed sell-out value, the Board also notes that the applicant's submissions reflected inconsistency as to sellable residential floor space and the development costs related to the 5.0 FAR scenario; and

WHEREAS, specifically, as reflected in the various submissions, in November 2006, the construction costs for this scenario decreased from the September 2006 submission, but then increased again in the December 2006 submission; and

WHEREAS, the Board also notes that that there was a similar disparity as to the amount of residential floor space; and

WHEREAS, the Board observes that no adequate explanation for the disparity between submissions exists in the record; and

WHEREAS, the Board observes that the lower construction costs estimate would support the conclusion that a 5.0 FAR scenario could be viable; and

WHEREAS, while the applicant has contended that a 5.0 FAR building would not realize a reasonable return since that amount of floor area would not fill up the building envelope approved by LPC, the Board notes that double height spaces could be created within individual units that would enhance the value of the units; and

WHEREAS, further, the Board observes that the reduced FAR could be achieved by eliminating a less viable unit proposed at the rear of the building; and

WHEREAS, in sum, the Board finds that a 5.0 FAR building is the minimum variance necessary for the owner to obtain relief; and

WHEREAS, the Board notes that the finding set forth at

ZR § 72-21(e) provides that it may permit a lesser variance than that applied for by the applicant; and

WHEREAS, the Board also notes that though it finds it appropriate to approve only an FAR of 5.0, the applicant is receiving a significant use waiver as well as a street wall waiver; and

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

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.4(b)(10) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA100M, dated June 16, 2006; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an M1-5 zoning district within Area B-2 of the Special Tribeca Mixed Use District, the construction of a nine-story with cellar, 22-unit residential condominium 5.0 FAR building, which is contrary to ZR §§ 111-104(d), 43-43 and 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 26, 2006"—ten (10) sheets; and *on further condition*:

THAT the following shall be the parameters of the building: 22 units, nine stories, a maximum residential and total FAR of 5.0, zoning floor area of 46,520 sq. ft., a total height of 105'-6", a street wall height of 85'-0", setbacks as indicated on the BSA-approved plans, and a rear yard of 30 feet;

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THAT all construction shall be performed in compliance with Building Code and LPC and DOB-imposed requirements concerning the protection of adjacent buildings;

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

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

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

Adopted by the Board of Standards and Appeals, March 13, 2007.

138-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for RH Realty LLC NY by Ralph Herzka, owner.

SUBJECT – Application July 5, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3447 Bedford Avenue, between Avenue M and N, Block 7661, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 302085204, reads in pertinent part:

- “1 - Proposed floor area contrary to ZR 23-141(a).
 - 2 - Proposed open space ratio contrary to ZR 23-141(a).
 - 3 - Proposed rear yard contrary to ZR 23-47.”;
- and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of two single-family dwellings and their merger into one single-family dwelling, which does not comply with the zoning requirements for FAR, floor area, open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, with continued hearings on January 30, 2007 and February 27, 2007, and then to

decision on March 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

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

WHEREAS, Council Member Michael C. Nelson provided a letter in support of this application; and

WHEREAS, several neighbors within a 200-ft. radius of the site have provided consent forms in support of this application; and

WHEREAS, however, one neighbor provided a rejection form in opposition to this application; and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue M and Avenue N; and

WHEREAS, the subject site has a total lot area of 12,000 sq. ft., and is occupied by two single-family homes with a total floor area of 6,448.12 sq. ft. (.54 FAR); and

WHEREAS, the subject site consists of two tax lots (Lots 31 and 32), which are proposed to be merged into a single Lot 31; 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 6,448.12 sq. ft. (0.54 FAR) to 11,997.01 sq. ft. (1.0 FAR); the maximum floor area permitted is 6,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the open space ratio from 115.72 percent to 56.01 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 21’-7 ¼” to 20’-0” (the minimum rear yard required is 30’-0”); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, at hearing, the Board expressed concerns that because the merged lot is so large, the proposed home, although within the FAR parameter often granted under the special permit, would be uncommonly large in the context of the neighborhood; and

WHEREAS, accordingly, the Board asked the applicant to respond to questions about neighborhood character and to establish a context for such a large home; and

WHEREAS, specifically, the Board asked the applicant to provide an analysis of floor area, building widths, and total heights of homes in the immediate vicinity; and

WHEREAS, as to floor area, the applicant submitted a chart identifying sixteen homes in the immediate vicinity, which have a comparable bulk to lot size ratio; and

WHEREAS, as to building width, the applicant submitted an analysis of building widths proportionate to lot width, which reflects that the majority of the proposed building width, with a coverage of 70 percent of the lot width, is compatible with other homes in the vicinity (89

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percent coverage of lot width is permitted if the minimum side yards are provided); and

WHEREAS, as to height, the applicant initially submitted plans reflecting a total height of 42'-10"; and

WHEREAS, at hearing, the Board asked the applicant to establish a context for this height; and

WHEREAS, in response, the applicant submitted a chart identifying the total heights of eight homes in the immediate vicinity with a range in height from 25'-0" to 42'-1 1/2"; and

WHEREAS, notwithstanding the fact that a height of 42'-10" is permitted within the R2 zoning district, the Board asked the applicant to reduce the height to make it more compatible with other homes in the vicinity; and

WHEREAS, in response, the applicant reduced the total height to 39'-10"; and

WHEREAS, further, the applicant submitted photographs of homes in the area, which establish a context for large homes; and

WHEREAS, at hearing, the Board asked the applicant to explain which elements of the existing buildings would be retained; and

WHEREAS, in response, the applicant stated that some cellar walls and several above-grade walls, including the rear walls, will not be demolished; and

WHEREAS, the Board asked the applicant to submit plans which clearly indicate which parts of the foundation, walls and floors will be retained; said plans were subsequently submitted; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of two single-family dwellings and their merger into one single-family dwelling, which does not comply with the zoning requirements for FAR, floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 13, 2007"-(13) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;
THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 11,997.01 sq. ft., a total FAR of 1.0, a perimeter wall height of 24'-6", a total height of 39'-10", one side yard of 7'-6 1/2", one side yard of 5'-5 1/2", a front yard of 15'-0", a rear yard of 20'-0", and an open space ratio of 56.01 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, March 13, 2007.

175-06-BZ

APPLICANT- Rothkrug Rothkrug & Spector, for Sal Calcagno & Family Realty, LLC, owner.

SUBJECT - Application August 14, 2006 - Special Permits (§73-243 and §73-44) to allow, within C1-1 (R1-2) (NA-1) zoning districts, the development of an eating and drinking establishment (UG 6) with an accessory drive-through facility and to permit a reduction in the amount of required off-street parking for UG 6 parking category B-1 uses. The proposal is contrary to §32-15 and §36-21 respectively.

PREMISES AFFECTED - 1653/9 Richmond Road, west side of Richmond Road, 417.06' south of intersection with Four Corners Road, Block 883, Lot Tentative 27, Borough of Staten Island.

COMMUNITY BOARD # 2SI

APPEARANCES -

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD - Application withdrawn.

THE VOTE TO WITHDRAW -

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

Adopted by the Board of Standards and Appeals, March 13, 2007.

237-06-BZ

APPLICANT - Moshe M. Friedman, for Jonathan M. Schwartz, owner.

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SUBJECT – Application September 12, 2006 – Special Permit (§73-622) for the enlargement of a single family semi-detached residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1462 East 26th Street, west side 333'-7" north of the intersection formed by East 26th Street and Avenue O, Block 7679, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosef Gottdiener.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 12, 2007, acting on Department of Buildings Application No. 302216395, reads in pertinent part:

“Proposed extension of existing one-family dwelling is contrary to:

- ZR Sec 23-141(a) Floor Area Ratio
- ZR Sec 23-141 (a) Open Space Ratio
- ZR Sec 23-461 Side Yard
- ZR Sec 23-47 Rear Yard.”;

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

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in *The City Record*, with a continued hearing on February 27, 2007, and then to decision on March 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Vice-Chair Collins and Commissioner Hinkson; and

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

WHEREAS, three neighbors, including the adjacent neighbor, submitted forms of consent in support of this application; and

WHEREAS, the subject lot is located on the west side of East 26th Street, between Avenue N and Avenue O; and

WHEREAS, the subject lot has a total lot area of 2,120.83 sq. ft., and is occupied by a 1,240.12 sq. ft. (.58 FAR) single-family home; 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 1,240.12 sq. ft. (.58 FAR) to 2,146.87 sq. ft. (1.01 FAR); the maximum floor area permitted is 1,060.42 sq. ft. (.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 117 percent to 53 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing 5'-0" and 0'-0" side yards (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" for one are required); and

WHEREAS, the Board notes that the semi-detached home, with a single 5'-0" side yard, was constructed in 1925 and is therefore an existing legal non-conforming building; semi-detached homes are not permitted in R2 zoning districts; and

WHEREAS, the proposed enlargement will reduce the rear yard from 43'-3" to 24'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will be two stories and an attic and will be located at the rear of the existing home and above the existing second floor; and

WHEREAS, initially, the applicant proposed a front ridge height of 53.04 feet and a total height of 56.79 feet; and

WHEREAS, at hearing, the Board asked the applicant to reduce the height and re-design the slope of the roof above the second floor so as to be more compatible with adjacent homes; and

WHEREAS, in response, the applicant reduced the front ridge height to 50.89 feet and the total height to 56.67 feet; and

WHEREAS, additionally, the applicant re-designed the slope of the roof above the second floor so that it matches the adjacent homes; and

WHEREAS, the applicant submitted a streetscape which reflects that the revised roof plan is compatible with adjacent homes; and

WHEREAS, at hearing, the Board asked the applicant if the rear of the home could have a more efficient layout; and

WHEREAS, the applicant responded that the narrow width of the lot results in layout constraints; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, accordingly, 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, 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

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outweighed by the advantages to be derived by the community; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family semi-detached dwelling, which does not comply with the zoning requirements for FAR, floor area, open space ratio, and side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received December 11, 2006”-(4) sheets, “February 5, 2007”-(2) sheets and “February 13, 2007”-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area in the attic shall be limited to 282.73 sq. ft.;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,146.87 sq. ft., a total FAR of 1.01, a total height of one side yard of 5'-0", a rear yard of 24'-0", a total height of 56.67, a front ridge height of 50.89, and an open space ratio of 53 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, March 13, 2007.

272-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for The Media Realty Group, owner; Evolution Sports Club, LLC, lessee.
SUBJECT – Application October 10, 2006 – Special permit (§73-36) to legalize a Physical Culture Establishment on the second floor in a three-story building. The proposal is contrary to Section 42-31. M1-5 zoning district.
PREMISES AFFECTED – 37-11 35th Avenue, between 37th

and 38th Streets, Block 645, Lot 1, Borough of Queens.

COMMUNITY BOARD # 1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 25, 2006, acting on Department of Buildings Application No. 401136070, reads in pertinent part:

“Obtain special permit by the Board of Standards and Appeals for a ‘physical culture or health establishment’ as per section 42-31.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, the establishment of a physical culture establishment (PCE) on the second floor of an existing three-story commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and then to decision on March 13, 2007; and

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

WHEREAS, the subject site is located on the east side of 35th Avenue, between 37th Street and 38th Street; and

WHEREAS, the site is occupied by a three-story commercial building, with offices and retail use; and

WHEREAS, the PCE will occupy a total of 14,536 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE will be operated as Evolution Sports Club; and

WHEREAS, the applicant represents that the PCE will offer facilities for physical improvement including group fitness classes and boxing; and

WHEREAS, the proposed hours of operation are: continuous 24-hour operation from Monday 7:00 a.m. through Friday midnight; and Saturday and Sunday, 7:00 a.m. to 10:00 p.m.; and

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

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-027Q dated January 2, 2007; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, the establishment of a physical culture establishment on the second floor of an existing three-story commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 10, 2007"- (3) sheets and *on further condition*:

THAT the term of this grant shall expire on March 13, 2017;

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

THAT the hours of operation shall be limited to: continuous 24-hour operation from Monday 7:00 a.m. through Friday midnight; and Saturday and Sunday, 7:00 a.m. to 10:00 p.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

THAT this approval is limited to the relief granted by

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

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

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

Adopted by the Board of Standards and Appeals, March 13, 2007.

425-05-BZ

APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§23-141c and §24-162), front yard (§24-34), side yards (§24-35), lot coverage (§23-141 and §24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 and 104, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a PCE in a portion of the cellar and a portion of the first floor in a three-story building in a C2-3/R6 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik and Robert Scarano.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for continued hearing.

79-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building

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on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Patrick W. Jones, Joel A. Miele.

For Opposition: Councilmember Letitia James for Ray Martin.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

103-06-BZ

APPLICANT– Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)) and rear yard (23-47) in R-2 zoning district.

PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for continued hearing.

111-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application June 5, 2005 – Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for decision, hearing closed.

141-06-BZ

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo

Ledovid, owner.

SUBJECT – Application July 6, 2006 – Variance pursuant to §72-21 to permit the proposed three-story synagogue. The Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (§24-11); front yards (§24-34); side yard (§24-35); wall height and sky exposure plane (§24-521); and parking (§25-31).

PREMISES AFFECTED – 2084 60th Street, southwest corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Leo Weinberger, Joseph Olivio, Natalie DeNicola, Anmna Cali, Vito Marinelli, Jr., Amadeo Zelferino, Jean Finn and Vito Pietanza.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright and Elena Kalman.

For Opposition: Walter H. Sanchez and Gary Giordano, CB#5.

ACTION OF THE BOARD – Laid over to April 24 2007, at 1:30 P.M., for continued hearing.

59-07-A

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application March 8, 2007 – Proposed building frontage is contrary to BC 27-291 Article 2. Provide Fire Department Approval. R6B Zoning District.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Borough of 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright and Elena Kalman.

For Opposition: Walter H. Sanchez and Gary Giordano, CB#5.

ACTION OF THE BOARD – Laid over to April 24 2007, at 1:30 P.M., for continued hearing.

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ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

163-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3) story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (23-141c), front yard (23-45), side yards (23-462), and off-street parking (25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43rd Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

278-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to Section 42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Christopher Wright.

For Opposition: CM James Office ray Martin and CB#8 Staten, M.H.

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for continued hearing.

294-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for John and Steven, Inc., owner; Club Fitness NY, lessee.

SUBJECT – Application November 8, 2006 – Special Permit (§73-36) to allow the proposed PCE on the second and third floors in a three-story building. The Premises is located in a C2-2 zoning district. The proposal is contrary to Section 32-31.

PREMISES AFFECTED – 31-11 Broadway, between 31st and 32nd Street, Block 613, Lots 1 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Christopher Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

303-06-BZ

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications, Inc., for Verrazano Garden Apartments, Inc., owner.

SUBJECT – Application November 14, 2006 – Special Permit 73-30: Install non-accessory 75' radio tower, with related equipment, on a portion of the property (Block 3107, Lot 12), a lot consisting of 51,458 SF, located in an R3-2 zoning district.

PREMISES AFFECTED – 1081 Tompkins Avenue, 220' north of Tompkins Avenue and Richmond Avenue, Block 3107, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert ?.

For Opposition: RoseAnne Gillen, Joann Callan, Kathleen Klein, Rita Kornfeld, Mieki Giller and Thomas Chapocas.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:20 P.M.

BULLETIN

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March 29, 2007

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61-07-A

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62-07-A

1582 East 17th Street, Western side of East 17th Street between Avenue O and Avenue P., Block 6763, Lot(s) 37, Borough of **Brooklyn, Community Board: 14**. Appeal-To secure vested right to continue with the development of single-family residence.

63-07-A

49-23 28th Avenue, North west corner of 28th Avenue & 50th Street in the bed of 50th Street., Block 745, Lot(s) 81, Borough of **Queens, Community Board: 1**. General City Law Section 35-Proposed new building.

64-07-A

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65-07-BZ

146-93 Guy R. Brewer Boulevard, Located at the northeastern intersection of 147th Avenue and Guy R. Brewer Boulevard., Block 13354, Lot(s) 12, Borough of **Queens, Community Board: 13**. Under 72-21-To permit a one-story (UG6) retail building.

66-07-BZ

3038 Atlantic Avenue, Between Essex and Shepherd Avenues., Block 3972, Lot(s) 22, Borough of **Brooklyn, Community Board: 5**. (SPECIAL PERMIT)-73-36-To allow a Physical Culture Establishment..

67-07-A

515 East 5th Street, Between Avenue A and Avenue B., Block 401, Lot(s) 56, Borough of **Manhattan, Community Board: 3**. Appeal-.

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

APRIL 24, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 24, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

592-71-BZ

APPLICANT – Vito J. Fossella, P.E., for FSD Realty, LLC, owner.

SUBJECT – Application February 2, 2007 – Extension of Term of a previously granted variance for the operation of (UG6) professional office building in an R3-2 & R-2 zoning district which expired on February 15, 2007; and for the extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 1010 Forest Avenue, south side of Forest Avenue, Block 316, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

72-96-BZII

APPLICANT – The Law Office of Fredrick A. Becker, for 30 WS LLC, for New York Sports Club, lessee.

SUBJECT – Application December 29, 2006 – Extension of Term/Amendment-To allow the operation of a Physical Culture Establishment/Health Club on portions of the cellar, first floor, first floor mezzanine, second floor and third floor of the existing twelve story commercial building located in a C5-5 (LM) zoning district. The application seeks to amend the hours of operation previously approved by the board.

PREMISES AFFECTED – 30 Wall Street, north side of Wall Street, 90' east of Nassau Street, Block 43, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #1M

10-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Crislis Realty Corp., owner.

SUBJECT – Application March 14, 2007 – Extension of Time to complete construction and a waiver of the rules for a Variance (§72-21) to permit, in an R-5 zoning district, the proposed development of a one story building to be used as four retail stores (Use Group 6) which expired July 10, 2005.

PREMISES AFFECTED – 85-28/34 Rockaway Boulevard, southwest corner of the intersection formed between Rockaway Boulevard and 86th Street, Block 9057, Lots 27 and 33, Borough of Queens.

COMMUNITY BOARD #9Q

83-02-BZII

APPLICANT – Law Offices of Howard Goldman, for Big Sue LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Time to Complete Construction for a Variance to permit in an M1-1 zoning district, the proposed conversion of a four-story industrial building into a residential building with 34 units which expired on February 25, 2007.

PREMISES AFFECTED – 925 Bergen Street, bounded by Classon and Franklin Avenues, Block 1142, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEALS CALENDAR

217-06-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon, LLC, owner.

SUBJECT – Application August 28, 2006 – Proposed construction of a daycare center which extends into the bed of a mapped street (Francis Lewis Blvd) contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard aka 196-23 42nd Street, north side of the intersection of Francis Lewis Boulevard and 42nd Avenue, Block 5361, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

APRIL 24, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 24, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

154-05-BZ

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to Sections 42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, 42-13 (There are no residential bulk regulations in a M1-5B zoning district), and 13-12 (The proposed public parking garage is

CALENDAR

not permitted in a residential development.)

PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

COMMUNITY BOARD #2M

119-06-BZ

APPLICANT – Harold Weinberg, P.E., for Jack Erdos, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141) and side yard (23-461) in an R4(OP) zoning district.

PREMISES AFFECTED – 444 Avenue W, south side 70'-0" east of East 4th Street, between Avenue R and S, Block 7180, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

261-06-BZ

APPLICANT– Sheldon Lobel, P.C, for Congregation Mazah, owner.

SUBJECT – Application September 25, 2006 – Variance (§72-21) to permit the construction and operation of a Yehsiva (Use Group 3A) and accessory synagogue (Use Group 4A) in a M1-2 zoning district. The proposal is contrary to section 42-10.

PREMISES AFFECTED – 87-99 Union Avenue, west side of Union Avenue at the intersection of Harrison Avenue, Union Avenue and Lorimer Street, Block 2241, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

306-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (42-00), floor area and lot coverage (24-11), front yard (24-34), side yards (24-35), and front wall (24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 20, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1038-80-BZ

APPLICANT – Davidoff & Malito & Hatcher, LLP, for
Feinrose Downing LLC, owner; Expressway Arcade Corp.,
lessee.

SUBJECT – Application February 6, 2007 – Extension of
Term of a Special Permit for an amusement arcade (UG15 in
an M2-1 zoning district.

PREMISES AFFECTED – 31-07/09 11 Downing Street,
Whitestone Expressway, Block 4327, Lot 1, Borough of
Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an
extension of the term of the special permit, which expired on
January 6, 2007; and

WHEREAS, a public hearing was held on this
application on February 27, after due notice by publication in
The City Record, and then to decision on March 20, 2007; and

WHEREAS, Community Board 7, Queens, recommends
approval of this application; and

WHEREAS, on January 6, 1981, the Board granted a
special permit for the operation of an amusement arcade on the
subject premises; and

WHEREAS, on May 13, 1986, the special permit was
amended to increase the number of amusement arcade games
from 112 to 130; and

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

Therefore it is Resolved that the Board of Standards and
Appeals, *reopens* and *amends* the resolution, said resolution
having been adopted on January 6, 1981, so that, as amended,
this portion of the resolution shall read: “to permit the
extension of the term of the special permit for an additional one
(1) year from January 6, 2007 expiring on January 6, 2008; *on
condition* that all conditions and drawings associated with the
previous grant remain in effect; and *on further condition*:

THAT the term of this grant shall expire on January 6,
2008;

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

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

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

(DOB Alt. No. 435/81)

Adopted by the Board of Standards and Appeals, March
20, 2007.

98-05-BZII

APPLICANT – Friedman & Gotbaum, LLP by Shelly S.
Friedman, Esq., for Lauto Group, Limited, c/o Anthony
Lauto, owner; 48 Bonhaus Corporation, c/o Dac Bon LLC,
lessee.

SUBJECT – Application December 1, 2006 – To reopen and
amend a previously-approved zoning variance which
allowed a residential multiple dwelling (UG 2) with ground
floor retail use (UG 6) in an M1-5B district; contrary to use
regulations (§42-10). Proposed modifications include: (1)
minor reduction of the ground floor commercial floor area
and (2) increase in mechanical space on the ground floor;
and (3) the creation of a 143 sq. ft. rooftop "storage cabin."
PREMISES AFFECTED – 46-48 Bond Street, north side of
Bond Street 163/5’ west of the corner formed by the
intersection of Bond Street and Bowery, Block 530, Lots 44
and 31, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and
an amendment to a previously granted variance for
modifications to the approved 11-story mixed-use residential
and commercial building; and

WHEREAS, a public hearing was held on this
application on March 6, 2007 after due notice by publication
in *The City Record*, and then to decision on March 20, 2007;
and

WHEREAS, the premises and surrounding area had a
site and neighborhood examination by a committee of the
Board consisting of Commissioner Srinivasan, Vice-Chair
Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan,

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recommends approval of this application on the condition that the new space be restricted to storage and not be used as an extension of the living space of the adjoining apartment; and

WHEREAS, the subject premises is located on the north side of Bond Street, between Lafayette Street and the Bowery, within an M1-5B zoning district; and

WHEREAS, Lot 31 is occupied by a one-story commercial building, which will remain, and Lot 44 is occupied by the foundation for the proposed building; and

WHEREAS, the site has a total lot area of 8,047 sq. ft.; and

WHEREAS, on November 15, 2005, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of an 11-story mixed-use residential and commercial building at the premises; and

WHEREAS, on March 24, 2006, by letter, the Board permitted certain modifications to the plan; these changes include modifications to the interior, relocation of the bulkheads, and the addition of a management office; and

WHEREAS, the applicant now proposes to create an additional space on the roof (the "roof cabin"), with a floor area of 143 sq. ft., to serve as a storage area connected to the eleventh floor dwelling unit; and

WHEREAS, specifically, the roof cabin will be built behind the stair bulkhead and is planned as a storage space for the adjoining apartment; and

WHEREAS, the modifications result in a minor increase in the residential floor area from 34,732 sq. ft (4.32 FAR) to 35,015 sq. ft. (4.35 FAR); and

WHEREAS, however, the applicant represents that due to a recalculation of the floor area on the first floor, the total combined floor area of the proposed building and the existing one-story commercial building is reduced slightly to 40,062 sq. ft. (4.997 FAR), even with the inclusion of the roof cabin; and

WHEREAS, the Board notes that the 143 sq. ft. increase in floor area is minor and that the revised floor area and FAR are within the parameters approved by the Board; and

WHEREAS, the Board also notes that at the time of the variance application, the building was initially proposed to have a height of 129'-0", without bulkheads, but that the Board directed the applicant to reduce the height to 120'-0" at the eleventh floor and to allow for the total height, with bulkheads, to be 130'-0"; and

WHEREAS, the applicant represents that the current revisions provide for a reduction in the total height, with bulkheads, to 128'-11"; and

WHEREAS, the roof cabin will be accommodated within the 128'-11" total building height; and

WHEREAS, additionally, the Board notes that the proposed roof cabin will be positioned behind the bulkhead so that it is not visible from the street and the roof is occupied by a private deck associated with the eleventh floor apartment; and

WHEREAS, based upon its review of the record, the Board finds that the proposed modification is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated November

15, 2005, so that as amended this portion of the resolution shall read: "to grant a modification to the roof plan to permit the construction of a roof cabin; *on condition* that all work and site conditions shall comply with drawings marked 'Received March 2, 2007'—seven (7) sheets and 'Received March 14, 2007'—two (2) sheets; and *on condition*:

THAT the floor area of the roof cabin shall be limited to 143 sq. ft.;

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. 104469996)

Adopted by the Board of Standards and Appeals, March 20, 2007.

947-80-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Hellmuth Owners Corporation c/o Grogan & Associates, owner.

SUBJECT – Application February 12, 2007 – Extension of Time to complete construction for a Variance that was originally granted on February 17, 1981 to allow the conversion of an eight story building from commercial to residential use which expired on March 25, 2007 in a C6-2A zoning district.

PREMISES AFFECTED – 154-158 West 18th Street, South side of West 18th Street between 6th Avenue and 7th Avenue, Block 793, Lot 67, Bororugh of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for decision, hearing closed.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot

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33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for continued hearing.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E., Charles Winter.

For Opposition: Terri Pouymari.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 10 A.M., for continued hearing.

395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsderfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a re-opening and amendment to a previously-granted variance (§72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54th Street, southwest side 242'-6" southeast of the intersection formed by 54th and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moishe Friedman and Fern Weinreich of Councilman Felder's Office.

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

182-06-A thru 211-06-A

APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront Community, LLC, owner.

SUBJECT – Application August 22, 2006 – An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. Premises is located in an R4-A Zoning district.

PREMISES AFFECTED – Beach 5th Street, Beach 6th Street and Seagirt Avenue, bound of Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67 and 69 Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Mitchell Korbey.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner and developer of the premises has obtained the right to complete a multiple-unit residential development under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on November 14, 2006, after due notice by publication in *The City Record*, with continued hearings on December 12, 2006, January 23, 2007, and then to decision on March 20, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioners Hinkson and Ottley-Brown; and

WHEREAS, Community Board 14, Queens, opposed this appeal, citing concerns about overdevelopment and the issuance of violations; where relevant, concerns of the Community Board are discussed below; and

WHEREAS, a group of neighbors to the site, known as the Neighbors of Mott Creek (the "Neighbors") also opposed this appeal, suggesting that work was done in violation of stop work orders (SWOs) issued by the Department of Buildings (DOB) and that proper permits were not obtained prior to the commencement of work; again, where relevant, these concerns are discussed below; and

WHEREAS, the appellant states that the subject premises consists of 30 separate tax lots on two separate blocks; and

WHEREAS, 14 of the tax lots are located on the entire northern half of Block 15608, which is bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west, and Reynolds Channel to the south; and

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WHEREAS, 16 of the tax lots are located on the entirety of Block 15609, which is bounded by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west, and Reynolds Channel to the south; and

WHEREAS, for purposes of this appeal, appellant referred to Block 15608, Lots 1, 57, 58, 61, 63, 65, 67, and 69 as “Cluster 1”, Block 15608, Lots 40, 42, 45, 51, 52 and 53 as “Cluster 2”, Block 15609, Lots 6, 8, 10, 12, 14, 16 and 18 as “Cluster 3”, and Block 15609, Lots 1, 3, 58, 63, 64, 65, 66, 67 and 68 as “Cluster 4”; and

WHEREAS, the proposed development on these two blocks contemplates the construction of 30 attached three-story, two-family homes, one on each lot; a site plan showing the entirety of this proposed integrated development was approved by DOB on March 19, 2004; and

WHEREAS, when the development commenced in March of 2004 subsequent to the issuance of foundation and piles permits, the site was located within an R5 zoning district; and

WHEREAS, the applicant states that piling work over the entirety of the development site proceeded and was completed as of May 24, 2004; and

WHEREAS, foundation work then commenced on six homes in Cluster 2; and

WHEREAS, the applicant notes that foundation walls, footings, framing and roofing for these six homes was installed as of the end of February 2005; and

WHEREAS, on August 2, 2005, the foundation of one of the homes in Cluster 4 was commenced; and

WHEREAS, in a submission dated November 28, 2006, the appellant summarizes the completed work as follows: (1) Cluster 1 – piles have been driven and excavation has been completed; (2) Cluster 2 – piles have been driven, excavation has been completed, foundations have been poured and framing and roofing for six of the proposed homes have been completed; (3) Cluster 3 – piles have been driven; and (4) Cluster 4 – piles have been driven, and on Lot 1, excavation has been completed and grade beams have been installed; and

WHEREAS, as discussed further below, one of the buildings in Cluster 2 will be removed and was excluded from the vesting calculation discussed herein; and

WHEREAS, the applicant states that work ceased on August 24, 2005, subsequent to the receipt of a notice of intent to revoke permits, issued by the Department of Buildings; this notice was subsequently rescinded; and

WHEREAS, while this notice was being resolved, the applicant claims that the Queens Borough office of DOB indicated that the project was vested based upon the already completed work, under the theory that the development was a “major development”, as this term is defined pursuant to ZR § 11-31; and

WHEREAS, a “major development” is a development that is rendered non-complying by a zoning change; and

WHEREAS, pursuant to ZR § 11-311, DOB can vest a “major development” after completion of just one foundation within the development, provided permits have

been issued for each building and the development as a whole was illustrated on an approved site plan; and

WHEREAS, the applicant claims that it presumed that the right to proceed under the issued permits had vested, and no more work was performed; and

WHEREAS, on September 15, 2005 (the “Enactment Date”), the City Council adopted the Far Rockaway and Mott Creek rezoning, which changed the zoning of the subject site from R5 to R4A; and

WHEREAS, under the R4A zoning, attached homes are not permitted; and

WHEREAS, the applicant states that since it was under the impression that it had vested through DOB, it did not immediately seek the right to continue construction at the Board through an application pursuant to ZR § 11-331; and

WHEREAS, however, DOB subsequently determined that, pursuant to ZR § 11-31, the development was a “minor development”, which is a development that is rendered non-conforming by a zoning change; and

WHEREAS, DOB apparently determined that the particular proposed housing form – attached two-family homes – was in a different Use Group than the detached homes permitted under the R4A zoning; and

WHEREAS, thus, the proposed attached homes had to be categorized as non-conforming, which means that the proposed development is a “minor development”; and

WHEREAS, accordingly, the appellant now seeks a Board determination that it has vested its right to complete the development as originally proposed under the common law, based upon the already completed work; and

WHEREAS, as a threshold issue, the appellant must establish whether: (1) work proceeded under valid permits and (2) work was done legally when SWOs were not in effect; and

WHEREAS, accordingly, the Board requested that the appellant provide a breakdown of validly issued permits, as well as an explanation of the site’s violation and SWO history; and

WHEREAS, as to the validity of the permits, in a submission dated February 6, 2007, the appellant explained that all the piles were driven pursuant to a permit issued March 19, 2004, referred to by the appellant as an “omnibus” permit; and

WHEREAS, the appellant explains that the omnibus permit covered the entire development, even though new addresses for each lot had not yet been obtained; and

WHEREAS, the appellant explains that subsequently, individual piles permits for each tax lot were also obtained after addresses were approved; and

WHEREAS, specifically, the appellant submitted a spread-sheet of all obtained permits, set forth as Exhibit A to appellant’s November 28, 2006 submission; and

WHEREAS, the Board observes that DOB, in a submission dated November 3, 2006, confirms that the permits issued prior the Enactment Date had been audited and had been confirmed to be valid; and

WHEREAS, further, DOB issued a notice of completion for the piles work performed, dated December 17, 2004; and

WHEREAS, the Neighbors contend that the addresses for

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the individual lots had not been established as of the commencement of work, and that therefore any work performed was not authorized; and

WHEREAS, the Neighbors make a similar contention about the work performed on Cluster 1; and

WHEREAS, however, in light of DOB's determination as to the permits, the arguments of the Neighbors are without merit; and

WHEREAS, as to work allegedly performed when SWOs were in effect, the appellant provided a detailed synopsis and explanation of all issued violations and SWOs, as well as completed work, in a submission dated January 9, 2007; and

WHEREAS, this submission clarifies that four "work without a permit" violations and four "failure to maintain job fence" violations were issued prior to the Enactment Date; and

WHEREAS, the submission explains that three of the "work without a permit" violations and attendant SWOs were issued because DOB did not take into consideration that the work observed was being performed pursuant to the above-mentioned omnibus permit; and

WHEREAS, the appellant affirms that no work was performed while the SWOs were in effect and the violations were being cleared; and

WHEREAS, further, as indicated in the above-referenced DOB submission, the various SWOs were not always applicable to each cluster, and the work done on Lot 1 of Cluster 4 in the summer of 2005 was not in contradiction to any issued SWO in effect at the time; and

WHEREAS, as to the fourth work without a permit violation, the appellant explains that the violation was issued for a failure to obtain a demolition permit for the removal of old structures on the site, and that a permit was later obtained and a correction certificate was approved by DOB; and

WHEREAS, as to the fence violations, the appellant explains that these were issued because high winds blew existing fencing down, but that fencing was repaired as needed during the course of construction; and

WHEREAS, the appellant submitted documentation in support of the January 9 submission; and

WHEREAS, the Board has reviewed this submission, and finds that it credibly explains the site's violation history and establishes that no work was done while SWOs were in effect; and

WHEREAS, the Board further finds none of the issued violations or SWOs indicate an attempt to "beat the clock" or any other bad faith on the part of the developer; and

WHEREAS, accordingly, the Board concludes that all work was performed under valid permits, and that no work occurred during the effective period of issued SWOs; and

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

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

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

WHEREAS, as to substantial construction, the appellant cites to the work noted above, which consisted of global piles installation and some work on two of the clusters; and

WHEREAS, specifically, the appellant notes that 632 piles were installed over the entire development site; and

WHEREAS, the appellant notes that the installation of piles was the most important component of foundation construction for the proposed homes, given that none of them would include cellars due to the proximity of the site to a body of water; and

WHEREAS, in support of the assertion that substantial construction was performed, the appellant submitted the following evidence: piles logs with dates, photographs of the site, a site plan showing the location of the piles, and receipts for materials and labor; and

WHEREAS, as noted above, one of the buildings in Cluster 2 will be removed; and

WHEREAS, the appellant explains that the building as constructed encroaches too far into a driveway that will be located between Clusters 1 and 2, and in order to comply with driveway requirements, it must be removed; and

WHEREAS, in terms of remaining work, the appellant states that the framing and finishing of the homes within each cluster must be completed; and

WHEREAS, the appellant also notes that some piles must be replaced, due to weather damage that occurred during the pendency of the instant appeal; and

WHEREAS, the appellant also notes that some piles must be installed for the sewer infrastructure; and

WHEREAS, based upon the above evidence, the Board concludes that a significant amount of work was performed at the development site prior to the Enactment Date; and

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

WHEREAS, the appellant states that prior to the

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Enactment Date, the owner expended a total of approximately a total of 3.745 million dollars; and

WHEREAS, said expenditures related to excavation, foundation, labor and materials costs, as well as architectural, engineering and expediting costs; and

WHEREAS, more specifically, the appellant claims 2.322 million dollars in soft costs and 1.423 million dollars in hard costs; and

WHEREAS, the appellant claims that approximately 400,000 dollars must be expended to complete the project,

WHEREAS, as proof of the expenditures, the appellant has submitted invoices, cancelled checks, and spread sheets; and

WHEREAS, the Board also notes that the appellant clarified that some of the expenditures related to work over the entire site, and some related to work on specific clusters; the appellant provided a breakdown of global versus cluster-related costs; and

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

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

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning and in part upon a showing that income would be reduced due to lost units or density; and

WHEREAS, in its November 28, 2006 submission, the appellant provided a plot plan showing that if compelled to conform to the new R4A zoning, only 19 homes rather than the proposed 30 could be built; and

WHEREAS, the appellant contends that the reduced unit count would lead to a diminished profit over the entire development site; and

WHEREAS, further, in its November 28 submission, the appellant also explains that it would be forced to incur substantial soft costs in order to redesign and re-prepare the site for a conforming R4A development; and

WHEREAS, specifically, the appellant claims that it would have to spend approximately 385,000 dollars in architectural, engineering and expediting fees; the expenditures related to such fees already incurred would be wasted; and

WHEREAS, further, all construction work expenditure related to Cluster 2 and Lot 1 of Cluster 4 would be lost, and such work would have to be demolished at cost; and

WHEREAS, the appellant concludes that based on the lost expenditures and the new costs, conformance with R4A zoning would impose a 2.5 million dollar loss on the developer; and

WHEREAS, the Board agrees that the non-recoupable expenditures related to the soft costs, the piles removal and replacement costs, and the lost revenue arising from the reduced unit count, when viewed in the aggregate, constitute

a serious economic loss, and that the supporting data submitted by the appellant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the appellant has satisfactorily established that a vested right to complete construction of all 30 of the proposed homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit Nos. 402146487-01, 402016625-01, 402016634-01, 402016643-01, 402016652-01, 402016661-01, 402016670-01, 402016689-01, 401712759-01, 401712811-01, 401708345-01, 401712740-01, 401712820-01, 401712768-01, 402063217-01, 402063226-01, 402063501-01, 402063510-01, 402063529-01, 402063538-01, 402063547-01, 402146931-01, 402146940-01, 402146959-01, 402146968-01, 402146977-01, 402146986-01, 402146995-01, 402147002-01, 402147011-01, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 20, 2007.

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Incorporated, owner. Thomas Carroll, lessee. SUBJECT – Application September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code regarding access and fire safety . R4 - Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Simon H. Rothkrug, Arhtur Lighthall, Joseph Sherry, Noreen Goodwin, James T. Cowan, Jr., Marguerita F.Shea and others.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for continued hearing.

292-06-A

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 2006 – An appeal

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seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6/M1-1. M1-2/R6A and MX-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

For Administrative: Marisa Sasitorn, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for decision, hearing closed.

12-07-A

APPLICANT – David L Businelli, R.A., AIA, for Mr. Thomas Tuminello, owner.

SUBJECT – Application January 10, 2007 – Proposed construction of a one family dwelling not fronting on mapped street, contrary to Article 3, Section 36 of the General City Law. R3X Zoning District.

PREMISES AFFECTED – 25 Allegro Street, North side of Allegro Street, 101.33 southwest corner of Bertram Avenue and Allegro Street. Block 6462, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 20, 2007
1:30 P.M.**

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

ZONING CALENDAR

427-05-BZ

CEQR #06-BSA-047Q

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail, community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.

PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 8, 2005, acting on Department of Buildings Application No. 402032885, reads in pertinent part:

“Proposed development which does not provide the required amount of parking is contrary to ZR Section 36-21 and therefore requires a special permit pursuant to ZR 73-44.”; and

WHEREAS, this is an application under ZR § 73-44, to permit a decrease in required off-street accessory parking spaces for an eight story plus penthouse retail, community facility, and office development, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in *The City Record*, with continued hearings on October 17, 2006, December 5, 2006, January 23, 2007, and February 27, 2007, and then to decision on March 20, 2007; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, certain neighbors and community business leaders opposed this application, based upon concerns that the amount of parking spaces would be insufficient and cause impacts on the street; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board,

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including Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located in a C4-2 zoning district and has a lot area of 6,968 sq. ft., with 50 feet of frontage on 39th Avenue; the site is currently used as a commercial parking lot; and

WHEREAS, the proposed building will have total Floor Area Ratio of 4.8, with a 57 vehicle parking garage located in the sub-cellar and cellar, Use Group 6 retail and Use Group 4 community facility use on the first floor, UG 6 retail use on the first floor mezzanine, an additional 19 vehicle parking garage on the second floor, UG 6 retail use on the third floor, a UG 4 health care facility on the fourth floor and a portion of the fifth, and UG 6 offices on the remainder of the fifth floor and the upper floors; and

WHEREAS, all of the 76 parking spaces will be attended; and

WHEREAS, the proposed building complies with all applicable bulk regulations and conforms with all applicable use regulations except for the amount of required accessory parking; and

WHEREAS, specifically, the mix of uses and amount of floor area within the proposed building generates a total accessory parking requirement of 112 spaces (36 are required for the retail use, and 76 for the office and community facility use); and

WHEREAS, the applicant claims that sub-surface conditions at the site prevents the placement of more parking spaces below grade; and

WHEREAS, because a parking waiver is needed, the instant application was filed; and

WHEREAS, the Board notes that pursuant to ZR § 73-44, it may, in the subject C4-2 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for UG 6 uses in the B1 parking category and UG 4 uses; and

WHEREAS, for the C4-2 zoning district and the subject UG 6 office use (which is in parking category B1), the Board may reduce the required parking from 1 space per 300 sq. ft. of floor area to 1 space per 600 sq. ft. of floor area; and

WHEREAS, for the subject UG 4 health facility, the Board may also reduce the required parking from 1 space per 300 sq. ft. of floor area to 1 space per 600 ft. of floor area; and

WHEREAS, assuming the special permit is granted, the required amount of spaces is 74; as noted above, 76 will be provided; and

WHEREAS, the Board notes that the amount of parking designated accessory to the proposed retail use is not being reduced; and

WHEREAS, the applicant notes that the second floor parking will be devoted to the proposed retail uses, and no stackers will be used; and

WHEREAS, parking for the office and community facility uses will be located in the cellar levels, where stackers will be used; and

WHEREAS, the applicant notes that a garage operator will direct vehicles seeking parking for the office and community facility uses to the correct floors; and

WHEREAS, the applicant explains that garages servicing a building with a mix of uses are common, and that it is typical to divide the parking such that transient parking is directed to parking levels not using stackers while longer-term parking like that associated with office use is directed to levels with stackers; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the proposed uses are contemplated in good faith; and

WHEREAS, the record reveals that the applicant has submitted sufficient evidence of the good faith of the owner in pursuing the proposed UG 6 office use and UG 4 community facility use, namely the filing of a DOB job application for such uses and an affidavit from the developer; and

WHEREAS, the applicant claims that the proposed development and the decreased amount of parking will not result in any negative parking or traffic impacts; and

WHEREAS, in support of this claim, the applicant's consultant prepared a report that analyzes the anticipated vehicular trips and parking demand that would be generated by the proposed development; and

WHEREAS, this report concluded that the total number of proposed on-site attended parking accessory parking spaces would be sufficient to accommodate the future parking demand to be generated by the proposed development; and

WHEREAS, this parking study also noted that there is sufficient on-street parking in the area during peak hours to accommodate the possibility of over-flow from the accessory parking facility, and established that the area is well-served by mass transit; and

WHEREAS, the Board agrees that the proposed mix of uses within the proposed building would not generate parking demand that could not be accommodated by the 76 proposed spaces; and

WHEREAS, however, at hearing, the Board expressed concern about the following issues: (1) the amount and location of the queuing spaces; (2) the proposed location of the loading dock and potential interference with parking operations; (3) the use of the proposed stackers; and (4) the single-lane ingress/egress into the parking facility; and

WHEREAS, as to the queuing spaces, the Board expressed concern that the originally proposed three-car queuing lane was insufficient; and

WHEREAS, the applicant subsequently revised the plans for the parking area to reflect a four-car queuing lane; and

WHEREAS, as to the loading berth, the Board expressed concern that it was located in an area within the proposed building where it could not be feasibly used given the interference of the proposed attended parking operation, particularly the queuing; and

WHEREAS, in response, the applicant obtained a

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reconsideration from the Department of Buildings that allows the location of the loading berth behind the proposed car elevators, on the basis that the narrow frontage compromises the ability to locate elsewhere within the proposed building; and

WHEREAS, the applicant also agreed to limit hours of servicing and deliveries; and

WHEREAS, as to the proposed stackers, the Board expressed concern that the particular brand of stacker contemplated had not yet been approved and would be too tall to be utilized on the proposed parking floors (with their limited floor to ceiling heights) without potentially interfering with fire suppression equipment; and

WHEREAS, in response, the applicant obtained another reconsideration from DOB regarding the acceptability of the proposed stackers and their compatibility with the proposed fire suppression system; and

WHEREAS, finally, as to the advisability of a single-lane parking facility, the applicant claims that the limited width of the site precludes any other design; and

WHEREAS, the applicant also submitted other examples of approved single-lane garages (including some approved by the City Planning Commission), and provided a further submission from the parking consultant that suggests that such a facility is viable if operated efficiently; and

WHEREAS, the applicant provided evidence that a sufficient number of attendants would operate the facility at all times; and

WHEREAS, the Board finds the applicant's further submissions responsive to the above-mentioned concerns; and

WHEREAS however, it defers to DOB final approval of the proposed layout of the parking areas, the queuing space, the use of stackers, and the location of the loading berth; and

WHEREAS, therefore, the Board, as a condition of this grant, will ask DOB to audit the BSA-approved plans to ensure compliance with all applicable laws and regulations concerning accessory parking; and

WHEREAS, further, in order to minimize impacts that the parking facility might have on the street, the Board will require the applicant to seek DOT approval of changes to the parking regulations on the street directly in front of the proposed building; these changes are illustrated on the submitted drawings; and

WHEREAS, based upon the above, the Board finds that the applicant has sufficiently met the requirements set forth at ZR § 73-44; and

WHEREAS, moreover, based upon the above, 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, the proposed parking reduction will not interfere with any pending public improvement project; and

WHEREAS, in sum, the Board has determined that the evidence in the record supports the findings set forth at Z.R.

§§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA047Q dated June 21, 2006; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings of ZR §§ 73-44 and 73-03, to permit a decrease in required off-street accessory parking spaces for an eight story plus penthouse retail, community facility, and office development, contrary to ZR § 36-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 16, 2007"-(6) sheets; and *on further condition*:

THAT a total of 76 accessory attended parking spaces shall be provided;

THAT no certificate shall hereafter be issued if either of the office or community facility uses are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT four queuing spaces shall be provided, as indicated on the BSA-approved plans;

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

THAT that the only permitted uses within the building shall be as indicated on the BSA-approved plans, absent prior approval from the Board;

THAT prior to the issuance of a building permit, DOB shall conduct an audit of the BSA-approved plans, reviewing the parking layout, the location of the loading berth, the proposed stackers, queuing, and ingress/egress, as well as any other law or regulation related to accessory parking facilities;

THAT prior to the issuance of a building permit, the

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applicant shall obtain Department of Transportation approval of changes to the parking regulations on the street in front of the proposed building and submit proof of same to DOB;

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, March 20, 2007.

67-06-BZ

CEQR #06-BSA-075R

APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.

SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of ZR §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars. PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 3, 2006, acting on Department of Buildings Application No. 500824593, reads in pertinent part:

“Accessory off street parking spaces for proposed new commercial building are located partially within an R2 zoning district contrary to Section 22-00 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C2-1 (R2) zoning district and partially within an R2 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R2 portion of the site, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this

application on October 31, 2006, after due notice by publication in the *City Record*, with continued hearings on December 5, 2006, January 23, 2007, and February 9, 2007, and then to decision on March 20, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommended disapproval of a prior iteration of the application, described below, which requested a reduction in the required number of parking spaces; and

WHEREAS, City Council Member James S. Oddo recommended disapproval of the prior iteration of the application; and

WHEREAS, certain neighbors provided testimony in opposition to the prior iteration of the application; and

WHEREAS, the site is located on the northwest corner of Clove Road and Woodlawn Avenue; and

WHEREAS, the site comprises two tax lots; Lot 149, which occupies the eastern portion of the site along Clove Road, is located in a C2-1 (R2) zoning district and Lot 168, which occupies the western portion of the site, is located in an R2 zoning district; and

WHEREAS, the applicant represents that the two tax lots were in common ownership prior to 1961 and form a single zoning lot; and

WHEREAS, the site has a total lot area of 24,730 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building used as a diner, which will be demolished, and an accessory parking lot with 37 parking spaces; and

WHEREAS, the applicant initially proposed an 8,847 sq. ft. one-story commercial building to be built as-of-right on Lot 149 and 34 parking spaces, a portion of which would be located in the R2 zoning district, which requires a waiver to allow the use and a waiver to allow a reduction in the required parking (based upon this square footage, 59 parking spaces is the minimum required); and

WHEREAS, the Board expressed concern about the inability to provide sufficient parking and directed the applicant to revise the application so that the parking requirement could be met; and

WHEREAS, in response, the applicant revised the application to provide for a 7,240 sq. ft. building and 48 parking spaces (based upon this square footage, 48 parking spaces is the minimum required); this eliminated the parking waiver; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site has an irregular shape, (2) the site is partially within an R2 zoning district and partially within a C2-1 (R2) zoning district, (3) a portion of the site is within the bed of mapped Woodlawn Avenue, and (4) there is a high water table at the site; and

WHEREAS, as to the shape of the site, the site is located

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at the corner of the wide Y-shaped intersection of Clove Road, Hylan Boulevard, Woodlawn Avenue and Norway Avenue; and

WHEREAS, Clove Road curves to the north around the frontage of the site, which results in the lot having an irregular shape with several angles and a range of lengths and depths; and

WHEREAS, further, the applicant notes that the portion of the site within the R2 zoning district is irregularly shaped; and

WHEREAS, specifically, the portion of the site within the R2 zoning district has frontage on Woodlawn Avenue and a triangular shape, with a range of depths and widths; and

WHEREAS, accordingly, given the irregular shape of the portion of the lot within the R2 zoning district, it would be difficult to develop it with a conforming residential use; and

WHEREAS, as to the location of the zoning district boundary, the majority of the site is located within the C2-1 (R2) has frontage at the wide intersection of two major thoroughfares, Clove Road and Hylan Boulevard; and

WHEREAS, the other four corners at the intersection are also within the C2-1 (R2) zoning district and are occupied by commercial uses; and

WHEREAS, the applicant represents that because of the commercial nature of the highly-trafficked intersection, only commercial use is feasible on the R2 portion of the site and the C2-1 (R2) portion of the site, which allows residential use; and

WHEREAS, the applicant submitted a statement from a real estate agent who states that homes near the site on Winfield Avenue behind commercial uses have been on the market for more than a year and are not marketable; and

WHEREAS, as to uniqueness, the subject site is the only site with such an irregular shape at the intersection of Clove Road and Hylan Boulevard; and

WHEREAS, as to the location of a portion of the site within the bed of Woodlawn Avenue, the applicant represents that a 30 ft. deep strip along the Woodlawn Avenue frontage of the site must be built out as a street and sidewalk; and

WHEREAS, the applicant represents that there are costs to be borne by the owner associated with DOT's requirement that the portion of the site within the bed of Woodlawn Avenue be built out; and

WHEREAS, as to the high water table, the applicant represents that boring tests indicate that water is present at a depth of approximately six feet; and

WHEREAS, the applicant represent that, given this condition, there would be significant costs associated with excavating the site to permit an underground parking area under the C2-1 (R2) portion of the site; and

WHEREAS, the applicant represents that should the portion of the site within the C2-1 (R2) zoning district be developed as commercial, the required parking would not be able to be accommodated within the C2-1 (R2) zoning district and some of the parking spaces would need to be accommodated within the R2 zoning district portion of the site; and

WHEREAS, specifically, because the required parking

cannot be accommodated on the portion of the site within the C2-1 (R2) zoning district, the applicant proposes to provide approximately 18 parking spaces, or 38 percent of the required parking, within the portion of the site in the R2 zoning district; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a smaller 6,600 sq. ft. commercial development with all of the required parking, (2) residential development on the entire site, and (3) residential development on the portion of the site within the R2 zoning district and commercial development on the portion of the site within the C2-1 (R2) portion of the site; and

WHEREAS, the applicant concluded that such scenarios would result in a loss because of the physical conditions of the site; and

WHEREAS, specifically, the applicant represents that: (1) a smaller commercial development would not be feasible because the irregularity of the lot restricts parking and the building would be under-built, (2) a residential development would not be marketable at the site, and (3) a mixed residential and commercial development would be neither marketable for residential nor allow a reasonable return for the limited commercial use; and

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

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

WHEREAS, the Board notes that the modified proposal and request is only to allow a portion of the accessory parking lot to be located within the R2 zoning district; and

WHEREAS, the applicant notes that the proposed drug store is a permitted use in the C2-1 (R2) zoning district and that, as proposed, the one-story commercial building will be under-built; and

WHEREAS, the applicant represents that the site has been used as a diner for several decades; and

WHEREAS, the existing diner currently provides accessory parking within the portion of the site in the R2 zoning district in a similar layout to what is proposed; and

WHEREAS, additionally, the building will be positioned at approximately the same location as the existing building, at the corner of the site furthest away from both the adjacent residential use to the north and west of the site; and

WHEREAS the applicant will install and maintain an opaque fence of six feet in height around the interior portion of the site, which is adjacent to residential uses to provide

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screening and a buffer; and

WHEREAS, additionally, the applicant will provide landscaping to screen the parking and the dumpster enclosure within the R2 zoning district from the adjacent residential use; and

WHEREAS, as to the traffic flow, the Board notes that Winfield Avenue intersects Woodlawn Avenue along the boundary between the R2 zoning district and C2-1 (R2) zoning district and that two curb cuts are proposed for the Woodlawn Avenue frontage of the site, within the portion of the site in the R2 zoning district; and

WHEREAS, at hearing, the Board asked the applicant if the introduction of these curb cuts would introduce additional traffic into the adjacent residential district and whether they should be limited to egress only; and

WHEREAS, the applicant responded that because the curb cuts are at the rear of the site, away from the intersection of Clove Road and Woodlawn Avenue, few patrons would access the site from along Woodlawn Avenue and that the use of this access point would likely be primarily used by residents of the adjacent residential district; and

WHEREAS, the applicant asserts that most traffic would access the site from Clove Road; and

WHEREAS, the Board notes that DOT has stated that any development of the site should include the proposed opening and building out of the mapped Woodlawn Avenue; and

WHEREAS, in response to DOT's request, the applicant agrees to build out the portion of the site within the bed of the mapped street; and

WHEREAS, the Board also notes that there is a concrete barrier across Woodlawn Avenue at the rear of the site; and

WHEREAS, community members and Council Member Oddo request that the concrete barrier on Woodlawn Avenue, which prohibits access to the residential streets, should remain; and

WHEREAS, the Board notes that the removal of the barrier is not within the applicant's discretion nor the Board's jurisdiction; and

WHEREAS, further, in response, the applicant represents that even if the concrete barrier were to be removed, as DOT has suggested, it is likely that the use of the Woodlawn Avenue entrance would be limited to residents of the adjacent residential district; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as discussed above, the applicant initially requested both a waiver to permit accessory parking within the portion of the site in the R2 zoning district and a reduction in the required number of parking spaces; and

WHEREAS, the Board directed the applicant to revise the applicant to eliminate the request for a reduction in the required number of parking spaces; and

WHEREAS, specifically, the revised proposal provides for a building with a floor area of 7,240 sq. ft., as opposed to the 8,847 sq. ft. initially proposed, and 48 parking spaces as opposed to the 34 parking spaces initially proposed; and

WHEREAS, the Board notes that the reduction in the size of the building to reduce the required number of parking spaces resulted in a building that uses only approximately one-third of the available floor area; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA075R, dated April 26, 2006; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C2-1 (R2) zoning district and partially within an R2 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R2 portion of the site, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the

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objections above noted, filed with this application marked "Received January 23, 2007"- (5) sheets and "Received March 16, 2007"- (1) sheet and *on further condition*:

THAT the floor area of the building shall be limited to 7,240 sq. ft.;

THAT a minimum of 48 parking spaces shall be provided;

THAT an opaque fence of six feet in height shall be installed and maintained on the portions of the site adjacent to residential uses;

THAT landscaping shall be planted and maintained as per the BSA-approved plans;

THAT all exterior lighting within the parking area shall be directed away from adjacent residential use;

THAT the applicant shall submit a builder's paving plan to DOB prior to the issuance of any 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 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, March 20, 2007.

115-06-BZ

APPLICANT- Harold Weinberg, for Saul Mazor, owner.
SUBJECT - Application June 7, 2006 - Special Permit (§73-622) for the enlargement of a single family detached residence. This application seeks to vary open space, floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED - 1820 East 28th Street, west side 140' south of Avenue R, between Avenue R and S, Block 6833, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES - None.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 302175063, reads in pertinent part:

"The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Increases the degree of non-compliance with

respect to Floor Area Ratio and the maximum permitted floor area and is contrary to Section 23-141 and 54-31 of the Zoning Resolution;

2. Increases the degree of non-compliance with respect to open space and is contrary to Section 23-141 and 54-31 ZR

3. Reduces the rear yard below 30' and is contrary to Section 23-47 ZR;

4. Increases the degree of non-compliance with respect to side yards and is contrary to Sections 23-461 and 54-31;

5. Increases the degree of non-compliance with respect to lot coverage and is contrary to Sections 23-141 and 54-31"; 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 dwelling, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, with continued hearings on January 23, 2007 and February 27, 2007, and then to decision on March 20, 2007; and

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

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

WHEREAS, Council Member Lew Fidler and certain neighbors opposed this application, based upon arguments addressed below; and

WHEREAS, the subject lot is located on the west side of East 28th Street, between Avenue R and Avenue S; and

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

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft., and is occupied by a 1,768 sq. ft. (0.59 FAR) single-family home; and

WHEREAS, the proposed enlargement will be two stories and an attic and will be located at the rear of the existing home; and

WHEREAS, the applicant seeks an increase in the floor area from 1,768 sq. ft. (0.59 FAR) to 2,976.8 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,800 sq. ft. (.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 1995.1 sq. ft. to 1501.7 sq. ft. (1,950 sq. ft. of open space is required); and

WHEREAS, the proposed enlargement will increase the lot coverage from 33.5% to 49.9% (a minimum of 35% is required); and

WHEREAS, the proposed enlargement will maintain the existing 6'-11" and 2'-5" side yards (two side yards of five feet each are required); and

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WHEREAS, the proposed enlargement will reduce the rear yard from 42'-6" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the Board notes that the enlarged home complies with applicable front yard, wall height, and total height requirements; and

WHEREAS, the Board also notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of similar size in the subject zoning district; and

WHEREAS, the opposition makes two arguments to this application: (1) the special permit should not be available when the subject home is for sale; and (2) the encroachment into the rear yard is contrary to the character of the neighborhood; and

WHEREAS, as to the first argument, the opposition suggests that the special permit was intended to enable only the current owners to enlarge a home in which they reside and would reside post-enlargement; the increased amount of space resulting from the enlargement would create an incentive to remain in New York City as opposed to moving to a different locality; and

WHEREAS, the opposition cites to excerpts of the City Planning Commission (CPC) report for the enactment of the subject special permit, which use the term "homeowners"; and

WHEREAS, the Board disagrees with this argument; and

WHEREAS, the Board observes that there is no language in the text of ZR § 73-622 that prohibits a homeowner from seeking the special permit while the home is for sale; and

WHEREAS, since the text is silent on this issue, there is no need to review the underlying legislative history; and

WHEREAS, however, even if the Board were obligated to review the legislative history, it would conclude that it does not provide any support for the opposition's argument; and

WHEREAS, the excerpts cited by the opposition only establish that the process was intended to be useful for homeowners who own the home in question; such is the case here; and

WHEREAS, further, to the extent that the broad goal of the special permit is assumed to be the retention of current City residents, the enlargement of the subject home fulfills this goal regardless of whether the current owner maintains ownership; and

WHEREAS, the Board observes that merely because the home is for sale does not mean that it will not be purchased and occupied by a City family that would otherwise consider moving out of Brooklyn; thus, because this possibility exists, having the home on the market does not necessarily contravene this alleged intent; and

WHEREAS, finally, the Board observes that zoning concerns the use of land and the built form of construction

rather than the nature of the ownership or the presumed intentions of the owner; thus, a special permit predicated on the ownership intentions of the applicant is, in most cases, contrary to general zoning principles; and

WHEREAS, for the above reasons, the Board rejects this argument; and

WHEREAS, as to the second argument, the opposition suggests that the rear yard intrusion is too extreme given the large rear yards that are present on the subject block; and

WHEREAS, specifically, the opposition suggests that the provision within ZR § 73-622 that allows an encroachment to within 20 feet of the rear lot line was designed with lots that have only a 30 foot rear yard in mind; and

WHEREAS, the opposition claims that the proposed enlargement will create a home that will be one of only two on the block that will extend into the deep rear yards, and that it will block views of the adjacent rear yards from the homes on either side of it (another home previously received a special permit to enlarge within the rear yard); and

WHEREAS, again, the Board disagrees with this argument; and

WHEREAS, first, the Board notes that ZR § 73-622 specifically provides that "any enlargement that is located in a rear yard is not located within 20 feet of the rear lot line"; and

WHEREAS, this section does not provide that the maximum encroachment permitted into the rear yard is 10 feet, as suggested by the opposition, precisely because it was anticipated that some rear yards were deeper than required, and an explicit 10 ft. limitation might mean that the special permit would place a constraint on an enlargement more significant than what would be allowed through an as of right enlargement; and

WHEREAS, instead, by referencing the rear lot line as the point of measurement, the enactors of the special permit plainly indicated that anything up to, but not within, 20 feet from the rear lot line could be acceptable; and

WHEREAS, there is no basis whatsoever to assume from reading the rear yard provision of ZR § 73-622 that the enactors of the provision capped rear yard encroachments at 10 feet; rather, the only commandment is that a 20 ft. rear yard must remain; and

WHEREAS, as noted above, the proposed enlargement contemplates a rear yard of 20 feet; and

WHEREAS, second, as to general concerns about the character of the neighborhood, the Board notes that as of right, a property owner on this block could construct a home that extends to 30 feet from the rear lot line; and

WHEREAS, thus, the as of right zoning applicable to this block already anticipates that the current rear yards are not required; and

WHEREAS, consequently, the alleged context that they create is a vestige of the historical development of this block rather than a zoning-driven element of the character of the neighborhood; the current zoning does not seek to protect this vestige; and

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WHEREAS, the Board also observes that the special permit allows an increase in floor area, even where a home is over-built; and

WHEREAS, the special permit text reveals a legislative determination that such a floor area increase should be accommodated through an enlargement at the rear of existing buildings (as evidenced by the rear yard encroachment allowance) as opposed to the front of buildings (as evidenced by the lack of a front yard encroachment allowance); and

WHEREAS, the Board agrees that rear enlargements generally will have less of an impact on the character of a neighborhood, since they are less visible; and

WHEREAS, third, as to alleged view impact, the Board observes that the special permit is available to all the lots on the subject block; and

WHEREAS, while the Board does not view the inability of adjacent homeowners to see the rear yards of other lots parallel to theirs from all points of the rear yard as a burden, even if this is assumed to be an impact, it is redressed by the ability of all homes on the block to similarly enlarge; and

WHEREAS, accordingly, the Board rejects the opposition's second argument and instead 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, in so finding, the Board observes that much of the concern of the opposition is plainly related to a general dislike of the subject special permit because it allows for larger homes than the opposition desires to see in particular neighborhoods; and

WHEREAS, however, the Board notes that the special permit was enacted by the City in order to create larger homes; and

WHEREAS, to the extent that a particular community district opted into the special permit and now wishes it had not, the proper forum to air this grievance is the Community Board or the City Council, not the Board; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which

does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, and side and rear yards, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; *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 6, 2007-(9) sheets and "March 14, 2007"-(2) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the floor area in the attic shall be limited to 135.19 sq. ft.;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,976.8 sq. ft.; a total FAR of 0.99, side yards of 6'-11" and 2'-5", a rear yard of 20'-0", open space of 1501.7 sq. ft., and lot coverage of 49.9%, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, March 20, 2007.

123-06-BZ

APPLICANT – Rampulla Associates Architects, for Dr. Ronald Avis, owner.

SUBJECT – Application June 13, 2006 – Variance (§72-21) to permit the legalization of the existing one room, one-story addition which encroaches upon the required 30' rear yard of the existing single-family detached house. The Premise is located in an R3X SHPD/LOGMA zoning district. The proposal is contrary to rear yard (§23-47).

PREMISES AFFECTED – 21 Cheshire Place, north side 905.04' to Victory Boulevard, Block 240, Lot 77, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 5, 2007, acting on Department of Buildings Application No. 500825093, reads, in pertinent part:

“The proposed legalization of a one room addition at the rear of the premises encroaches into the thirty feet (30’-0”) rear yard and is contrary to the zoning resolution. ZR 23-47.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3X zoning district, within the Special Hillside Preservation District and the Special Growth Management District, the legalization of an enlargement to a one-story with cellar single-family home, which results in noncompliance as to rear yard, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in *The City Record*, and then to decision on March 20, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Hinkson; and

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

WHEREAS, the site is located on the north side of Cheshire Place, east of Melrose Avenue and north of Beverly Avenue; and

WHEREAS, the site is 99.09 ft. in width and has a depth of between 68.08 feet and 69.78 feet, with a total lot area of 6,813 sq. ft.; and

WHEREAS, the site is currently improved upon with a 2,606 sq. ft. (0.38 FAR) one-story with cellar single-family home; and

WHEREAS, the legal floor area of the home, which was built in 1953, is 2,310 sq. ft. (0.33 FAR); and

WHEREAS, applicant proposes to legalize the as-built condition which includes a 296 sq. ft. addition at the rear at the rear of the home, characterized as a sunroom and built after 1961; and

WHEREAS, the main portion of the house, without the subject addition, has a pre-existing non-complying rear yard depth of 22.30 feet; and

WHEREAS, the site’s rear yard abuts the 17th fairway of the Silver Lake Golf Course, which is owned by the New York City Parks Department; and

WHEREAS, the enlargement maintains the two complying side yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the shallow depth of the site, (2) the existing non-complying rear and front yards, and (3) the site’s adjacency to a City Park/public golf course; and

WHEREAS, as to the site’s shallow depth, the applicant states that the range in depth from 68.06 feet to 69.78 feet is an

existing non-complying condition from before 1961, when the home was built; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram which shows that the subject site has the shallowest depth of the 14 lots within the radius, with frontage on the golf course; and

WHEREAS, as to the yard conditions, the applicant states that the shallow depth of the lot provided for non-complying front and rear yards; and

WHEREAS, the applicant represents that the home, which was under built at 0.33 FAR (0.50 FAR is the maximum permitted) could not have been enlarged horizontally (1) at the rear without encroaching into the required rear yard since the existing rear yard was only 22.23 feet (a rear yard of 30 feet is the minimum required); (2) at the 16.65 ft. front yard because it is also non-complying (a front yard of 18 feet is the minimum required); or (3) at the side yards because there is not sufficient space to enlarge at the west side of the home and there is a one-story garage at the east side; and

WHEREAS, additionally, the applicant represents that a vertical enlargement would not be feasible because, in order avoid further encroachment into the required front and rear yards, the second floor would have to be setback at both the front and the rear; and

WHEREAS, the applicant notes that in order to accommodate the setbacks, the second floor would require new load-bearing columns and steel structural support because it could not rest on the exterior walls; and

WHEREAS, the applicant asserts that this requirement would make a second-floor addition prohibitively expensive; and

WHEREAS, as to the site’s adjacency to the Silver Lake Golf Course, the applicant represents that ZR § 23-67 (Special Provisions for Zoning Lots adjoining Public Parks) requires that in addition to the rear yard requirement, the rear lot line of the house shall be treated as a front yard and the provisions of ZR § 23-63 (Maximum Height of Front Wall and Required Front Setbacks) shall apply; and

WHEREAS, the applicant represents that these requirements put additional restrictions on any development of the home at the rear; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that a complying enlargement using available floor area would be feasible; and

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

WHEREAS, the applicant represents that most of the houses along both sides of the block are existing one-story single-family detached homes and that the enlargement is compatible with this context; and

WHEREAS, the applicant states that the modest

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enlargement is completely at the rear of the home and is not visible from the street or from the adjacent golf course because of screening; and

WHEREAS, moreover, the Board notes that the requested FAR increase to 0.38 is within the zoning district parameters; and

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

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

WHEREAS, the Board finds that this proposal is for a minor increase in FAR, from 0.33 to 0.38, reflects the minimum necessary to afford the applicant relief; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.4 and 617.13, §§ 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 § 72-21, to permit, in an R3X zoning district, within the Special Hillside Preservation District and the Special Growth Management District, the legalization of an enlargement to a one-story with cellar single-family home, which results in noncompliance as rear yard, contrary to ZR § 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 21, 2006"– three (3) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: an FAR of 0.38; a floor area of 2,606 sq. ft.; a front yard of 16.65 feet; and a rear yard of 12.23 feet;

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2007.

263-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special

Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area §23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 28, 2006, acting on Department of Buildings Application No. 302229112, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

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

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in *The City Record*, with a continued hearing on February 6, 2007, and then to decision on March 20, 2007; and

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

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application, citing concerns that the application does not meet the requirements of an enlargement; and

WHEREAS, the subject lot is located on the northeast corner of Avenue L and East 28th Street; and

WHEREAS, the subject lot has a total lot area of 6,000 sq. ft., and is occupied by a 2,399.23 sq. ft. (0.40 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,399.23 sq. ft. (0.40 FAR) to 6,178.02 sq. ft. (1.03 FAR); the maximum floor area permitted is 3,000 sq. ft. (0.50 FAR); and

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WHEREAS, the proposed enlargement will decrease the open space ratio from 191.1 percent to 51.2 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 12'-0" front yard and reduce the second front yard from 24'-9" to 15'-0" (two front yards with depths of 15'-0" are required); and

WHEREAS, the proposed enlargement will provide one 5'-0" side yard and one 8'-0" side yard (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" for one are required); and

WHEREAS, initially, the applicant proposed a wall height of 24'-6" and a total height of 39'-10"; and

WHEREAS, at hearing, the Board asked the applicant to respond to questions about neighborhood character and to establish a context for the proposed bulk and height of the home; and

WHEREAS, as to bulk, the applicant submitted an analysis of homes within a 200-ft. radius of the subject premises, which reflects that more than 19 percent of the homes within the radius have an FAR of 1.04 or greater; and

WHEREAS, further, the analysis reflects that 29 percent of the homes within the radius on Avenue L have an FAR of 1.04 or greater; and

WHEREAS, at hearing, the Board also asked the applicant to reduce the wall height and total height so as to be more compatible with nearby homes; and

WHEREAS, in response, the applicant reduced the wall height to 23'-6" and the total height to 38'-3" to match the home across the street; and

WHEREAS, the Board expressed concern that not enough of the existing building was proposed to be retained and asked the applicant to clarify which elements would be retained; and

WHEREAS, in response, the applicant revised the plans to indicate which portions of the existing floor joists, foundations, and walls would remain, to the Board's satisfaction; and

WHEREAS, additionally, the Board directed the applicant to remove the reference to the stucco veneer from the plans; and

WHEREAS, the Board noted that any veneer would be as approved by DOB; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to

be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, and open space ratio, contrary to ZR § 23-141; *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 January 23, 2007"-(10) sheets and "February 21, 2007"-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 837.03 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a floor area of 6,178.02 sq. ft., an FAR of 1.03, a wall height of 23'-6", a total height of 38'-3", one side yard of 5'-0", one side yard of 8'-0", one front yard of 15'-0", one front yard of 12'-0", and an open space ratio of 51.2 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that existing portions of foundation walls, walls, and floors shall be retained as illustrated on the BSA-approved plans, marked "Received January 23, 2007"-(3) sheets and "February 21, 2007"-(3) sheets;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, March 20, 2007.

283-06-BZ

APPLICANT – Moshe M. Friedman, for Tammy Hirsch, owner.

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SUBJECT – Application October 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1372 East 29th Street, for 190' north of intersection formed by East 29th Street and Avenue N, Block 7664, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 17, 2006, acting on Department of Buildings Application No. 302230477, reads in pertinent part:

“Proposed extension of existing one-family dwelling is contrary to:

- ZR Sec 23-141(a) Floor Area Ratio
- ZR Sec 23-141(a) Open Space Ratio
- ZR Sec 23-461 Side Yard
- ZR Sec 23-47 Rear Yard.”; and

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

WHEREAS, a public hearing was held on this application on March 6, 2007, after due notice by publication in *The City Record*, and then to decision on March 20, 2007; and

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

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

WHEREAS, the subject lot is located on the west side of East 29th Street, between Avenue M and Avenue N; and

WHEREAS, the subject lot has a total lot area of 3,000 sq. ft., and is occupied by a 2,241.19 sq. ft. (0.75 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,241.19 sq. ft. (0.75 FAR) to 3,017.58 sq. ft. (1.006 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease

the open space ratio from 92 percent to 57 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 10'-0" front yard (one front yard with a depth of 15'-0" is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 3'-3.5" side yard and reduce the other side yard from 6'-10.5" to 6'-8.5" (a minimum width of 5'-0" for each is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 32'-10.5" to 20'-1" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; 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, 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, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio and rear and side yards, contrary to ZR § 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received January 16, 2007–(6) sheets and “March 20, 2007”-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 567.98 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,017.58 sq. ft., a total FAR of 1.006, a wall and total height of 34'-4", one side yard of 3'-3.5", one side yard of 6'-8.5", a rear yard of 20'-1", and an open space ratio of 57 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

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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; 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, March 20, 2007.

285-06-BZ

CEQR #07-BSA-031M

APPLICANT – Sheldon Lobel, P.C., for 531 Central Park Avenue Associates, LLC, owner; Serenity Wellbeing Inc., lessee.

SUBJECT – Application October 25, 2006 – Special Permit (§73-36) to permit the operation of a physical culture establishment on the third floor of an existing commercial building located in a C6-4.5 zoning district.

PREMISES AFFECTED – 23 West 45th Street, north side of West 45th Street, between Fifth and Sixth Avenues, Block 1261, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 12, 2006, acting on Department of Buildings Application No. 104554484, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in C6-4.5 zoning district and it is contrary to ZR 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district, the establishment of a physical culture establishment (PCE) on the third floor of an existing three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and then to decision on March 20, 2007; and

WHEREAS, Community Board 5, Manhattan,

recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 45th Street, between Fifth Avenue and Sixth Avenue; and

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

WHEREAS, the PCE will occupy a total of 1,989 sq. ft. of floor area on the third floor; and

WHEREAS, the PCE will be operated as Serenity Wellbeing Spa; and

WHEREAS, the applicant represents that the PCE will offer spa services including massage therapy; and

WHEREAS, the proposed hours of operation are: Monday through Sunday, 10:00 a.m. to 12:00 a.m.; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-031M dated January 2, 2007; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

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

MINUTES

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district, the establishment of a physical culture establishment on the third floor of an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 8, 2007"-(1) sheet and *on further condition*:

THAT the term of this grant shall expire on March 20, 2017;

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

THAT the hours of operation shall be limited to: Monday through Sunday, 10:00 a.m. to 12:00 a.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2007.

378-04-BZ

APPLICANT– Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR §32-14 (use), §33-121 (FAR), §101-721 and §101-41(b) (street wall height), §101-351 (curb cut), and §35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100' east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most and Fack Freeman.

For Opposition: Sidney L. Meyer, William Harris and Anita Abraham-Inz.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

98-06-BZ & 284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik and Marc Mariscal.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

136-06-BZ

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00),

MINUTES

FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Paul Proux and Willis De Lalour.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for decision, hearing closed.

240-06-BZ thru 251-06-BZ

APPLICANT – Manat, Phelps & Phillips, LLP, for St. John’s University, owner.

SUBJECT – Application September 15, 2006 – Variance (§72-21) to permit a five foot encroachment in the required front setback. The proposal would convert the uses in the twelve subject buildings to community facility (dormitory Use Group 3A), an as-of-right use in the R4 zoning district. The proposal is contrary to the required front yard setback (§24-34).

PREMISES AFFECTED – 147-04 to 147-30 Union Turnpike, Block 6715, Lots 25-37, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Carol Rosenthal, Tim Nsdell, Albert Tein II, Jason Perri and Andrew Schwarsin.

For Opposition: Judith Guttman and Teresa Noonan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

288-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of §24-111 (FAR), §24-521 (wall height, setback and sky exposure plane), §24-34 (front yard) and §24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223rd and 224th Streets, Block 10796, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Ron Mandel, Albert Tein II, Robert Comas and Linnette Taylor.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: James Power and Doris Diether, CB #2.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for deferred decision.

301-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111’ north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing

316-06-BZ

APPLICANT– Jesse Masyr, Esq., Wachtel & Masyr, LLP, for Blaseboro Realty, LLC, owner; New York Botanical Garden, lessee.

SUBJECT – Application December 7, 2006 – Variance (§72-21) to permit the construction of the proposed accessory parking garage (UG4) with 825 parking spaces on

MINUTES

six stories, in one cellar level and on the roof. The Premises is located in a C8-2 zoning district. The proposal is requesting waivers with respect to setback (§33-432) and parking (§36-11 and §36-12).

PREMISES AFFECTED – 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lots 1 & 4, Borough of The Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Jesse Masyr, JV Cossaboom, Jesse Masyr, Robert Edward, Karen Washington, Tim Tracy, Tim Martung and Ethan Goodman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10, 2007, at 1:30 P.M., for decision, hearing closed.

334-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Machia Abramczyk, owner.

SUBJECT – Application December 29, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1119 East 23rd Street, East 23rd Street between Avenue K and Avenue L, Block 7623, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

1-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Jacqueline Savio and Alfred Buonanno, owner.

SUBJECT – Application January 2, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary (§23-141) in that the proposed building exceeds the maximum permitted floor area ratio of .75 in an R4-1 zoning district.

PREMISES AFFECTED – 1792 West 11th Street, West 11th Street between Quentin Road and Highlawn Avenue, Block 6645, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

MINUTES

**SPECIAL MEETING
WEDNESDAY MORNING, MARCH 21, 2007
10:00 A.M.**

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

54-05-A

APPLICANT – NYC Department of Buildings.
OWNER OF PREMISES: Yeshiva Imrei Chaim Viznitz.
SUBJECT – Application March 4, 2005 – Application to
revoke Certificate of Occupancy No. 300131122, on the
basis that the Certificate of Occupancy allows conditions at
the subject premises that are contrary to the Zoning
Resolution and the Administrative Code.
PREMISES AFFECTED – 1824 53rd Street, southeast
corner of 18th Avenue, Block 5480, Lot 14, Borough of
Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –
For Applicant: Angelina Martinez-Rubio, Joel Steinberg,
Maria Martinelli, Moses Krishner, Rabbi Israel Steinberg
and David Garber.

For Opposition: Stuart A. Klein.

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins and
Commissioner Ottley-Brown.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to April 24,
2007, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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April 19, 2007

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69-07-BZ

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70-07-A

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71-07-BZ

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72-07-BZ

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73-07-A

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Certificate of Occupancy-Also require the installation of a sprinkler system in the cellar of the subject property..

74-07-BZ

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75-07-BZ

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76-07-A

485 Seabreeze Walk, East side Seabreeze Walk 204.11' feet south of Beach 213th Street., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposal to reconstruct and enlarge an existing one family dwelling and the upgrade of an existing private disposal system..

77-07-A

32 Adele Street, Between Burgher Avenue and Evergreen Avenue., Block 3329, Lot(s) 63, Borough of **Staten Island, Community Board: 2.** General City Law Section 36, Article 3-Propose to construct a new commercial building..

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 8, 2007, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 8, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025 Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

COMMUNITY BOARD #2SI

118-95-BZII

APPLICANT – Windels Marx Lane & Mittendorf, LLP, for White Castle System, Inc., owner.

SUBJECT – Application April 9, 2007 – Extension of Term of a Special Permit for an accessory drive-through facility, located in an C1-2/R7B zoning district, in conjunction with an (UG6) eating and drinking establishment (White Castle) which expired on July 25, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on June 11, 2002 and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 89-03 57th Avenue, northeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 41, Borough of Queens.

COMMUNITY BOARD #4Q

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application April 18, 2007 – Request for a waiver of Practice and Procedure and for an extension of time to complete construction and to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 6778 Hylan Boulevard, southeast corner of Page Avenue, Block 7734, Lots 13 & 19, Borough of Staten Island.

COMMUNITY BOARD #3SI

28-05-A

APPLICANT – Alex Ng

OWNER OF PREMISES: Bill Petit

SUBJECT – Application February 17, 2005 – Appeal seeking to challenge the Department of Building's determination that a fenced refuse area in any yard or open space does not violate any Building Code or Zoning Resolution.

PREMISES AFFECTED – 72-02 Ridge Boulevard, a/k/a Flag Court, Block 5906, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #10BK

317-06-A

APPLICANT – John Dydland-NYCDEP, for Department of Environmental Protection, owner.

SUBJECT – Application December 7, 2006 – Proposed construction of a Groundwater Remediation System at a NYCDEP owned site (Station 24) which is located in the bed of mapped street 109th Avenue which is contrary to General City Law Section 35 .R3X Zoning District.

PREMISES AFFECTED – 180th Street and 106th Road, premises is situated at the following intersections – 176th Street and 109th Avenue and Fern Place, 177th Street and Watson, Block 10343, Lots 300, 32, 12, 1, Borough of Queens.

COMMUNITY BOARD #12Q

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

CALENDAR

MAY 8, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 8, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

302-06-BZ

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Institute, owner.

SUBJECT – Application November 15, 2006 – Variance (§72-21) to permit the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building. The premise is located in a R6 zoning district and the Ocean Parkway Special Zoning District Sub-District. The proposal is contrary to §24-11.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner Avenue R, north side Avenue R between Ocean Parkway and East 77th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

13-07-BZ

APPLICANT– Jesse Masyr, Wachtel & Masyr, LLP, for Zahav Enterprises, Inc., owner; Unicorp National Development, Inc., lessee.

SUBJECT – Application January 11, 2007 – pursuant to §11-413 of the Zoning Resolution seeking approval to change the use on the project site from parking and storage of motor vehicles and auto rental (Use Group 8) to accessory off-street parking (Use Group 6). The accessory off-street parking would provide the required parking for an adjacent drug store. The subject application is located in an R6 zoning district.

PREMISES AFFECTED – 1120 East New York Avenue, a/k/a 5 Rockaway Parkway, northeast corner of East New York Avenue and Rockaway Parkway, Block 4600, Lots 1 & 7, Borough of Brooklyn.

COMMUNITY BOARD # 17BK

32-07-BZ

APPLICANT– Omnipoint Communications Inc., for E.C. Hassell Inc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application January 24, 2007 – Special Permit §73-30 and §22-21 – In an R3-2 zoning district, for a non-accessory radio tower for a public utility wireless communications facility and consist of a 62-ft. stealth flagpole (gold ball on top), together with antennas mounted and equipment cabinets on roof of nearby commercial building.

PREMISES AFFECTED – 146-10/16 Guy R. Brewer

Boulevard, 240' south of the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, Block 13310, Lots 69 & 70, Borough of Queens.

COMMUNITY BOARD #13Q

42-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Cong. & Yeshiva Lev Somejach, owner.

SUBJECT – Application February 6, 2007 – Variance (§72-21) to permit the proposed conversion and extension of an existing synagogue. The Premises is located in an R5 Ocean Parkway Special District. The proposal is requesting waivers of open space and lot coverage (§113-11 and §23-141c) and side yards (§113-11 and §23-462a).

PREMISES AFFECTED – 203 Avenue F, a/k/a 201-203 Avenue F, 717-727 East 2nd Street, Block 5396, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss, owner.

SUBJECT – Application February 23, 200 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1776 East 26th Street, west side of 26th Street, between Avenue R and Quentin Road, 200' north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 10, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

597-39-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Kings Parsons Car Care Inc., lessee.

SUBJECT – Application December 11, 2006 – §11-412 Amendment to a gasoline service station (Exxon Mobil) for the erection of a new steel canopy and to legalize the conversion from one pump island to two pump islands, conversion of a portion of the service building to an convenience store, the installation of a car vacuum and public telephone on site, four curb cuts and wood planters in a C1-4/R5D zoning district.

PREMISES AFFECTED – 84-04 Parsons Boulevard, a/k/a 152-16 84th Avenue, southwest corner of 84th Avenue, Block 9751, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to the previously granted variance for a gasoline service station with accessory uses; and

WHEREAS, a public hearing was held on this application on February 6, 2007, after due notice by publication in *The City Record*, with a continued hearing on March 13, 2007, and then to decision on April 10, 2007; and WHEREAS, Community Board 8, Queens, recommends approval of this application on condition that the term be limited to ten years and that the convenience store not be permitted to sell alcoholic beverages; and

WHEREAS, the premises is located on the southwest corner of Parsons Boulevard and 84th Avenue; and

WHEREAS, the site is located within a C1-4 (R5D) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 1939 when, under the subject calendar number, the Board granted an application for the

alteration of an existing gasoline service station; and

WHEREAS, subsequently, the grant was amended at various times; and

WHEREAS, most recently, on April 3, 1990, the Board reopened and amended the resolution to allow for certain site modifications; and

WHEREAS, the applicant initially proposed, under this application, to legalize the following changes to the site: the enlarged width of four curb cuts, two new pump islands, a conversion of a portion of the service building to an accessory convenience store, and the addition of planters, a car vacuum, and a public telephone; and

WHEREAS, the existing curb cuts are 30'-4" and 26'-7" on the 84th Avenue frontage and 42'-9" and 45'-3" on the Parsons Boulevard frontage; the approved plans provide for two 25'-0" curb cuts on 84th Avenue and two 30'-0" curb cuts on Parsons Boulevard; and

WHEREAS, the applicant also proposes to construct a steel canopy; and

WHEREAS, the application represents that storage containers, a shed, and a fence enclosure currently onsite will be removed from the site and are not sought to be legalized; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for alterations to the site; and

WHEREAS, at hearing, the Board expressed concern about the width of the curb cuts and directed the applicant to restore the curb cuts provided for on the BSA-approved plans and to reduce the westernmost curb cut on 84th Avenue even further to 20'-0"; and

WHEREAS, in response, the applicant revised the plans to provide for one 25'-0" and one 20'-0" curb cut on 84th Avenue and two 30'-0" curb cuts on Parsons Boulevard; and

WHEREAS, the Board asked the applicant if the signage was complying; and

WHEREAS, the applicant responded that zoning district regulations permit a total of 100 sq. ft. of illuminated signage, with 50 sq. ft. on each frontage; and

WHEREAS, the applicant noted that due to the location of several of the signs directly in the corner of the site, between the two frontages, it is difficult to determine which frontage to attribute the sign to and requests that it be viewed in the aggregate; and

WHEREAS, the Board noted that the signage in the aggregate is within the parameters of that permitted and agreed that the proposed signage is appropriate; and

WHEREAS, as to the Community Board's recommendation to limit the term, the Board notes that the this variance previously has not been termed; and

WHEREAS, as to the Community Board's recommendation to prohibit the sale of alcoholic beverages at the site, the Board notes that this request is beyond the scope of the Board's jurisdiction; and

WHEREAS, based upon its review of the record, the Board finds the proposed amendments are appropriate and that the evidence in the record supports the findings required to be made under ZR § 11-412, with certain conditions as set forth below.

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Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on December 12, 1939, so that as amended this portion of the resolution shall read: “to permit the legalization of the accessory convenience store and other noted existing site modifications to allow a new metal canopy and other noted new site modifications *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked “February 23, 2007”– (5) sheets; and *on further condition*:

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

THAT DOB shall review and approve the layout of the onsite parking;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application Nos. 402492940, 402492806, 402492824, 402492842, 402492815 and 402492833)

Adopted by the Board of Standards and Appeals, April 10, 2007.

717-60-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.

SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.

PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a gasoline service station, which expired on June 1, 2006; and

WHEREAS, a public hearing was held on this application on November 14, 2006 after due notice by publication in *The City Record*, with continued hearings on January 9, 2007, February 13, 2007, and March 13, 2007, and then to decision on April 10, 2007; and

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

WHEREAS, the site is located on the southeast corner of Victory Boulevard and Bradley Avenue; and

WHEREAS, the site is located in a C1-1 (R3-2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 7, 1961 when, under the subject calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

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

WHEREAS, most recently, on April 15, 2003, the grant was amended to permit an extension of the time to obtain a certificate of occupancy to expire on April 15, 2005; and

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

WHEREAS, at hearing, the Board directed the applicant to remove any non-complying signage; and

WHEREAS, in response, the applicant submitted photographs reflecting that the non-complying signage had been removed; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on February 7, 1961, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 1, 2006 to expire on June 1, 2016, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received February 26, 2007’– (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 1, 2016;

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

THAT a certificate of occupancy shall be obtained within nine months of the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 5000846864)

Adopted by the Board of Standards and Appeals, April 10, 2007.

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854-60-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Company, Inc. R & M, owner.

SUBJECT – Application January 22, 2007 – Extension of Time to obtain a Certificate of Occupancy and waiver of the Rules of Practice and Procedure which expired on September 21, 2000 in a C2-2/R3-2 zoning district.

PREMISES AFFECTED – 188-02 to 188-10 Hillside Avenue, 88-01 to 88-09 188th Street, Block 10453, Lot 19, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the time to obtain a certificate of occupancy, which expired on September 21, 2000; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City Record*, and then to decision on April 10, 2007; and

WHEREAS, the subject premises is located on the southeast corner of Hillside Avenue and 188th Street; and

WHEREAS, the site is occupied by a gasoline service station, located within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 11, 1961 when, under the subject calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

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

WHEREAS, most recently, on September 21, 1999, the grant was amended to permit an extension of term of the variance, to expire on September 21, 2000, and an amendment to permit modifications to the site; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by September 21, 2000; and

WHEREAS, the applicant represents that the work has been completed and that a new certificate of occupancy can be obtained within one year; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension is appropriate, with the conditions 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 April 11, 1961, so that as amended this portion of the resolution shall read: “to grant an extension of the time to obtain a certificate of occupancy for an additional one year from the date of this grant; *on condition:*

THAT a certificate of occupancy be obtained by April 10, 2008;

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. 400889464)

Adopted by the Board of Standards and Appeals, April 10, 2007.

58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 277 Park Avenue, LLC, owner; Manhattan Athletic Club, LLC, lessee.

SUBJECT – Application December 8, 2006 – Extension of Term/Amendment-For the operation of a Physical Culture or Health Establishment for an additional ten (10) years, and to add 479 square feet to the club for the purposes of a boxing room. The site is located in a C5-3(SMD) &C6-6 zoning district.

PREMISES AFFECTED – 277 Park Avenue, east side of Park Avenue and 47th Street, Block 1302, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Larsen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an amendment, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on December 10, 2006; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City Record*, and then to decision on April 10, 2007; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the east side of Park Avenue, between East 47th Street and East 48th Street; and

WHEREAS, the site has a lot area of approximately 81,337.5 sq. ft. and is located partially within a C5-3 zoning district and partially within a C6-6 zoning district, within the Special Midtown District; and

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WHEREAS, the site is occupied by a 50-story commercial building; and

WHEREAS, the PCE occupies a portion of the first floor and basement for a total floor area of 12,933 sq. ft.; and

WHEREAS, the PCE is operated as Manhattan Athletic Club; and

WHEREAS, on December 10, 1996, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years; and

WHEREAS, the instant application seeks the legalization of interior layout modifications including the addition of 479 sq. ft. of floor area on the first floor to accommodate boxing facilities; and

WHEREAS, the floor area increase results in the PCE occupying 12,933 sq. ft., rather than the 12,454 sq. ft. as per the approved plans; and

WHEREAS, the applicant also requests a ten-year extension of term for the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested interior modifications and extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated December 10, 1996, so that as amended this portion of the resolution shall read: "to grant approval of the increase in floor area and an extension of the term for ten years from the expiration of the last grant to expire on December 10, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received December 8, 2006' – (6) sheets; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years to expire on December 10, 2016;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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. 104595715)

Adopted by the Board of Standards and Appeals, April 10, 2007.

97-97-BZII

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

SUBJECT – Application February 12, 2007 – Extension of Time and a waiver of the rules, to obtain a Certificate of Occupancy for a previously granted variance to allow in an R-5 zoning district; the construction and maintenance of a gasoline service station with an accessory convenience store which expired April 19, 2006.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, a/k/a 1419/21 Rosedale Avenue, Block 3894, Lot 28, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the time to obtain a certificate of occupancy for a gasoline service station, which expired on April 19, 2006; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City Record*, and then to decision on April 10, 2007; and

WHEREAS, the subject premises is located on the southwest corner of the Cross Bronx Expressway and Rosedale Avenue, within an R5 zoning district; and

WHEREAS, the site is occupied by a one-story gasoline service station with accessory convenience store; and

WHEREAS, on October 7, 1997, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station at the site; the grant required that a new certificate of occupancy be obtained within four years; and

WHEREAS, however, the work was not completed and on April 19, 2005, the Board amended the grant to permit an extension of time to complete work and obtain a certificate of occupancy for one additional year, to expire on April 19, 2006; and

WHEREAS, the applicant states that the work is completed, but that a new certificate of occupancy has not been obtained; and

WHEREAS, the applicant now requests one year to obtain a new certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated October 7, 1997, so that as

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amended this portion of the resolution shall read: "to grant an extension time to obtain a certificate of occupancy for one year from the date of this grant; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on condition*:

THAT a certificate of occupancy shall be obtained by April 10, 2008;

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. 200410572)

Adopted by the Board of Standards and Appeals, April 10, 2007.

150-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Yeshiva of Far Rockaway, owner.

SUBJECT – Application February 15, 2007 – Extension of Time to complete construction and obtain a certificate of occupancy for a variance for additional floor area on the second floor to an existing two story synagogue and yeshiva which expired January 25, 2007 in an R-2 zoning district.

PREMISES AFFECTED – 802 Hicksville Road, corner of Beach 9th Street, Block 15583, Lot 16, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction and obtain a certificate of occupancy for the enlargement of a community facility, which expired on January 25, 2007; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City Record*, and then to decision on April 10, 2007; and

WHEREAS, the subject premises is located on the northeast corner of Hicksville Road and Beach 9th Street; and

WHEREAS, the site is occupied by a two-story synagogue and yeshiva building, located within an R2 zoning district; and

WHEREAS, on January 9, 2000, under the subject calendar, the Board granted a variance, pursuant to ZR § 72-21,

to permit the enlargement of the second floor of an existing two-story synagogue and yeshiva building; and

WHEREAS, on January 25, 2005, the Board granted an amendment and an extension of time to complete construction and obtain a certificate of occupancy for an additional two-year term; and

WHEREAS, the instant application seeks a two-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a two-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 9, 2000, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction and obtain a certificate of occupancy for a term of two years from the date of this grant; *on condition*:

THAT substantial construction shall be completed and a certificate of occupancy be obtained by April 10, 2009;

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. 401962006)

Adopted by the Board of Standards and Appeals, April 10, 2007.

741-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Hillside Auto Center S.S., Inc., owner.

SUBJECT – Application January 8, 2007 – §11-411 and §11-412 to extend the term of a variance for a gasoline service station with accessory uses for an additional period of ten years from September 23, 2005 and to amend the resolution to permit a portion of the building to be used as an accessory convenience store and to permit a metal canopy and new fuel pump. The site is located in an R-2 zoning district.

PREMISES AFFECTED – 241-15 Hillside Avenue, northwest corner of 242nd Street, Block 7909, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for continued hearing.

8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno

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Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125’ east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug .

For Opposition: Sarem Ozdusal.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for continued hearing.

44-06-BZ, Vol. II

APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215’ east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Ronald J. Dillon of President Concerned Homeowners Association.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for decision, hearing closed.

81-74-BZ

APPLICANT – Martyn & Don Weston, for Bogopa Supermarket, Inc., owner; Food Bazaar Supermarket; lessee.

SUBJECT – Application January 29, 2007 – Extension of Term of a previously granted variance for the operation of a Use Group 6 (Food Bazaar Supermarket) in a C1-2/R6A & R6B zoning district which expired on February 27, 2007.

PREMISES AFFECTED – 97-27 57th Avenue, north side between 97th Place and 98th Street, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Don Weston, Kyo C Hwang and Jae Gook Kim.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 24, 2007, at 10 A.M., for decision, hearing closed.

200-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Blans Development Corp., owner.

SUBJECT –Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37th Avenue, a/k/a 37-16 108th Street, southwest corner of 108th Street and 37th Avenue, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

163-04-BZII

APPLICANT – Rothkrug Rothkrug & Spector, for Mylaw Realty Corp., owner; Crunch Fitness, lessee.

SUBJECT – Application August 28, 2006 – Amendment of a special permit (§73-36) to allow the enlargement and expansion of an existing physical culture establishment into an adjoining building, and to reflect a change in the name of the operator. C2-4(R6) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of Fulton Street and St. Felix Street, Block 2096, Lots 66 and 69, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 24, 2007, at 10 A.M., for decision, hearing closed.

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150-06-A & 151-06-A

APPLICANT – Kathleen R. Bradshaw, for Frank Gallo, owner.

SUBJECT – Application July 7, 2006 – Proposed construction of two, two – family dwellings located within the bed of a mapped street contrary to General City Law Section 35. R4A Zoning District.

PREMISES AFFECTED – 2550 & 2552 Kingsland Avenue, between Mace Avenue and Allerton Avenue, Block 4488, Lots 30 & 32, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Kathleen Bradshaw.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 29, 2006, acting on Department of Buildings Application Nos. 200939583 and 200939574, reads in pertinent part:

“Building in the bed of mapped street contrary to General City Law Section 35.”; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in the *City Record*, and then to decision on April 10, 2007; and

WHEREAS, by letter dated March 13, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated November 20, 2006, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 23, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Bronx Borough Commissioner, dated June 29, 2006, acting on Department of Buildings Application Nos. 200939583 and 200939574, 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 September 7, 2006”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the lot subdivision is to be as approved by DOB;
THAT this approval is limited to the relief granted by the

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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 10, 2007.

6-07-A thru 9-07-A

APPLICANT – Sheldon Lobel, P.C., for College Point Holding, LLC, owner.

SUBJECT – Application January 8, 2007 – Proposed construction of four two family homes not fronting on mapped street which is contrary to Article 3, Section 36 of the General City Law. R4A Zoning District.

PREMISES AFFECTED – 127-09, 127-11, 127-15 and 127-17 Gurino Drive, (*Former 25th Road*) between 127th Street and Ulmer Street, Block 4269, Lots 1 & 27 (*to be known as New Tax Lots 1, 2, 3 & 4*), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 7, 2006, acting on Department of Buildings Application Nos. 402031957, 402031948, 402031939, 402031920, reads in pertinent part:

“The proposed development is contrary to General City Law Section 36, and does not have at least 8% of the total perimeter of the building fronting directly upon a street or frontage space per Building code Section 27-291.”; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in the *City Record*, and then to closure and decision on April 10, 2007; and
and

WHEREAS, Community Board 7, Queens, has recommended approval of this application; and

WHEREAS, the site was a corner lot bounded by what was formerly 25th Road to the south and what was formerly 128th Street to the east; and

WHEREAS, the site became landlocked when these portions of 25th Road and 128th Street were de-mapped in October 1973 by the City of New York; and

WHEREAS, this portion of the former 25th Road, now

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part of Block 4273 to the south, was designated a 60-ft. wide buffer zone by the City of New York in connection with the College Point Urban Renewal Plan; and

WHEREAS, this buffer zone serves to separate the residentially-zoned site from the industrial-zoned properties to the south; and

WHEREAS, in 2002, the prior owners of the site were granted an easement of necessity over the buffer zone by the Supreme Court of New York State; and

WHEREAS, in 2005, the City Planning Commission determined, pursuant to an application under the College Point Urban Renewal Plan, that an access driveway over the buffer zone was necessary; and

WHEREAS, this portion of the former 25th Road, to be known as Gurino Drive, will provide a roadway that will allow ingress and egress from the site through the buffer zone and 127th Street, a public city street; and

WHEREAS, a Homeowner's Association shall be formed for the purposes of maintaining the common roadway, underground utilities, landscaping, sidewalks, curbs, and fencing; and

WHEREAS, by letter dated March 5, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 7, 2006, acting on Department of Buildings Application Nos. 402031957, 402031948, 402031939, and 402031920, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 8, 2007"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the lot subdivision shall be as approved by DOB;

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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 10, 2007.

Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard, Block 3122, Lot 213, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for continued hearing.

287-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: 32-42 33 Street, LLC, owner.

SUBJECT – Application September 15, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John , Eric Hantzopolous, Madeleine Henley, George Mi, Laurel Mei Turbin and Mary Orisses.

For Administration: Deborah Glikin, Department of Buildings.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for continued hearing.

300-06-A

APPLICANT – Eric Palatnik, P.C., for Tony Wan Yiu Cheng, owner.

SUBJECT – Application November 14, 2006 – Proposed construction of a 4 story mixed use building which extends into the mapped street (44th Avenue) which is contrary to Section 35 of the General City Law. C2-5/R6-B zoning district.

PREMISES AFFECTED – 43-17 104th Street, north side of the corner formed by the intersection of 44th Street and 104th Avenue, Block 1987, Lot 67, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for continued hearing.

232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for

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17-07-BZY, 18-07-BZY, 19-07-BZY & 20-07-BZY thru 31-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5000 and 5020 Iselin Avenue, 421 West 250th Street, Grosvenor Avenue and Goodridge Avenue, Block 5831, 5829, 5830 and 5839, Lots 10, 20, 30, 4018, 4025, 3912, 3920, 3940, 3630, 3635, 40, 50, 60 and 70, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most and Neil Strandberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 12:20 P.M.

REGULAR MEETING TUESDAY AFTERNOON, APRIL 10, 2007 1:30 P.M.

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

ZONING CALENDAR

118-06-BZ

APPLICANT– Harold Weinberg, P.E., for Moshe Cohn, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage, open space and floor area, ZR §23-141(a) and rear yard, ZR §23-47 in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beaumont Street, east side, 220' north of Hampton Avenue and Shore Boulevard, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 302169258, reads in pertinent part:

“Proposed enlargement of the one family residence in an R3-1 zoning district:

1. Extends the degree of non-compliance with respect to lot coverage and is contrary to Sections 23-141 and 54-31 of the Zoning Resolution (ZR).
2. Extends the degree of non-compliance with respect to floor area ratio and open space and is contrary to Sections 23-141 and 54-31 ZR.
3. Extends the degree of non-compliance with respect to rear yard and is contrary to Section 23-47 ZR and 54-31.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for lot coverage, floor area, FAR, open space, and rear yard, contrary to ZR §§ 23-141, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on February 6, 2007, after due notice by publication in *The City Record*, with a continued hearing on March 6, 2007, and then to decision on April 10, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

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

WHEREAS, the subject site is located on the east side of Beaumont Street, between Hampton Avenue and Shore Boulevard; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a 2,186 sq. ft. (0.55 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,186 sq. ft. (0.55 FAR) to 4,048 sq. ft. (1.01 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, including the attic allowance); and

WHEREAS, the proposed enlargement will decrease the open space from 2,576 sq. ft. to 2,306.5 sq. ft. (a minimum open space of 2,600 sq. ft. is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 21'-6 1/4" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not

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located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to clearly identify which portions of the existing building would be retained; and

WHEREAS, in response, the applicant submitted drawing, which identify the portions of the building that will be retained; and

WHEREAS, additionally, the Board asked the applicant to provide a streetscape which identifies the perimeter wall and total heights of the homes on the subject block; and

WHEREAS, in response, the applicant submitted a streetscape, which identifies the perimeter wall and total heights of three homes on each side of the subject home; and

WHEREAS, these heights, some of which the applicant states were interpolated, represent a range in perimeter wall heights from 13'-3" to 29'-8" and total heights from 32'-0" to 35'-0"; and

WHEREAS, the Board notes that the proposed enlargement will result in a home with a perimeter wall height of 21'-0" and a total height of 28'-6", which is compatible with the homes on the subject block; 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, Board finds that the proposed project will not interfere with any pending public improvement project; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for lot coverage, floor area, FAR, open space, and rear yard, contrary to ZR §§ 23-141, 23-47, and 54-31; *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 November 30, 2006" –(2) sheets and "Received March 1, 2007" – (9) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 660.9 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,048 sq. ft., a total FAR of 1.01, a perimeter wall height of 21'-0", total height of 28'-6", a front yard of 15'-6 ¾", a rear yard of 21'-6 ¼", and open space of 2,306.5 sq. ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, April 10, 2007.

177-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 1840 EMAB LLC, owner.

SUBJECT – Application August 16, 2006 – Special permit (§§11-411, 11-413). On a lot consisting of 9,700 SF, in a C2-2 in R3A district, permission sought to legalize auto repair and sale of used cars (UG 16). The existing and proposed FAR is .14 for the one-story commercial building. DOB Objection: Section 32-25: Auto repair and auto sales (UG16) not permitted in C2-2 district.

PREMISES AFFECTED – 1840 Richmond Terrace, Clove Road and Bodine Street, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 9, 2006, acting on Department of Buildings Application No. 500792975, reads in pertinent part:

"Proposed use of the premises for an automotive repair shop and sale of used cars, uses in Use Group 16, are not permitted as-of-right in a C2-2 district and are contrary to Section 32-25 Zoning Resolution and therefore referred to Board of Standards and Appeals.;" and

WHEREAS, this is an application for a reinstatement of a

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prior Board approval, pursuant to ZR § 11-411, and a legalization of a change in use to an automotive repair shop with the sale of used cars, pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on January 23, 2007, after due notice by publication in the *City Record*, with a continued hearing on March 6, 2007, and then to decision on April 10, 2007; and

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

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

WHEREAS, the Staten Island Borough President James P. Molinaro recommends disapproval of this application, citing concerns that the site is not operated in compliance with the prior grants; and

WHEREAS, the North Shore Waterfront Conservancy of Staten Island provided testimony in opposition to this application, citing environmental concerns; and

WHEREAS, the premises is located on the southeast corner of Richmond Terrace and Clove Road, and is within a C2-2 (R3-2) zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 9,700 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,347.78 sq. ft. automotive repair shop and used car sales area, with accessory parking for vehicles awaiting service; and

WHEREAS, on April 9, 1957, under BSA Cal. No. 51-56-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses at the site for a term of 15 years; and

WHEREAS, subsequently, the grant was amended to permit the addition of an advertising sign and to permit a ten-year extension of term, to expire on March 13, 1983; and

WHEREAS, on September 5, 1989, under BSA Cal. No. 80-88-BZ, the Board granted a special permit pursuant to ZR § 73-211 to allow the legalization of an automotive service station for a period of ten years; and

WHEREAS, on March 18, 2003, under BSA Cal. No. 322-02-BZ, the Board granted a special permit, pursuant to ZR § 73-211, to permit the re-establishment of the expired variance allowing the automotive service station use and certain site modifications, to expire on March 18, 2013; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 51-56-BZ, and to change the use permitted under the variance from a gasoline service station to an automotive repair shop with the sale of used cars for a term of ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has been no enlargement to the zoning lot or the building; and

WHEREAS, the applicant also proposes to legalize a change in the use at the site from gasoline service station to automotive repair station with the sale of used cars; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the Board notes that the change in use, from

the gasoline service station permitted under the original variance to an automotive repair shop including the sale of used cars is permitted pursuant to ZR § 11-413; and

WHEREAS, initially, the applicant proposed a parking layout with accessory parking abutting the area used for the display of cars; and

WHEREAS, at hearing, the Board expressed concern that the site could not accommodate the requested number of cars at the site and directed the applicant to review the parking layout to improve traffic circulation; and

WHEREAS, the applicant submitted a revised site plan, which limited the accessory parking to the southern side of the site away from the display area for nine used cars for sale; and

WHEREAS, further, the applicant states that an employee of the car sales business would park and move the cars for sale; and

WHEREAS, the Board agreed that the revised parking layout and the removal of two curb cuts near the intersection of Clove Road and Richmond Terrace would improve the traffic circulation; and

WHEREAS, the applicant also agreed to plant and maintain landscaping in front of the car display and along the south and east lot lines to provide screening from adjacent residential uses; and

WHEREAS, the revised site plan also provides for chain link fencing of a height of 8'-0" to be installed and maintained in front of the car display area; and

WHEREAS, as to signage, the Board asked the applicant to ensure that all signs at the site comply with zoning district regulations; and

WHEREAS, while the Board notes that the Community Board and the Borough President do not approve of the proposed use of the site, the Board finds that such use is compatible with existing land uses in the area; and

WHEREAS, specifically, the Board notes the following conditions: (1) the site is within a C2-2 overlay, (2) there is a C8-2 zoning district across Clove Road, which permits a variety of commercial uses including automotive repair, (3) there is an M1-1 zoning district across Richmond Terrace where a sanitation plant is located, and (4) the noted landscaping and fencing provide screening from the adjacent residential uses; and

WHEREAS, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413; and

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 under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval and a legalization of a change in use to an automotive repair shop with the sale of used cars; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 21, 2007"-(4) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire

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on April 10, 2017;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT the number of used cars for sale on display at the site shall be limited to nine;

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

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

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

THAT all signage shall comply with zoning district regulations;

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

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

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

Adopted by the Board of Standards and Appeals, April 10, 2007.

214-06-BZ

APPLICANT– Walter T. Gorman, P.E., for Sidney Esikoff & Norman Fieber, owners.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1953. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, northwest corner of 197th Street, Block 10509, Lot 265, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, August 1, 2006, acting on Department of Buildings Application No. 402183622, reads in pertinent part:

“Proposal to extend the term of the variance which expired on April 22, 2000 is contrary to the latest resolution adopted by the Board of Standards and Appeals under Cal. No. 673-53-BZ and contrary to C.O. # Q195693 which expired on April 22, 1990 and must, therefore, be referred back to the BSA for reinstatement of the variance since the variance

granted under Cal. No. 673-53-BZ had lapsed.”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval to permit a gasoline service station, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in the *City Record*, with continued hearings on January 30, 2007 and March 6, 2007, and then to decision on April 10, 2007; and

WHEREAS, Community Board 8, Queens, recommends approval of this application for a three-year term on condition that the towing business at the site cease operations, the sidewalk be repaired and maintained free of snow, and that full service gas pumping will be available to patrons with disabilities without additional charge; and

WHEREAS, the premises is located on the northwest corner of Hillside Avenue and 197th Street, and is within an R3-2 zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 16,658.51 sq. ft.; and

WHEREAS, the site is currently occupied by 2,168 sq. ft. accessory use building and two gasoline pump islands; and

WHEREAS, on February 23, 1955, under BSA Cal. No. 673-53-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses and the construction of a two-story dwelling at the site for a term of 15 years; and

WHEREAS, the applicant represents that at some point after 1955, the original Lot 265 was divided into the subject site (Lot 265) and an adjacent site occupied by the residential use (Lot 335); and

WHEREAS, the portion of the site attributed to Lot 335 and the residential use are no longer subject to the variance; and

WHEREAS, subsequently, the grant was amended to permit site modifications and to extend the term; and

WHEREAS, on June 4, 1991, the grant was extended for a period of ten years, to expire on April 22, 2000; and

WHEREAS, subsequently, the grant was reopened on three occasions to permit an extension of term to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy has not been obtained since the April 22, 1990 expiration; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 673-53-BZ, for a term of 15 years; and

WHEREAS, pursuant to ZR §11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has been no enlargement to the zoning lot and that a minor enlargement to the west side of the service building will be removed; and

WHEREAS, initially, the applicant proposed to maintain all three of the curb cuts on Hillside Avenue; and

WHEREAS, at hearing, the Board expressed concern that the middle curb cut may interfere with bus traffic and pedestrian access to the bus stop; and

WHEREAS, in response, the applicant stated that a

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request would be made to the Department of Transportation and the MTA to request that the bus stop be relocated; and

WHEREAS, the applicant submitted a letter from the MTA, dated January 30, 2007, which states that it has plans to relocate the subject bus stop; and

WHEREAS, because the proposed new location of the bus stop was not specified and because a timeframe was not stated for the relocation, the Board requested that the middle curb cut be removed; and

WHEREAS, the applicant revised the plans to provide for the removal of the middle curb cut; and

WHEREAS, additionally, the Board directed the applicant to remove any non-complying signage and to ensure that all signage at the site complies with C1 zoning district regulations; and

WHEREAS, the applicant submitted photographs of the site reflecting that all non-complying signage had been removed; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411; and

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 under ZR §11-411, for a reinstatement of a prior Board approval of a gasoline service station; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 4, 2007"-(5) sheets; and *on further condition*:

THAT this grant shall be for a term of 15 years, to expire on April 10, 2022;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

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

THAT a new certificate of occupancy shall be obtained within one year of the date of this grant, on April 10, 2008;

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

THAT the layout of the property, and location and size of the fence shall be as approved by the Department of Buildings;

THAT all signage shall comply with C1 zoning district regulations;

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

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

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

Adopted by the Board of Standards and Appeals, April 10, 2007.

240-06-BZ thru 251-06-BZ

APPLICANT – Manat, Phelps & Phillips, LLP, for St. John’s University, owner.

SUBJECT – Application September 15, 2006 – Variance (§72-21) to permit a five foot encroachment in the required front setback. The proposal would convert the uses in the twelve subject buildings to community facility (dormitory Use Group 3A), an as-of-right use in the R4 zoning district. The proposal is contrary to the required front yard setback (§24-34).

PREMISES AFFECTED – 147-04 to 147-30 Union Turnpike, Block 6715, Lots 25-37, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Carol Rosenthal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 18, 2006, acting on Department of Buildings Application Nos. 402429323, 402429797, 402429788, 402429779, 402429760, 402429751, 402429742, 402429733, 402429724, 402429332, 402429341, and 402429350, reads in pertinent part:

“Proposed front yard for Community Facility development is contrary to Section 24-34 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the conversion of 12 existing three-story three-unit residential buildings from residential use (Use Group 2) to community facility use (Use Group 3A), which results in a new non-compliance as to front yard requirements and is contrary to ZR § 24-34; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in the *City Record*, and then to decision on April 10, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Commissioner Ottley-Brown; and

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of the application; and

WHEREAS, the Parkway Village Cooperative initially opposed the application, but the Cooperative’s Board has withdrawn its objections; and

WHEREAS, the Parkway Village Preservation Society provided testimony in opposition to the application, citing concerns that the site would be redeveloped with a building that would not be compatible with historic preservation goals; and

WHEREAS, the Parkway Village Tenants’ Association

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provided testimony in opposition to the application, citing concerns about not being represented by the Cooperative Board's decision to support the application; and

WHEREAS, the application is brought on behalf of St. John's University (the "University"); and

WHEREAS, the site is located on a superblock which was created in 1983 and measures approximately 1,606,574 sq. ft. (36.88 acres) and is within an R4 zoning district; and

WHEREAS, the subject zoning lot includes the 12 referenced tax lots (the "University Site") and is located at the north side of the block with frontage on Union Turnpike, between Main Street and 150th Street; and

WHEREAS, the majority of the zoning lot is occupied by the 34-acre Parkway Village housing cooperative of approximately 109 separate buildings; there are 16 additional tax lots (the "Sixteen Lots") located at the intersection of Goethals Avenue and Parsons Boulevard, on the easternmost edge of the zoning lot; and

WHEREAS, as per the Rules of Practice and Procedure, the applicant endeavored to secure consent from all of the individual owners on the common zoning lot prior to submitting the subject application; and

WHEREAS, the applicant received consent from the Park Village Cooperative; and

WHEREAS, however, the applicant was unable to secure consent from the owners of the Sixteen Lots; and

WHEREAS, the applicant provided evidence documenting the efforts to obtain consent from the owners of the Sixteen Lots; the efforts resulted in one response in objection to the application; and

WHEREAS, the applicant represents that a Declaration of Restrictions, dated July 28, 1983, was executed when Parkway Village was completed, which requires that all successors and assigns of the zoning lot shall cooperate in the development of what is now the University Site; and

WHEREAS, accordingly, the applicant requests a waiver of the Rules of Practice and Procedure to permit the application without consent from each owner on the zoning lot; and

WHEREAS, the Board reviewed the evidence detailing the efforts to reach the owners of the Sixteen Lots; and

WHEREAS, the Board notes that the Sixteen Lots are the equivalent distance of four blocks away from the University Site and do not share street frontage with it; the waiver affects only the Union Turnpike frontage; and

WHEREAS, based upon the evidence submitted, the Board finds a waiver of the Rules of Practice and Procedure is appropriate and accepts the application on behalf of the University, with the consent of Parkway Village but not the owners of the Sixteen Lots; and

WHEREAS, the University Site has a lot area of 25,309.8 sq. ft.; and

WHEREAS, the site is occupied by 12 attached three-story three-family dwellings divided into two groups of six attached buildings; and

WHEREAS, the total floor area for the 12 buildings is 42,596.54 sq. ft., which amounts to approximately 1.7 FAR on the University Site and 0.026 FAR on the zoning lot; the combined FAR of all residential development on the zoning lot

is 0.499 FAR (0.75 FAR is the maximum permitted for residential use); and

WHEREAS, the buildings are currently used by the University for residential use (Use Group 2); and

WHEREAS, the applicant proposes to maintain the existing buildings' envelope, but to convert the buildings to community facility use to be used by the University as a dormitory (Use Group 2A); and

WHEREAS, the applicant proposes to maintain the existing floor area, but to convert all 42,596 sq. ft. from residential to community facility use; and

WHEREAS, the result of this conversion, which will not have any effect on the total amount of floor area on the University Site or the zoning lot, will be a community facility FAR of 0.026 and a residential FAR of 0.47 on the zoning lot; the maximum permitted community facility and total FAR is 2.0; and

WHEREAS, all of the apartments are generous in size, ranging from 1,132.9 sq. ft. to 1,210 sq. ft. for one, two, and three bedrooms; and

WHEREAS, the applicant proposes to increase the occupancy of each apartment in order to accommodate more students; and

WHEREAS, however, under the Housing Maintenance Code, the residential occupancy of the apartments is limited to three un-related occupants per dwelling, but the community facility use regulations permit an increased occupancy of individuals who are not related to each other; and

WHEREAS, accordingly, the applicant proposes to convert the use of all of the buildings to University dormitory use in order to better accommodate its housing demand; and

WHEREAS, although more floor area is permitted for a community facility use than for a residential use within the R4 zoning district, a 15-ft. front yard is required for the community facility use and only a ten ft. front yard, like the existing one which will be maintained, is permitted for residential uses; and

WHEREAS, accordingly, the applicant seeks a variance to permit a community facility use without the required 15-ft. front yard; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the shallow depth of the University Site and (2) the existing buildings onsite; and

WHEREAS, as to site's dimensions, the University Site is 71.75 feet deep with a width of 352.75 feet; and

WHEREAS, further, the applicant represents that the shallow depth does not permit much flexibility in where to situate the buildings on the site while still allowing for efficient residential floor plates; and

WHEREAS, the applicant represents that it would be infeasible to set the buildings further back on the site and still provide the required parking (30 spaces and 36 are provided), access to the buildings, and access to the remainder of the zoning lot from Union Turnpike; and

WHEREAS, as to the existing conditions of the superblock, the applicant states that the property is surrounded on three sides by Parkway Village, a large scale development

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situated around a central unmapped street; and

WHEREAS, the applicant represents that setting the University buildings back on the site would be less compatible with these adjacent uses; and

WHEREAS, the applicant represents that the proposed use at the site would not be feasible if the existing buildings could not be re-used and the 15-ft. front yard were required; and

WHEREAS, in addition, the applicant represents that the variance request is necessitated by the University's programmatic needs; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the University, which necessitate the requested waivers: (1) a significant increase in attendance; (2) a need to provide student housing for students drawn from outside the immediate area; and (3) a need to remain competitive by providing affordable student housing with easy access to campus facilities; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the site, when considered in conjunction with the programmatic needs of the University, create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, since the University is a non-profit educational institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, specifically, the applicant represents that the site fronts on Union Turnpike, a wide six-lane street with a median; and

WHEREAS, the applicant represents that directly across the street is a C1-2 zoning district, which includes a gas station, several restaurants, and other businesses; and

WHEREAS, as noted, the adjacent site at the rear is developed with one and two-story residential buildings comprising the 685-unit cooperative Parkway Village; and

WHEREAS, the applicant represents that the current occupancy of the University buildings is 108 and that the projected occupancy will be approximately 162; and

WHEREAS, the applicant notes that the existing 36 dwelling units could house 36 families with no limitation on the number of occupants; and

WHEREAS, thus, the applicant asserts that the proposed use may actually result in fewer occupants than what is permitted as of right; and

WHEREAS, the applicant represents that the population density of Parkway Village is comparable to what is proposed; and

WHEREAS, the Board notes that the applicant does not propose any new construction and therefore the use change will not alter the appearance of the existing buildings and their compatibility with the surrounding area; and

WHEREAS, additionally, the Board notes that the maintenance of the ten-ft. front yard, which complies with zoning district regulations for one use, but not for the proposed use, will not have a tangible impact on nearby uses; and

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

WHEREAS, the applicant states that the hardship was not self-created; and

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

WHEREAS, the applicant represents that the requested waiver is the minimum necessary to accommodate the current and projected needs of the University; and

WHEREAS, the applicant represents that although more floor area is available for a community facility use on the University Site, the buildings will be maintained so as to minimize impact on nearby uses; and

WHEREAS, the Board notes that the increased number of occupants is the minimum necessary to accommodate the University's programmatic needs at the site; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the University to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as a Type II action pursuant to Sections 617.6(h) and 617.12 of 6 NYCRR; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 72-21, to permit, within an R4 zoning district, the conversion of 12 existing three-story three-unit residential buildings from residential use (Use Group 2) to community facility use (Use Group 3A), which results in a new non-compliance as to front yard requirements and is contrary to ZR § 24-34, *on condition* that the use and occupancy shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 9, 2007"-(17) sheets and "Received March 8, 2007"-(1) sheet; and *on further condition*:

THAT any change in the use or ownership of the buildings shall be approved by the Board;

THAT the total floor area of the buildings on tax lots 25-37 shall not exceed 42,596 sq. ft. (0.026 FAR on the zoning lot), as illustrated on the BSA-approved plans;

THAT the use and occupancy of the buildings shall be as per Department of Buildings approval;

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

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jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, April 10, 2007.

260-06-BZ

APPLICANT – J. Owen Zurhellen, III, for Charlton Cooperative Corp., owner; TRI IPPON, LLC, lessee.

SUBJECT – Application September 26, 2006 – Special Permit (§73-36) to allow the proposed PCE on the first floor in a six-story (plus basement) building located in a M1-6 zoning district. The proposal is contrary to §42-00 and §42-31.

PREMISES AFFECTED – 547 Greenwich Street, a/k/a 112 Charlton Street, southeast corner of Greenwich and Charlton Streets, Block 597, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: J. Owen Zurhellen, III and Doris Diether, CB #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 18, 2006, acting on Department of Buildings Application No. 104542853, reads in pertinent part:

“Proposed Physical Culture Establishment located in M1-6 zoning district is contrary to ZR 42-31 and requires special permit of the Board of Standards and Appeals.”; and

WHEREAS, this is an application under ZR §§73-36 and 73-03, to permit, on a site within an M1-6 zoning district, the establishment of a physical culture establishment (PCE) on a portion of the first floor of an existing six-story mixed-use residential/commercial building, contrary to ZR §42-00; and

WHEREAS, a public hearing was held on this application on March 6, 2007 after due notice by publication in *The City Record*, and then to decision on April 10, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan,

recommends approval of this application; and

WHEREAS, the residential cooperative which occupies the remainder of the subject building provided a letter in support of the proposed use; and

WHEREAS, the operator of the adjacent restaurant provided testimony in support of the application; and

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

WHEREAS, the site is occupied by a six-story mixed-use residential/commercial building; and

WHEREAS, on June 10, 1980, the Board granted a variance pursuant to BSA Cal. No. 1092-79-BZ, to permit the conversion of the building for residential use; and

WHEREAS, the PCE will occupy a total of 1,725 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as Oishi Judo Club; and

WHEREAS, the applicant represents that the PCE will offer classes and instruction for physical improvement and the martial art of Judo; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 9:00 a.m. to 9:00 p.m.; and Saturday 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that an acoustic analysis was performed and that special sound attenuation measures will be provided, as indicated on the plans; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA019M dated September 25, 2006; and

WHEREAS, the EAS documents show that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous

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Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, the establishment of a physical culture establishment on a portion of the first floor of an existing six-story mixed-use residential/commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 18, 2006”-(3) sheets and “Received March 16, 2007”-(1) sheet and *on further condition*:

THAT the term of this grant shall expire on April 10, 2017;

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

THAT the hours of operation shall be limited to: Monday through Friday, 9:00 a.m. to 9:00 p.m.; and Saturday 9:00 a.m. to 3:00 p.m.;

THAT sound attenuation measures shall be installed and maintained as per the approved plans;

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 10, 2007.

294-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for John and Steven, Inc., owner; Club Fitness NY, lessee.

SUBJECT – Application November 8, 2006 – Special Permit (§73-36) to allow the proposed PCE on the second

and third floors in a three-story building. The Premises is located in a C2-2 zoning district. The proposal is contrary to Section 32-31.

PREMISES AFFECTED – 31-11 Broadway, between 31st and 32nd Street, Block 613, Lots 1 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Christopher Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 17, 2006, acting on Department of Buildings Application No. 402278600, reads in pertinent part:

“Per ZR Section 32-31, proposed Physical Culture Establishment is not permitted as-of-right in a C2-2 Commercial District.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-2 (R6) zoning district and partially within a C2-2 (R6B) zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar level, and first, second, and third floors of adjoining two- and three-story commercial buildings, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City Record*, and then to decision on April 10, 2007; and

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

WHEREAS, the subject site is located on the north side of Broadway, between 31st Street and 32nd Street; and

WHEREAS, the site comprises two lots; Lot 1 is occupied by a three-story commercial building and the adjacent Lot 4 is occupied by a two-story commercial building; and

WHEREAS, the applicant represents that the two buildings and two lots will be combined to provide for the PCE entrance and several physical therapy rooms on the first floor, several physical therapy rooms, locker rooms, a boxing ring, a yoga center, exercise equipment and the connection between the two buildings on the second floor, and exercise equipment on the third floor; and

WHEREAS, the PCE will occupy a total floor area of 27,271 sq. ft. in the two buildings; and

WHEREAS, the premises is the subject of two prior Board grants; and

WHEREAS, on December 20, 1921, under BSA Cal. No. 628-21-BZ, the Board granted a variance to permit the construction of a movie theater in what was formerly a residential district; the theater has since been demolished; and

WHEREAS, on October 17, 1967, under BSA Cal. No.

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97-67-BZ, the Board granted a variance to permit the use of the cellar to include an eating and drinking establishment with cabaret; this establishment is still operating at the site; and

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

WHEREAS, the applicant represents that the PCE will offer classes and instruction for physical improvement including yoga, weight-lifting, dance, and martial arts, and facilities for massage therapy; and

WHEREAS, the proposed hours of operation are: Monday through Sunday, 5:00 a.m. to midnight; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA036Q dated November 4, 2006; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-2 (R6)

zoning district and partially within a C2-2 (R6B) zoning district, the establishment of a physical culture establishment on portions of the cellar level, and first, second, and third floors of adjoining two- and three-story commercial buildings, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 4, 2007"- (7) sheets and *on further condition*:

THAT the term of this grant shall expire on April 10, 2017;

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

THAT the hours of operation shall be limited to: Monday through Sunday, 5:00 a.m. to midnight;

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 10, 2007.

316-06-BZ

APPLICANT– Jesse Masyr, Esq., Wachtel & Masyr, LLP, for Blaseboro Realty, LLC, owner; New York Botanical Garden, lessee.

SUBJECT – Application December 7, 2006 – Variance (§72-21) to permit the construction of the proposed accessory parking garage (UG4) with 825 parking spaces on six stories, in one cellar level and on the roof. The Premises is located in a C8-2 zoning district. The proposal is requesting waivers with respect to setback (§33-432) and parking (§36-11 and §36-12).

PREMISES AFFECTED – 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lots 1 & 4, Borough of The Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ethan Goodman and Rosemary Gines.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 13, 2006, acting on Department of Buildings Application No. 201088492, reads in pertinent part:

“The proposed accessory group parking facility (Use Group 4) to be located within a C8-2 zoning district is contrary to the provisions of zoning resolution Sections 33-43 pertaining to height and setback, 36-11 pertaining to roof parking and 36-12 pertaining to the maximum size of an accessory group parking facility, and requires a variance from the NYC Board of Standards and Appeals.”;

WHEREAS, this is an application under ZR § 72-21, to permit an accessory parking facility to an existing community facility in excess of 150 spaces with rooftop parking, contrary to ZR §§ 36-11 and 36-12, in a structure which does not comply with the zoning requirements for height and setback, contrary to ZR § 33-43; and

WHEREAS, the application is brought on behalf of the New York Botanical Garden (the “Garden”), a non-profit institution; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in the *City Record*, and then to decision on April 10, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 7, Bronx, recommends approval of this application; and

WHEREAS, Bronx Borough President Adolfo Carrion, Jr., recommends approval of this application; and

WHEREAS, certain neighbors provided testimony in support of the proposed facility; and

WHEREAS, the site is located on the south side of Webster Avenue, between Bedford Park Boulevard and Botanical Square South; and

WHEREAS, the site is located within a C8-2 zoning district; and

WHEREAS, the site comprises two tax lots with a total lot area of 42,251 sq. ft. and is bounded by Webster Avenue, Bedford Park Boulevard, Botanical Square, and the Metro-North Botanical Garden station and railroad tracks; and

WHEREAS, the site has 193 feet of frontage on Bedford Park Boulevard, 200 feet of frontage on Webster Avenue, and 206 feet of frontage on Botanical Square South; and

WHEREAS, the site is occupied by an abandoned gasoline station and a one-story warehouse for a welding and boiler repair business (Use Group 16); the business is relocating and all structures will be demolished; and

WHEREAS, the former gasoline station was the subject of a variance, under BSA Cal. No. 108-32-BZ, to permit its construction; and

WHEREAS, the Garden, which was created by an Act of

the New York State legislature in 1891, occupies a 250-acre campus and contains more than 10,000 trees and more than one million plants; and

WHEREAS, the Garden offers programs and facilities for education, horticulture, and science on its grounds and within its historic buildings; it was designated a National Historic Landmark in 1967; and

WHEREAS, the site is located approximately 400 feet across the street from the Garden’s western boundary; and

WHEREAS, the applicant proposes to construct a six-story with cellar and rooftop parking garage accessory to the Garden, with a height of 85 feet (60 feet is the maximum permitted before a setback), without a setback (setbacks of 15 feet on wide streets and 20 feet on narrow streets are required); and

WHEREAS, the applicant proposes to construct the 123,600 sq. ft. garage to accommodate 825 parking spaces; and

WHEREAS, the applicant states that the variance is necessitated both by the programmatic needs of the Garden and by the inherent irregularities of the site; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Garden: (1) a need to consolidate and centralize accessory parking; and (2) a need to satisfy visitor parking demand while alleviating the parking burden on Garden roadways, nearby institutions’ parking garages, and neighborhood streets; and

WHEREAS, the applicant states that to adequately address these two needs, a single parking garage with a significant number of spaces is required; and

WHEREAS, however, in order to accommodate the requisite number of spaces with the allowable FAR on the site, the applicant requires a variance pursuant to ZR § 72-21 for height and setback, to allow the floorplates of the garage to most efficiently accommodate the needed parking; and

WHEREAS, additional waivers are required to permit accessory group parking of this size and rooftop parking; these waivers are available through special permits, but are also justifiable as part of the instant variance application; and

WHEREAS, even though the waivers are part of the variance, the applicant nonetheless addresses the special permit findings, pursuant to ZR § 73-482, for an accessory group parking facility of more than 150 spaces, and ZR § 73-49, to permit roof parking, as discussed below; and

WHEREAS, the applicant states that the following are unique physical conditions which, when considered in light of the established program needs, create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) a substantial change in grade between Bedford Park Boulevard and the bridge over the Metro-North railroad tracks and the corner of Webster Avenue and Botanical Square South, (2) the adjacency of the Metro-North railroad tracks, and (3) the presence of soil contamination; and

WHEREAS, as to the grade change between Bedford Park Boulevard and Botanical Square South, the applicant represents that there is a difference of 17 feet between the two locations; and

WHEREAS, the applicant represents that this condition, coupled with the requirement for setbacks above the fourth

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floor on three sides (15 feet along Webster Avenue and Bedford Park Boulevard, and 20 feet along Botanical Square South), would result in a complying building with inefficient and constrained floor plates at the higher floors; and

WHEREAS, further, the applicant represents that due to the slope, the setbacks would be on different levels at different sides of the building, further constraining the floor plates; and

WHEREAS, as to the specific effect that this would have, the applicant represents that the resulting garage would not operate efficiently due to the high ratio of space allocated to ramps versus space allocated to parking; the applicant also notes that this condition would complicate and impinge upon circulation patterns; and

WHEREAS, by way of comparison, the applicant notes that in the proposed garage, the area of each parking level constitutes approximately 57 percent parking spaces and 43 percent circulation ramps and aisles; in the as of right scenario, the allocation would be approximately 38 percent parking spaces and 62 percent circulation ramps and aisles; and

WHEREAS, the applicant represents that the loss of efficiency is due to one full aisle of parking being lost on two of the four outer walls; and

WHEREAS, in the complying garage scenario, each full level would be able to accommodate a maximum of approximately 73 spaces, with the ground floor accommodating even fewer; and

WHEREAS, the applicant concedes that a parking facility is an of right use in the subject zoning district and that special permits are available to address the number of parking spaces and rooftop parking; in other words, the special permits could permit the required parking on the site; and

WHEREAS, however, the applicant contends that to achieve the desired 825 spaces within the height and setback requirements, the garage would have to either (1) rise to at least 12 levels, which is not compatible with the neighborhood character or (2) provide four levels below grade, which is not feasible for reasons discussed below; and

WHEREAS, thus, the slope condition prevents a complying garage from fulfilling the programmatic need of providing a viable parking structure with sufficient parking spaces; and

WHEREAS, as to the adjacency of the railroad tracks, the entire 224.95-ft. southeast boundary of the site abuts the Metro-North Botanical Gardens train station and is within 25 feet of the railroad tracks and the passenger platform; and

WHEREAS, the applicant has identified additional costs related to construction precautions that arise from this condition; and

WHEREAS, these costs further detract from the viability of a complying garage; and

WHEREAS, as to the soil issues, the applicant represents that a Phase I environmental assessment indicated that the site has been historically used for concrete block manufacturing, pipe fabrication, warehousing, welding, auto repair, and a gasoline station; and

WHEREAS, further, the applicant represents that subsurface investigation reports identified petroleum contamination in the soil and groundwater; and

WHEREAS, while one sub-grade level is proposed, the applicant claims that remediation of the soil and groundwater to the extent required for the installation of three more sub-grade levels is cost-prohibitive; and

WHEREAS, as with the costs related to protecting the train station and railroad tracks, such increased remediation costs would further diminish the viability of a complying garage; and

WHEREAS, accordingly, based upon the above, the Board finds that the site's unique physical conditions, when considered in conjunction with the programmatic needs of the Garden, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Garden is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, specifically, the applicant represents that the site is located in a C8-2 zoning district and such districts are characterized by heavy commercial and manufacturing uses such as automobile showrooms, repair shops, warehouses, gasoline stations, and car washes; and

WHEREAS, the applicant represents that the historic use of the site was as a gasoline station and welding and boiler repair warehouse; and

WHEREAS, further, the applicant represents that the uses in the surrounding area include a mix of commercial, industrial, auto-related, railroad, and residential uses; and

WHEREAS, adjacent uses include the railroad tracks and station to the east, two-story commercial and industrial buildings to the west, additional commercial and auto-related uses to the south, and a six-story residential building to the north; and

WHEREAS, the applicant has designed the garage to be compatible with the neighborhood and to reflect the mission of the Garden; the innovative design will accommodate the growth of vegetation on three of its facades and wire trellises on the fourth; and

WHEREAS, the north façade, which is across the street from a six-story residential building, will contain a louvered screen set behind a vegetative wall intended to block headlights from shining into residential windows; and

WHEREAS, the roof will be buffered on all frontages by opaque planters; and

WHEREAS, the circulation of the garage is designed to minimize impact on the surrounding streets and includes queuing space for 20 cars, with a total of four ticket-dispensing lanes to speed the flow of cars into the garage; and

WHEREAS, additionally, all cars will be directed to exit the garage by making right turns onto either Webster

MINUTES

Avenue or Botanical Square South; the applicant will provide signage to direct traffic circulation; and

WHEREAS, the applicant represents that the hours of operation of the facility will be limited to correspond to the hours of operation of the Garden; and

WHEREAS, the Board notes that the applicant undertook extensive studies to try to identify space within the Garden's campus to accommodate the parking demand, but was unable to create a plan that would satisfy the parking demand without interfering with the programmatic needs; and

WHEREAS, the applicant conducted an analysis of traffic circulation around the site and concluded that the proposed entrance and exit plan and the maintenance of Botanical Square South as a one-way street would be most compatible; and

WHEREAS, the Board notes that, by letter dated March 13, 2007, the Department of Transportation (DOT) states that it has reviewed the proposed traffic circulation plan, including the maintenance of Botanical Square South as a one-way street, and does not have any objections; and

WHEREAS, the Board notes that the proposed project would help relieve the impact the Garden's insufficient parking has on the surrounding neighborhood streets; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Garden could occur on the existing site given its unique conditions; and

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

WHEREAS, the applicant represents that the requested height and setback waiver and the inclusion of 825 parking spaces, and rooftop parking are the minimum waivers necessary to accommodate the current and projected needs while alleviating the parking problems; and

WHEREAS, the applicant represents that an as of right community facility building could rise to a height of more than 115 feet by providing merely a ten-ft. setback from Webster Avenue and Bedford Park Boulevard, and a 15-ft. setback from Botanical Square South; and

WHEREAS, the applicant states that the proposed garage, at a height of 85 feet, is considerably shorter and requires setbacks at only the top two stories; and

WHEREAS, additionally, the proposed garage does not use all of the floor area available to a community facility in the zoning district; an additional 87,000 sq. ft. are available; and

WHEREAS, the applicant performed an analysis that demonstrated that, due to the lot's slope, the garage would have to be altered substantially, and the parking reduced considerably, without the requested waiver; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Garden

to fulfill its programmatic needs; and

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

WHEREAS, as per the standards set by the special permit, pursuant to ZR § 73-482, the Board may permit accessory group parking facilities in excess of 150 spaces in commercial or manufacturing districts, provided the following findings are made: (1) that there is adequate reservoir space to accommodate the vehicular entrance of either ten automobiles or five percent to of the total parking spaces provided, whichever is greater; and (2) the streets providing access to such use are adequate to accommodate the traffic generated; and

WHEREAS, the applicant represents that the proposed 825-parking space facility is not required to provide the specified number of reservoir spaces because automatic ticket machines will be provided at the entrances; the applicant will provide 20 queuing spaces within the garage; and

WHEREAS, the Board notes that this satisfies the requirement; and

WHEREAS, the applicant represents the streets providing access to the proposed accessory garage are adequate to handle traffic generated by the garage; and

WHEREAS, the applicant represents that the proposed garage will have three points of access, including (1) an entrance only on Bedford Park Boulevard, (2) an entrance and exit on Webster Avenue, with exits limited to right turns, and (3) an exit only on Botanical Square South, with a right turn only onto the one-way circle; and

WHEREAS, pedestrian access will be available at the four corners of the building; and

WHEREAS, upon reviewing the traffic analysis and site access plan, the Board agrees that the street network can accommodate the traffic generated by the proposed garage; and

WHEREAS, further, the Board notes that DOT does not object to the proposed traffic circulation plan; and

WHEREAS, based upon the above, the Board agrees that the findings required under § 73-482 have been met; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit accessory off-site parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the proposed garage is designed and located so as not to impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, as noted above, the applicant proposes to install opaque planters and a trellis along the roof line in order to screen the rooftop parking from adjacent uses; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA043X dated

MINUTES

December 6, 2006; and

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

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: December 6, 2006 EAS, the June 2006 Phase I Environmental Site Assessment Report; and the March 2007 Air Quality response submission; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials and Air Quality; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on March 29, 2007 and submitted for proof of recording on April 3, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

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

WHEREAS, based upon the above, the Board agrees that the findings required under ZR § 73-49 have been met; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR §72-21, to permit an accessory parking facility to an existing community facility in excess of 150 spaces with rooftop parking, contrary to ZR §§ 36-11 and 36-12, in a structure which does not comply with the zoning requirements for height and setback, contrary to ZR § 33-43, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 4, 2007"-six (6) sheets and "Received March 29, 2007"-one (1) sheet; and *on further condition*:

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of

Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the total floor area of the garage shall not exceed 123,600 sq. ft. and the total height shall not exceed 85 feet, as illustrated on the BSA-approved plans;

THAT the total number of parking spaces shall not exceed 825;

THAT all lighting on the roof shall be directed down and away from adjacent residential use;

THAT, all landscaping and street trees shall be provided and maintained as per the approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, April 10, 2007.

159-05-BZ

APPLICANT – Vito J. Fossella, P.E., for Antonio Ciccotto, owner.

SUBJECT – Application July 7, 2006 – Variance under ZR §72-21 to allow a three (3) story mixed-use building containing residential use on the upper floors and retail use (UG 6) on the ground and cellar levels on a site zoned R3X and R3X/C2-1; contrary to ZR §22-00.

PREMISES AFFECTED – 880 Annadale Road, located on the west of the corner formed by the intersection of Annadale Road and South Railroad Avenue, Block 6249, Lot 436T, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh EI. Meniawy.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

183-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Dimitrios Spanos.

SUBJECT – Application August 5, 2005 – Variance (§ 72-21) to allow the residential redevelopment and enlargement of an existing two-story commercial building. The proposed multiple dwelling building will be six (6) floors and will contain ground floor commercial space. Twenty (20) dwelling units and ten (10) accessory parking spaces are proposed. The proposal is contrary to use regulations (§42-00). M1-3D district.

MINUTES

PREMISES AFFECTED – 25-09 38th Avenue, north east corner of the intersection of Crescent Street and 38th Avenue, Block 368, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for adjourned hearing.

318-05-BZ

APPLICANT – Marc A. Chiffert, P.E., for 2040 MLK Realty, LLC, owner.

SUBJECT – Application November 1, 2005 – Zoning variance under §72-21 to allow a proposed horizontal enlargement of an existing one-story non-conforming commercial building in an R7-1 district. The proposal calls for Use Group 6 retail use and is contrary to §52-22.

PREMISES AFFECTED – 2040 Dr. MLK JR. Boulevard f/k/a 2040 University Avenue, northeast corner of intersection of West Burnside Avenue and Dr. MLK Jr. Boulevard, Block 3210, Lot 2, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Marc A. Chiffert.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for decision, hearing closed.

425-05-BZ

APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§23-141c and §24-162), front yard (§24-34), side yards (§24-35), lot coverage (§23-141 and §24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 and 104, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 24, 2007, at 1:30 P.M., for adjourned hearing.

31-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Frank Falanga,

owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00.

PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Jordan Most and Mark London.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

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

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

79-06-BZ

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246’ east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Patrick W. Jones.

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

83-06-BZ

APPLICANT– Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application May 2, 2006 – Variance (§72-21) to allow the conversion and two (2) story enlargement of an existing four story industrial building. The proposed multi-family building will contain six (6) floors, ground floor retail use, and fourteen (14) dwelling units. No parking spaces are proposed. The proposal would exceed the maximum floor area ratio (§123-64 (a)) and applicable height and setback requirements (§123-662). The project site is located within the Hunters Point Subdistrict of the Special Long Island City Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lot 26, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for adjourned hearing.

100-06-BZ

APPLICANT– Francis R. Angelino, for Old Gowanus Road, LLC, owner.

SUBJECT – Application May 23, 2006 – Variance (§72-21) to allow a proposed residential building to violate regulations for maximum height (§23-633), minimum dimensions of inner court (§23-851) and permitted obstructions in courts (§ 23-87). The proposed building will contain five (5) dwelling units and three (3) parking spaces. Site is located in an R6B district.

PREMISES AFFECTED – 638-640 President Street, between 4th and 5th Avenues, Block 958, Lots 35 and 36, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Francis R. Angelino, Jack Freeman and Shael Shapiro.

For Opposition: Sheila O’Hara and Mira Jones.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

278-06-BZ

APPLICANT– Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-

21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Christopher Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

65-06-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Zhen Xiang, owner.

SUBJECT – Application April 11, 2006 – Zoning variance under §72-21 to allow a proposed residential building containing three (3) dwelling units to violate applicable front yard (§23-45(a)) and side yard requirements (§23-462(a)). R5 zoning district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1357, Lot 46, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Mary Varnavas.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

108-06-BZ

APPLICANT– Eric Palatnik, P.C., for S & L-G Realty Corp., owner.

SUBJECT – Application May 30, 2006 – Zoning variance under §72-21 to allow a proposed 15-story residential building (U.G. 2) containing twenty-six (26) dwelling units and ground floor retail use (U.G. 6) to locate in an M1-6 district; contrary to §42-00 (use regulations).

PREMISES AFFECTED – 143 West 30th Street, between 6th and 7th Avenues, Block 806, Lot 4, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pauls.

For Opposition: Justin Deifuer and Alex Bernstein.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

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SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (§23-141); provides less than the minimum required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Joan Baron.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

253-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Jamila Maleh and Asian Azrak, owners.

SUBJECT – Application September 15, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary side yard (§23-461) and rear yard (§23-47) in an R4 zoning district.

PREMISES AFFECTED – 2243 Homecrest Avenue, east side of Homecrest Avenue between Avenue V and Gravesend Neck Road, Block 7373, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for continued hearing.

14-07-BZ

APPLICANT – Ivan Khoury, Esq., for Green Tea Inc., owner; Da Spa, LLC, dba Delluva Day Spa, lessee.

SUBJECT – Application January 11, 2007 – Special Permit (§73-36) to legalize a PCE (spa) located in the Tribeca West Historic District and a M1-5 zoning district. The proposal is contrary to §42-10.

PREMISES AFFECTED – 152 Franklin Street, 150.33' east of the intersection of Franklin and Hudson Streets, Block 189, Lot 7506, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

41-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for 17th and 10th Associates, LLC, owner; Equinox 17th Street, Inc., lessee.

SUBJECT – Application February 5, 2007 – Special Permit (§73-36) to permit the proposed PCE on the cellar, ground, and mezzanine levels of a 24-story building under construction. The Premises is located in a C6-3 zoning district and Sub Area 1 of the Special West Chelsea District. The proposal is contrary to §22-00.

PREMISES AFFECTED – 450 West 17th Street, a/k/a 100 Tenth Avenue, east side of Tenth Avenue between West 16th and West 17th Streets, Block 714, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

44-07-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Rubin-Lobo LLC d/b/a Bikram Yoga NY, lessee.

SUBJECT – Application February 8, 2007 – Special Permit (§73-36) to legalize a PCE (Yoga Studio) on a portion of the second floor in a six-story mixed-use building. The Premises is located in a C1-9 zoning district. The proposal is contrary to §32-18.

PREMISES AFFECTED – 171-173 East 83rd Street, northwest corner East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Edward Rubin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 5:00 P.M.

BULLETIN

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April 26, 2007

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

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2515 McDonald Avenue, East side of McDonald Avenue distant north 142' feet from the corner formed by the intersection of McDonald Avenue and Avenue X running thence east 150' feet; thence north 80' feet thence west 150' feet and thence south 80' feet., Block 7173, Lot(s) 58, Borough of **Brooklyn, Community Board: 11.** (SPECIAL PERMIT)-73-36-For a Physical Culture Establishment.

79-07-BZ

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80-07-BZ

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81-07-A

10 Courtney Lane, South side Courtney Lane 177.31' east of Beach 203rd Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling and upgrade of a non-conforming private disposal system.

82-07-A

71 Bedford Avenue, East side Bedford Avenue @ mapped 12th Avenue 88.81' east of Beach 204th Street., Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-Proposed construction and enlargement of an existing single family dwelling.

83-07-A

134 Ocean Avenue, West side Ocean Avenue 143.88' south of mapped 8th Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling.

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, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 15, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

142-30-BZ

APPLICANT – Barbara Hair, Esq., for Target Realty LLC, owner.

SUBJECT – Application December 12, 2006 – Amendment to a variance previously approved pursuant to section 72-21 of the zoning resolution which allowed commercial office space (Use Group 6) on the cellar level of a residential building located in a R7-2 zoning district. The application seeks a change of use in the existing commercial space on the cellar level from Use Group 6 office to Use Group 6 store.

PREMISES AFFECTED – 8 St. Marks Place, south side, 126' east of 3rd Avenue, Block 463, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #3M

737-86-BZ

APPLICANT – Rampulla Associates Architects, for Angelo Falato, owner.

SUBJECT – Application February 9, 2007 – Extension of Term of a previously granted Variance (§72-21) for an existing one story retail store (Use Group 6) which will expire on June 2, 2007. R3-1 zoning district.

PREMISES AFFECTED – 3304 Amboy Road, between Buffalo Street and Hopkins Avenue, Block 4964, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

520-89-BZ

APPLICANT – Law Office of Fredrick A. Becker, for SJF Audubon Realty, LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Term for a previously granted variance to permit in an R7-2 zoning district a (Use Group 8) parking lot for more than 5 vehicles which expired on April 18, 2005; a waiver of rules of practice and procedure and an Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996.

PREMISES AFFECTED – 65 Audubon Avenue, easterly side of Audubon Avenue, 30' southerly of West 169th Street, Block 2125, Lots 30 & 31, Borough of Manhattan.

COMMUNITY BOARD #12M

214-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.
SUBJECT – Application October 18, 2006 – Extension of Term/Extension of time to obtain a Certificate of Occupancy and Amendment of a Special Permit granted pursuant to §73-242 to permit within a C3 zoning district an eating and drinking establishment.

PREMISES AFFECTED – 2761 Plumb Second Street, northeast corner formed by intersection of Plumb Second Street and Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application April 18, 2007 – Request for a waiver of Practice and Procedure and for an extension of time to complete construction and to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 6778 Hylan Boulevard, southeast corner of Page Avenue, Block 7734, Lots 13 & 19, Borough of Staten Island.

COMMUNITY BOARD #3SI

135-05-BZ

APPLICANT – Judith Gallent, Esq., Bryan Cave, LLP for L&M Equity Participants Ltd. and Harlem Congregations for Community Improvement, Inc, contract vendees

SUBJECT – Application April 18, 2007 – To reopen and amend a previously -approved zoning variance under ZR § 72-21 that allowed the residential conversion of an existing non-complying building previously used as a school (former PS 90) located in an R7-2 district; contrary to ZR § 23-142, ZR § 23-533, & ZR § 23-633. The proposed amendment would permit a 5,987 sf. ft. enlargement to the existing sixth floor.

PREMISES AFFECTED – 217 West 147th Street, located on block bounded by West 147th and West 148th streets and Adam Clayton Powell, Jr. and Frederick Douglas Boulevards, Block 2033, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #10M

CALENDAR

APPEALS CALENDAR

34-07-A

APPLICANT – Valentino Pompeo, for Gorian Papa, owner.
SUBJECT – Application January 24, 2007 – Proposed alteration of an existing one family home located within the bed of a mapped street (72nd Lane) which is contrary to Section 35 of the General City Law. R4-1 Zoning District.
PREMISES AFFECTED – 72-40 Myrtle Avenue, south of Myrtle Avenue, east of 72nd Street, Block 3511, Lot 27, Borough of Queens.

COMMUNITY BOARD #5Q

76-07-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner.
SUBJECT – Application April 4, 2007 – Proposal to reconstruct and enlarge an existing one family dwelling and the upgrade of an existing private disposal system which does not front on mapped street, contrary to General City Law Section 36. R4 Zoning District.
PREMISES AFFECTED – 485 Seabreeze Walk, east side of Seabreeze Walk, 204.11' south of Beach 213th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

MAY 15, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 15, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

43-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Emmanuel Charismatic Church, owner.
SUBJECT – Application March 13, 2006 – Zoning variance under § 72-21 to allow a proposed house of worship to violate requirements for lot coverage (§ 24-11), front wall height (§ 24-521), front yard (§ 24-34), side yards (§ 24-35(a)), and accessory parking (§ 25-31). R5 district.
PREMISES AFFECTED – 31-09 35th Avenue, north side of 35th Avenue, 80' 10" east of 31st Street, Block 608, Lots 3 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

212-06-BZ

APPLICANT– Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.
SUBJECT – Application August 22, 2006 – Variance (§ 72-

21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to § 22-10.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

308-06-BZ

APPLICANT– Eric Palatnik, P.C., for David Levitan, owner.

SUBJECT – Application November 22, 2006 – Special Permit (§ 73-622) for the enlargement of two semi-attached single family homes to be converted to a detached single family home. This application seeks to vary open space and floor area (§ 23-141(a)) and rear yard (§ 23-47) in R-2 zoning district.

PREMISES AFFECTED – 1458-1460 East 26th Street, between Avenue “N” and Avenue “O”, Block 7679, Lots 77 & 79, Borough Brooklyn.

COMMUNITY BOARD #14BK

322-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Hamid Kavian, owner.

SUBJECT – Application December 13, 2006 – Variance (§ 72-21) to permit the construction of a two family dwelling on a vacant lot with less than the required side yards contrary to ZR § 23-48 in an R3-2 zoning district.

PREMISES AFFECTED – 117-57 142nd Place, east side of 142nd Place, between 119th Road and Foch Boulevard, Block 12015, Lot 317, Borough of Queens.

COMMUNITY BOARD #12Q

72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado, owner.

SUBJECT – Application March 28, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§ 23-141); side yard (§ 23-461); rear yard (§ 23-47) and perimeter wall height (§ 23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1941 East 26th Street, eastern side of 26th Street between Avenue S and Avenue T, Block 7305, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 17, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

947-80-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Hellmuth Owners Corporation c/o Grogan & Associates, owner.

SUBJECT – Application February 12, 2007 – Extension of Time to complete construction for a Variance that was originally granted on February 17, 1981 to allow the conversion of an eight story building from commercial to residential use which expired on March 25, 2007 in a C6-2A zoning district.

PREMISES AFFECTED – 154-158 West 18th Street, South side of West 18th Street between 6th Avenue and 7th Avenue, Block 793, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction of a residential building, which expired on March 25, 2007; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, the subject premises is located on West 18th Street, 141 feet east of Seventh Avenue; and

WHEREAS, the site is occupied by an eight-story and penthouse building, located within an M1-5 zoning district; and

WHEREAS, on February 17, 1981, under the subject calendar, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a penthouse enlargement and the conversion of the existing eight-story building to residential use; and

WHEREAS, on March 25, 2003, the Board granted an amendment which permitted the elimination of the conditions that the second floor be occupied by a commercial or manufacturing use and that 25 percent of the roof area be allocated as tenant recreation space; and

WHEREAS, the applicant proposes to convert the second floor to residential use, but has not completed the work; and

WHEREAS, the instant application seeks an extension of time to complete construction; and

WHEREAS, the applicant represents that an extension of time is necessary to allow for all of the tenants to vacate the subject floor prior to the conversion; and

WHEREAS, based upon its review of the record, the Board finds that a four-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 17, 1981, 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 from the date of this grant; *on condition:*

THAT substantial construction shall be completed by April 17, 2011;

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. 10315998)

Adopted by the Board of Standards and Appeals, April 17, 2007.

395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsorfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a reopening and amendment to a previously-granted variance (§ 72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54th Street, southwest side 242’-6” southeast of the intersection formed by 54th and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Yosef Gottdiener.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and

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an amendment to the previously approved plans for a new synagogue building; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, with continued hearings on January 23, 2007 and March 20, 2007, and then to decision on April 17, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, this application is brought on behalf of Congregation Imrei Yehudah, a non-profit entity; and

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

WHEREAS, City Council Member Simcha Felder provided a letter in support of this application; and

WHEREAS, the subject premises is located on 54th Street, 242'-6" south of 12th Avenue, within an R5 zoning district; and

WHEREAS, on November 1, 2005, under the subject calendar number, the Board granted a variance to permit the construction of a new synagogue and rectory, including a rabbi's apartment and a sexton's apartment (UG 4), with non-compliances as to floor area, FAR, lot coverage, front wall and sky exposure plane, side and front yards, and parking; and

WHEREAS, the site is currently improved upon with a semi-detached, two-story two-family home; and

WHEREAS, the applicant proposes to demolish the existing building and to construct a new semi-detached synagogue and rectory; and

WHEREAS, the synagogue building, as approved, provided for a three-story portion and a one-story portion at the rear; and

WHEREAS, the new building has not been built and the applicant would like to make modifications to the approved plans in order to accommodate the synagogue's current articulated needs; and

WHEREAS, the applicant plans the following modifications to the approved plans: the addition of a second floor mezzanine connected to the synagogue on the first floor to accommodate women congregants, and other interior layout modifications; and

WHEREAS, specifically, the applicant proposes the following modifications to the approved plans: a floor area increase from 5,326 sq. ft. to 6,422.61 sq. ft.; an FAR increase from 2.24 to 2.70; and an increase in the perimeter wall height from 40'-4" to 41'-1"; and

WHEREAS, the additional height, FAR, and floor area are attributed to the addition of a fourth floor; and

WHEREAS, the applicant also proposes to decrease the front yard from 6'-3 1/8", as noted in the November 1, 2005 resolution to 5'-0"; the applicant contends that there was an error in the resolution and that the approved plans reflect that a 5'-0" front yard was contemplated and approved; and

WHEREAS, the Board agrees that the approved plans, which provide for a 5'-0" front yard, reflect the approved conditions; and

WHEREAS, the applicant proposes to increase the degree of non-compliance as to the sky exposure plane; and

WHEREAS, finally, the applicant proposes to maintain all other non-compliances approved pursuant to the original grant; and

WHEREAS, at hearing, the Board asked the applicant to establish the need for the increased size and to compare the proposed synagogue to other nearby institutions; and

WHEREAS, the applicant responded that the increases were necessary to provide for the reconfiguration of the first floor synagogue to accommodate a rabbi's study, auxiliary prayer room, and a mezzanine; and

WHEREAS, the applicant represents that the rabbi has requested a private study to accommodate his responsibilities to lead the congregation in private counseling and other small meetings; and

WHEREAS, the applicant represents that the auxiliary prayer room is needed for smaller groups of worshipers who may require a separate area for services, such as for a quorum of mourners; and

WHEREAS, the applicant represents that the second-floor mezzanine will provide separate facilities for women and girls, which is a traditional religious requirement; and

WHEREAS, as to a comparison of other such facilities, the applicant identified two nearby synagogues that are comparable in size and provided photographs of similarly-sized buildings nearby; and

WHEREAS, the Board asked the applicant to establish the need for a sexton's apartment, which occupies its own floor, in addition to the rabbi's apartment, which similarly occupies its own floor; and

WHEREAS, in response, the applicant provided a statement that it is customary to provide two apartments for religious officials, including the sexton; and

WHEREAS, the applicant initially requested to increase the building height to 43'-9" and to provide a more prominent parapet; and

WHEREAS, notwithstanding the programmatic needs of the synagogue, the Board expressed concerns about bulk and compatibility with neighborhood character and asked the applicant (1) to reduce the building height, and (2) to reduce the height of the parapet wall; and

WHEREAS, as to the building height, the applicant agreed to lower the front wall and total height to 41'-1" so as to be more compatible with nearby buildings; and

WHEREAS, the applicant represents that the building height cannot be reduced any more because (1) it is cost prohibitive to provide a deeper cellar; (2) the underpinning required for a deeper cellar might negatively impact the adjacent neighbor's home, and (3) the floor to floor heights are the minimum that can accommodate the proposed uses and mechanicals; and

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WHEREAS, the applicant agreed to lower the parapet wall to 2'-0" in order to minimize the visual impact; and

WHEREAS, the Board observes that the proposed amendment, to add 1,096.1 sq. ft. of floor area and to increase the building's total floor area from 5,326 sq. ft. to 6,422.61 sq. ft. is modest and does not affect the prior findings for the variance; and

WHEREAS, additionally, the Board notes that in its present iteration, the application provides for a total height of 41'-1", which is only nine inches more than what was originally approved; and

WHEREAS, based upon the above, the Board finds that the requested amendment is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on November 5, 2005, so that as amended this portion of the resolution shall read: "to permit the proposed modifications to the approved plans for a one- and three-story synagogue building, now a one- and four-story building, *on condition* that all work and site conditions shall comply with drawings marked 'Received January 9, 2007'—three (3) sheets, Received 'March 3, 2007'—five (5) sheets and 'Received March 22, 2007'—one (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 6,422.61 sq. ft. (2.70 FAR), four stories, a height of 41'-1", a 5'-0" front yard, a 30'-0" rear yard above the first floor, and a lot coverage of 65 percent, all as illustrated on the BSA-approved plans;

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

THAT a certificate of occupancy shall be obtained within two years of the date of this grant;

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. 301860706)

Adopted by the Board of Standards and Appeals, April 17, 2007.

878-62-BZ & 879-62-BZ

APPLICANT – Sheldon Lobel, P.C., for Sutton House, Inc., owner.

SUBJECT – Application February 20, 2007 – Extension of Term of a Variance for the use of transient parking for the unused and surplus car spaces in an existing multiple dwelling accessory garage which will expire on July 5, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 23, 1999 in an R10/C1-5 zoning district.

PREMISES AFFECTED – 399-423 East 52nd Street; 404-20

East 53rd Street, north side of 52nd Street, between 1st Avenue and FDR Drive, Block 1364, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for decision, hearing closed.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for continued hearing.

1059-84-BZ, Vol. II

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for BMS Realty Co., LLC, owner; Bally Total Fitness Corp., lessee.

SUBJECT – Application December 22, 2006 – Extension of term of a special permit for the operation of a physical culture establishment (PCE) in a C4-2 zoning district within the Special Ocean Parkway District.

PREMISES AFFECTED – 943/61 Kings Highway, a/k/a 2032 Coney Island Avenue, northwest corner of intersection Kings Highway and Coney Island Avenue, Block 6666, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for decision, hearing closed.

21-91-BZ

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath

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Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Kenwyn A. Sandy.

For Opposition: Ronald J. Dillion.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Kathy Grove, Larry List and Nick Lecakes.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

292-06-A

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6/M1-1. M1-2/R6A and MX-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner/developer of the premises has obtained the right to complete a 15-unit eight-story residential building (the “Proposed Building”) under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on February 13, 2007, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2007, and then to decision on April 17, 2007; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair, Srinivasan, Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, the Department of Buildings appeared in opposition to this appeal, claiming that while the developer had obtained a valid foundation permit and commenced and completed foundation construction prior to the zoning change in question, no vesting may occur under it; this argument is addressed in detail below; and

WHEREAS, the appellant states that the subject premises is a 7,500 sq. ft. lot with approximately 75 feet of frontage on the south side of Newton Street, located between Manhattan and Graham Avenues; and

WHEREAS, the appellant states that development commenced on the site on March 4, 2005, when the developer was issued a demolition permit by DOB; and

WHEREAS, on April 1, 2005, DOB examined and approved foundation plans and other application materials for the Proposed Building, under DOB App. No. 301921909; and

WHEREAS, the foundation plans consist of two separate sheets, both of which were stamped as approved by the DOB examiner who reviewed them; and

WHEREAS, one of the sheets reflected zoning calculations for the entire Proposed Building, and described it as an eight-story, 15-unit residential building; and

WHEREAS, the application materials also reflected an eight-story, 70 feet high residential building; and

WHEREAS, on April 8, 2005, DOB issued a foundation permit (No. 301921909; hereinafter, the “Foundation Permit”), and foundation work commenced; and

WHEREAS, the appellant claims that the developer installed one hundred percent of the foundation as of April 26, 2005; and

WHEREAS, on May 11, 2005 (the “Enactment Date”), the City Council adopted the Greenpoint/Williamsburg rezoning, which changed the zoning of the subject site from R6/M1-1 (the “Prior Zoning”) to M1-2/R6A and MX-8 (the “New Zoning”); and

WHEREAS, the appellant states that under the New Zoning, the top two stories of the proposed building would not be permitted due to a height limitation; and

WHEREAS, the appellant notes that DOB improperly issued a new building permit on October 21, 2005 based on the Prior Zoning, and work continued on the site until

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August 8, 2006; and

WHEREAS, on August 8, work ceased pursuant to a DOB-issued stop work order; and

WHEREAS, the appellant argues, and the Board agrees, that the October 21, 2005 new building permit is not relevant to the instant vesting application, since it was issued after the Enactment Date; and

WHEREAS, the appellant also notes that as of August 8, 2006, six stories of the Proposed Building were completed, and the seventh and eighth stories were commenced but not completed; and

WHEREAS, the appellant claims that in October of 2006, the developer met with the then Brooklyn Borough Commissioner and obtained permission to work on elements of the Proposed Building allowable under the New Zoning; and

WHEREAS, the appellant also claims that on November 16, 2006, the developer met with DOB's technical staff to discuss the possibility of allowing additional construction to weather-proof and protect the existing construction; and

WHEREAS, through a reconsideration dated November 24, 2006, the then Brooklyn Borough Commissioner permitted weather-proofing work on the seventh and eighth floors, as well as all work on the first through sixth floors; and

WHEREAS, the appellant now seeks a common law vesting determination from this Board so that it may receive permits from DOB to complete the Proposed Building; and

WHEREAS, as a threshold issue, the appellant must establish whether work proceeded under a valid permit; and

WHEREAS, DOB states that the Foundation Permit is valid; and

WHEREAS, however, DOB argues that the work done under the Foundation Permit alone is insufficient to vest the right to construct the Proposed Building; and

WHEREAS, DOB asserts that the Foundation Permit did not authorize construction of the entire Proposed Building under the Prior Zoning; and

WHEREAS, the Board agrees that after the construction of the foundation, the developer would have had to obtain a new building permit in order to proceed with construction of the entirety of the Proposed Building; and

WHEREAS, however, the Board notes that unlike a case brought under ZR § 11-311 there is no requirement under the common law that work proceed pursuant to a building permit authorizing construction of the entire building; and

WHEREAS, the Board observes that the controlling case on the ability to vest a development under a foundation permit is Glenel Realty Corp. v. Town of Greenburgh, 4 A.D.2d 702 (2nd Dep't, 1957); and

WHEREAS, in Glenel, the court considered whether a developer seeking to develop a site with a shopping center had obtained vested rights to continue construction of one and two-story buildings pursuant to issued foundation permits; and

WHEREAS, specifically, the court noted that the developer in question had obtained four permits "issued for the

excavation and foundation work"; and

WHEREAS, the municipality's building inspector argued that the only vested rights the developer had obtained were to the foundations, and not to the anticipated superstructure; and

WHEREAS, the court rejected this contention, holding "[s]uch an argument is not only shocking to the sense of justice but also leads to a *reduction ad absurdum*. The foundation is an integral part of the whole structure; it *is the foundation*. Where, as here, the superstructure is for a one or two-story 'taxpayer' and part of the basement is to be utilized for rental purposes, the foundation may be said to be a major part of the whole structure. Consequently, the vested right in the foundation must connote a vested right to the erection and subsequent use of the specific superstructure for which the foundation was designed. It is the construction of the foundation and the substantial costs thereof which establish and define the builder's vested rights in relation to the superstructure and its use, and which entitle him to complete it in accordance with the zoning ordinance in force at the time of the construction of the foundation . . ." (*citations omitted; emphasis in original*); and

WHEREAS, the Board notes that Glenel has been cited with approval many times; and

WHEREAS, the Board takes particular note of Gershowitz v. Planning Bd. of Town of Brookhaven, 69 A.D.2d 460 (2nd Dep't, 1979), which, while overruled on procedural grounds by the Court of Appeals, cited to Glenel with approval as an example of a valid departure from the requirement of a full building permit; and

WHEREAS, thus, the Board concludes that Glenel is valid law; and

WHEREAS, further, the Board finds that the instant facts are comparable to those in Glenel; and

WHEREAS, as in Glenel, the developer here obtained a valid permit for a foundation related to a specific superstructure and then proceeded to make expenditures and perform construction pursuant to the permit; and

WHEREAS, further, the foundation here is unquestionably a fundamental component of the Proposed Building, for structural reasons and because accessory uses presumably would be located in the cellar; and

WHEREAS, in spite of the court's unambiguous holding, DOB attempts to distinguish Glenel in two ways; and

WHEREAS, first, DOB maintains that the foundations in question in Glenel were designed for a specific superstructure, namely one and two-story buildings; and

WHEREAS, DOB argues that since the completed superstructure of the Proposed Building is currently at six stories, it cannot be said that the foundation was designed specifically for the proposed eight stories; instead, DOB alleges that its design can accommodate less stories; and

WHEREAS, even if DOB is correct that the foundation can support a six-story building, the Board does not find this argument persuasive; and

WHEREAS, it is neither surprising nor determinative to the outcome of this matter that a foundation that can support an eight-story building can also support a building of six stories or

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less; and

WHEREAS, further, while the Board acknowledges that the Glenel court noted that the vested right to the foundation gives a vested right to the superstructure for which the foundation was designed, it also observes that this requirement is met; and

WHEREAS, the record indicates that the foundation as reflected on the Foundation Permit plans was designed for the Proposed Building; and

WHEREAS, the Foundation Permit contains language indicating that the application was filed for a foundation “for new building” and lists the number of stories as “8” and the proposed use as “residential apartment house”; and

WHEREAS, the only eight-story, residential “new building” that this language could possibly be referencing is the Proposed Building, since there was no other building reflected in the Foundation Permit plans and application materials; and

WHEREAS, additionally, the Foundation Permit plans and application materials contain explicit language about the contemplated eight-story superstructure; and

WHEREAS, these materials are part of the Foundation Permit, which could not be issued under the Building Code unless the plans and application materials associated with it reflected the zoning information (see Building Code § 27-164); and

WHEREAS, finally, the Board observes that DOB appears to provide confirmation of the fact that the foundation was intended to be part of the Proposed Building in its March 5, 2007 submission, stating “[t]he foundation application includes a description and diagram of an eight story residential building . . .”; and

WHEREAS, in sum, the Foundation Permit, plans and materials support the conclusion that the foundation was intended to be for the Proposed Building; and

WHEREAS, the Board finds that this satisfies the requirement in Glenel that the proposed foundation be designed for the contemplated superstructure; and

WHEREAS, accordingly, the Board respectfully disagrees with DOB’s first argument; and

WHEREAS, the Board notes that this determination is not affected by DOB’s claim at hearing that its Brooklyn Borough office did not review or approve the zoning calculations related to the Proposed Building, pursuant to an unwritten policy in that office; and

WHEREAS, DOB states instead that it only reviewed and approved the foundation construction; and

WHEREAS, the Board notes that this argument appears to be contradicted by the record; and

WHEREAS, as discussed above, the Foundation permit plans (including the calculations) reflect the specific approval stamp of the DOB examiner, and unmistakably illustrate that the Proposed Building was contemplated by the developer and that the foundation was designed for it; and

WHEREAS, aside from the statements of DOB’s legal representative, there is no qualification of the scope of DOB’s review anywhere in the Foundation Permit or the materials and plans associated with it, nor elsewhere in the record; and

WHEREAS, however, even though the Board accepts that DOB in fact conducted a limited review of the Foundation Permit plans and application materials, a full DOB review is not a prerequisite for a Board conclusion that the foundation was designed and intended for the Proposed Building; and

WHEREAS, DOB’s second argument is predicated on the Glenel court’s observation that the foundation permits in question apparently contained express language granting permission to build the contemplated buildings; and

WHEREAS, DOB contends that since the Foundation Permit does not reflect such language, the right to construct the Proposed Building cannot vest based on work performed under it; and

WHEREAS, the Board agrees that the Glenel court noted the language set forth on the foundation permits, which apparently authorized construction of the buildings; and

WHEREAS, however, the court did not hold that this was an essential requirement of its holding or vesting determination, nor did the court suggest that the outcome would have been different had the permits not contained this language; and

WHEREAS, in fact, the court’s discussion of this point came after it made its fundamental holding, as set forth above verbatim; and

WHEREAS, obviously, the court could have simply concluded that the foundation permits were the equivalent of new building permits, as this would have obviated the need for any further analysis; and

WHEREAS, instead, without any reference to the actual language set forth in the foundation permits, the court held that when a municipality authorizes construction of a foundation designed for a certain building, construction of that foundation is sufficient to vest; and

WHEREAS, the court also cited to many cases as precedent for this holding; and

WHEREAS, thus, the Board concludes that the Glenel court’s observation about the foundation permits in question merely supported the outcome of the case and that explicit authorization in the foundation permit to construct the entire building was not held to be a requirement for vesting; and

WHEREAS, finally, the Board notes that no other New York State court that has cited Glenel has held or even suggested that its applicability be limited to instances where the foundation permit in question contains language that authorizes the construction of the entire building; and

WHEREAS, accordingly, the Board also respectfully disagrees with DOB’s second argument; and

WHEREAS, therefore, based upon its review of Glenel and the record in this matter, the Board concludes that work performed and expenditures made under the Foundation Permit can provide the basis for a vesting determination under the common law; and

WHEREAS, assuming that a valid permit had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to

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proceed under the prior zoning; and

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

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

WHEREAS, as to substantial construction, the appellant notes that prior to the Enactment Date, all of the work necessary for the foundation, including all of the concrete pours, was completed; and

WHEREAS, in support of the assertion that substantial construction was performed, the appellant submitted the following evidence: affidavits from the foundation contractor, the developer, and the concrete supplier, concrete pour slips, and a foundation survey prepared prior to the Enactment Date; and

WHEREAS, based upon the above evidence, the Board concludes the foundation for the Proposed Building was completed prior to the Enactment Date; and

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

WHEREAS, the appellant states that prior to the Enactment Date, the developer expended or committed \$672,180; and

WHEREAS, said expenditures and commitments related to excavation, foundation, labor and materials costs, as well as architectural, engineering and expediting costs; and

WHEREAS, as proof of this, the appellant has submitted invoices, cancelled checks, and spread sheets; and

WHEREAS, the Board considers this dollar amount significant, both in of itself for a project of this size, and when compared against the total development costs (\$2,192,381); and

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

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning and in part upon a showing that income would be

reduced due to lost units or density; and

WHEREAS, the appellant states that the top two stories of the Proposed Building could not be completed under the New Zoning, which would constitute a 30 percent reduction in anticipated sellable floor area; and

WHEREAS, the appellant concludes that the development would fail if this floor area was lost; and

WHEREAS, the Board also observes that some expended soft costs would likely be wasted, and some new soft costs would likely be necessitated, by any redesign of the Proposed Building that complies with the New Zoning; and

WHEREAS, thus, the Board agrees that the lost revenue arising from the reduced floor area and unit count, along with the soft costs, constitute a serious economic loss, and that the supporting data submitted by the appellant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and finds that the appellant has satisfactorily established that a vested right to complete construction of the Proposed Building; and

WHEREAS, in so concluding, the Board also finds that the developer is entitled to file with DOB plans for the superstructure and all other building elements of the Proposed Building that conform in all respects to the Prior Zoning, and that also comply with all other applicable laws, in order to legalize the as-built construction and to complete the remaining work.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting the right to continue construction of the Proposed Building, as well as the issuance of a new building permit and issuance or renewal of other permits for various work types, necessary to complete construction and obtain a certificate of occupancy for the Proposed Building, is granted for four years from the date of this grant, *on condition that*:

1. The developer must submit a new application and set of plans to DOB for a new building permit that reflects the as built conditions and compliance with the Prior Zoning.
2. This application may not be professionally certified, but must receive plan examination under the Prior Zoning by a DOB examiner.
3. DOB must confirm that the as built conditions and the new plans comply in all respects with the Prior Zoning.
4. Any as built conditions that do not comply with the Prior Zoning must be remedied by the Developer.
5. The new plans may not reflect any parameter that creates a new non-compliance under the Prior Zoning.
6. Deviations between the new plans and the Foundation Permit plans are acceptable so long as such deviations comply with the Prior Zoning and

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other legal requirements.

7. Notwithstanding the above condition, the new plans may not reflect more than an eight-story, 70 feet high building, nor may the zoning floor area exceed 16,486 sq. ft.
8. Any questions that may arise during DOB's review of the developer's new plans may be referred to the Board's executive director for resolution.

Adopted by the Board of Standards and Appeals, April 17, 2007.

330-06-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Thomas & Diane McNoble, lessee.
SUBJECT – Application December 22, 2006 – Reconstruct and enlarge an existing one family dwelling and install a new septic system located within a bed of the mapped streets (Breezy Point Blvd & 203rd St.) contrary to General City Law Section 35 and does not front on a mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 203 Oceanside Avenue, north side 86.67' east of Bedford Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jon Ronan.

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 18, 2006, acting on Department of Buildings Application No. 402511466, reads in pertinent part:

“Proposal to modify the interior space within the first floor of a home, construct a new second floor and install a new septic system on a site which is located within an R4 Zoning district but which does not front on a mapped street (Oceanside Avenue) and simultaneously lies within the bed of two (2) streets that are mapped streets (Breezy Point Blvd. and Beach 203rd Street)is contrary to Article 3, Section 36 (2) and 35 of the General City Law respectively and must, therefore be referred to the Board of Standards & Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated April 17, 2007 the Fire Department states that it has reviewed the above project and

has no objections; and

WHEREAS, by letter dated March 21, 2007, the Department of Transportation states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 2, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 18, 2006, acting on Department of Buildings Application No. 402511466, is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 22, 2006” “Proposed Plan A-1”-(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);

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 17, 2007.

332-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Keith Matone, lessee.

SUBJECT – Application December 28, 2006 – Proposed reconstruction and enlargement of an existing one family home located and the upgrade of an existing private disposal system within the bed of mapped street which is contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 636 Bayside Avenue, north of Bayside Avenue, east of Bayside Drive, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Raymond Gomez.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough

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Commissioner, dated December 8, 2006, acting on Department of Buildings Application No. 402485930, reads in pertinent part:

“A-1 – The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A-2 – The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated January 3, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated March 19, 2007, the Department of Transportation states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 2, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 8, 2006, acting on Department of Buildings Application No. 402485930, 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 April 13, 2007” “Proposed Plan BSA-1”– (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);

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 17, 2007.

12-07-A

APPLICANT – David L Businelli, R.A., AIA, for Mr. Thomas Tuminello, owner.

SUBJECT – Application January 10, 2007 – Proposed construction of a one family dwelling not fronting on mapped street, contrary to Article 3, Section 36 of the

General City Law. R3X Zoning District.

PREMISES AFFECTED – 25 Allegro Street, North side of Allegro Street, 101.33 southwest corner of Bertram Avenue and Allegro Street. Block 6462, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli.

ACTION OF THE BOARD – Appeal granted on condition
THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 4, 2007, acting on Department of Buildings Application No. 500839603, which reads in pertinent part:

“1. The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

A.) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law; and

B.) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to section 27-291 of the NYC Building Code.”; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in the *City Record*, and then to closure and decision on April 17, 2007; and

WHEREAS, by letter dated March 28, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of Staten Island Borough Commissioner, dated January 4, 2007, acting on Department of Buildings Application No. 500839603, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 28, 2007”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the lot subdivision shall be as approved by DOB;

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

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

THAT the Department of Buildings must ensure

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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 17, 2007.

238-06-A

APPLICANT – Kevin A. Finnegan, for Elizabeth Langwith, et al.

OWNER: Hudson 12th Development, LLC.

SUBJECT – Application September 12, 2006 – Appeal of the decision of the DOB refusal to revoke permits issued for a proposed dormitory (NYU) on a lot formerly occupied by St Anne's Church that allows the creation of a zoning lot under Section 12-10 (d) utilizing unused developmental rights from the United States Post Office, a government agency that is exempt from zoning regulations. C6-1 zoning district.

PREMISES AFFECTED – 110-124 East 12th Street, between Third and Fourth Avenue, Block 556, Lots 48 and 49, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Kevin Finnegan, Councilwoman Rosie Mendez, Brian Cak, Andrew Berman, Erin Drinkwater, David Chang, Gregory Brender, Frances Goldin Jose, Alan Marinoff, Elizabeth Lauguith, Keen Bergen, Katherine Wolpe, Carole DeSaram, Richard Barkett and others.

For Opposition: David M. Satnick and Jeffrey B. Rosen.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2007, at 10 A.M., for decision, hearing closed.

45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application February 8, 2007 – For a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue “N” and Avenue “O”, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Trevis Savage.

For Opposition: Mark J. Kurzman and Abraham Lasker.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

ACTION OF THE BOARD – Laid over to May 22,

2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, APRIL 17, 2007 1:30 P.M.

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

ZONING CALENDAR

239-04-BZ

CEQR #04-BSA-221K

APPLICANT – Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side of Starr Street, 304’ east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Adopted by the Board of Standards and Appeals, April 17, 2007.

288-06-BZ

CEQR #07-BSA-033Q

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of §24-111 (FAR), §24-521 (wall height, setback and sky exposure plane), §24-34 (front yard) and §24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223rd and 224th Streets, Block 10796, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402846954, reads, in pertinent part:

“Proposed community facility FAR and total FAR is contrary to Zoning Resolution Section 24-111.

Proposed front yard is contrary to Zoning Resolution Section 24-34.

Proposed side yard is contrary to Zoning Resolution Section 24-35.

Proposed wall height, setback and sky exposure plane is contrary to Zoning Resolution Section 24-521.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of the application; and

WHEREAS, Council Member Leroy Comrie provided a letter in support of the application; and

WHEREAS, the owner of an adjacent property to the rear provided testimony in support of the application; and

WHEREAS, the application is brought on behalf of the Church of God of St. Albans (the “Church”), a non-profit religious institution; and

WHEREAS, the site is located on the north side of Hempstead Avenue, between 223rd Street and 224th Street; and

WHEREAS, the site has a width of 80 ft. and a depth ranging from 102.34 feet to 105.44 feet, with a total lot area of 8,314 sq. ft.; and

WHEREAS, the western portion of the site is currently occupied by a two-story semi-detached building (the “Existing Building”), which is located on the front lot line, and a one-story garage, which is occupied by the Church; the eastern portion of the site is currently vacant; and

WHEREAS, the applicant proposes to enlarge the Existing Building to the east (the Existing Building and the enlargement, hereinafter the “New Building”); and

WHEREAS, the New Building will have a total floor area of 8,024 sq. ft. (0.965 FAR); a maximum floor area of 4,157 sq. ft. (0.5 FAR) is permitted for a community facility in

the subject zoning district; and

WHEREAS, the applicant proposes to maintain the existing streetwall condition by locating the New Building on the front lot line, without any front yard (a minimum front yard of 15’-0” is required); and

WHEREAS, the applicant also proposes to maintain the semi-detached condition of the Existing Building and to provide a single side yard of 40’-8” (two side yards with a minimum width of 8’-0” each are required) to the east of the New Building; and

WHEREAS, the applicant proposes to retain the existing 26’-2” perimeter wall and to add a pitched roof with a total height of 38’-3” without a setback to a portion of the New Building; a maximum perimeter wall height of 25’-0” is permitted in the subject zoning district; and

WHEREAS, the applicant proposes for the cellar level to be occupied as a community center/multi-purpose room to be used for youth and after school programs and a kitchen, accessory storage, and restrooms; and

WHEREAS, the applicant proposes for the first floor to be occupied primarily with the 98-seat worship space and also accessory office and storage space and restrooms; and

WHEREAS, the applicant proposes for the second floor to be occupied with a Bible study and meeting room, conference room, accessory office and storage space, and additional restrooms; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Church, which seeks to build a new building in order to accommodate the growing congregation and its accessory services; and

WHEREAS, specifically, the applicant represents that the proposed FAR and floor area are necessary to accommodate the programmatic needs discussed below and that the side yard, front yard, height, and setback waivers are necessary to accommodate the worship space on one level while accommodating the required parking spaces in a single accessory parking lot; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Church: (1) a need to accommodate the significant increase in attendance over the past 30 years; (2) a need to accommodate accessory educational, meeting, and community center space; and (3) a need to improve access and modernize facilities; and

WHEREAS, as to attendance, the applicant represents that since its founding in 1976, the Church’s congregation has increased substantially and has outgrown two prior facilities; and

WHEREAS, the applicant represents that the Church has a congregation of approximately 120 members and the current facility is overcrowded; and

WHEREAS, the applicant represents that the Church currently occupies a total of 4,120 sq. ft. of floor area in the Existing Building but that this cannot accommodate the required amount of worship space, offices, and accessory services; and

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WHEREAS, the applicant represents that the Church's worship space is limited to the first floor of the existing building and the second floor is partially occupied by administrative use and partially occupied as a residence for the Church's custodian; and

WHEREAS, additionally, the applicant represents that the Existing Building does not have sufficient seating to accommodate the congregation and that, routinely, some attendees are required to stand during Church services; and

WHEREAS, the applicant represents that the proposed 98 seats will accommodate the current congregation and allow for some growth; and

WHEREAS, as noted, the Church offers a number of accessory services including educational and youth programs, after school programs, and meeting space available to the community, which cannot all be accommodated in the Existing Building; and

WHEREAS, as to the facilities, the proposed improvements include a larger entrance, which will be handicapped-accessible, and additional restrooms; and

WHEREAS, the applicant also proposes to provide a single accessory parking lot with eleven parking spaces on the eastern portion of the site; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the construction of the New Building is necessary to address the Church's needs, given the limitations of the Existing Building; and

WHEREAS, further, the Board notes that the New Building will be integrated with and relate to the Existing Building in an efficient manner; and

WHEREAS, the Board notes that the site's existing conditions (the Existing Building with its non-compliances) necessitates the additional waivers including front and side yards and height and setback; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the Existing Building, when considered in conjunction with the programmatic needs of the Church, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant represents that the surrounding area is characterized by one- and two-story buildings occupied by residential uses and by a number of commercial buildings with frontage on Hempstead Avenue; and

WHEREAS, the three attached buildings to the west of

the site are occupied by commercial uses and do not have front yards; and

WHEREAS, the front of the New Building will be integrated into the Existing Building and provide a consistent street wall with the attached row of commercial buildings; and

WHEREAS, the applicant proposes to provide an open space, with parking, with a width of 40'-8" between the New Building and the existing one-story detached building to the east; and

WHEREAS, the applicant proposes to provide a parking lot with 11 spaces (ten spaces are the minimum required), which is sufficient to accommodate the parking demand; and

WHEREAS, additionally, the applicant notes that the Church has occupied the site since approximately 1983 and is a fixture in the community; and

WHEREAS, the Board agrees that the proposed New Building is compatible with the surrounding neighborhood; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Church; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Church; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Church to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA033Q, dated February 8, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2007"- (6) sheets and on further condition:

THAT the building parameters shall be: a total floor area of 8,024 sq. ft. (0.965 FAR), a total height of 38'-3", 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 objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, April 17, 2007.

290-06-BZ

CEQR #07-BSA-034M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: James Power and Doris Diether, CB #2.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 19, 2006, acting on Department of Buildings Application No. 104520608, reads in pertinent part:

“Proposed Use Group 2 residential use (dwelling units) in a manufacturing district is contrary to ZR 42-10 and it is not permitted. There are no bulk and use regulations for UG 2 in a manufacturing district.

Proposed use Group 6 in manufacturing district M1-5B is contrary to ZR 42-142(2)(d) and it is not permitted in that only uses listed in Use Group 7, 9, 11, 16, 17A, 17B, 17C or 17E shall be allowed below the floor level of the 2nd story.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District, the construction of a six-story, eight-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in the *City Record*, and then to decision on April 17, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application on condition that there be no signage on the building and that no bar or restaurant occupy the ground floor space; and

WHEREAS, the site is located on the west side of Lafayette Street, between Great Jones Street and Bond Street, within an M1-5B zoning district; and

WHEREAS, the site has a lot area of 3,039.4 sq. ft.; and WHEREAS, site is occupied by a one-story auto repair establishment that will be demolished; and

WHEREAS, the site has 26'-4" of frontage on the south side of Great Jones Street and 100'-7" of frontage on the west side of Lafayette Street; and

WHEREAS, the site has a width of 34'-6" along the southern lot line; a one-story gas station occupies the adjacent lot to the south; and

WHEREAS, the site has a trapezoidal shape, attributed in part to the widening and extension of the former Elm Street and Lafayette Place at Great Jones Street in the late 19th Century, as discussed below; and

WHEREAS, the proposed building will have a total floor area of 15,556.5 sq. ft. (5.12 FAR), a residential floor area of 14,026 sq. ft. (4.62 FAR), a commercial floor area of 1,530.5

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sq. ft. (0.50 FAR), a height of 70'-10 ¾", without bulkheads, and a total height of 79'-10 ¾", with bulkheads; and

WHEREAS, the cellar level will be occupied by storage and accessory use; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance, located on the southern end of the Lafayette Street frontage; and

WHEREAS, the second through fourth floors will each be occupied by two residential units; and

WHEREAS, the fifth and sixth floors will each be occupied by two duplex units; and

WHEREAS, proposed building will rise without setback to a full height of 70'-10 ¾" along both Lafayette Street and Great Jones Street; and

WHEREAS, the building will be constructed with a pre-fabricated modular system based on cargo containers, stacked above a ground floor retail space of conventional steel frame construction; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is irregularly-shaped; (2) the site is small; (3) the site is adjacent to the Lexington Avenue subway line; and (4) the historic use of the site as a gasoline service station and automotive repair shop has resulted in soil contamination; and

WHEREAS, as to the site's shape, the applicant states that it is trapezoidal with a depth ranging from 26'-2" to 34'-6" from Lafayette Street and 100'-6" from Great Jones Street; and

WHEREAS, as mentioned above, the shape of the site is partly attributed to the creation of Lafayette Street between East Houston Street and Great Jones Street in the 1890s, which replaced the former Elm Street and Lafayette Place and claimed an irregularly-shaped sliver of the historic lot; and

WHEREAS, because of the site's long and narrow shape and the large amount of street frontage, there is a high ratio of exterior walls to usable interior; and

WHEREAS, the applicant documented additional construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, as to size, the applicant represents that the site is small, which results in a high loss factor as a disproportionate share of each floor would be devoted to the building core; and

WHEREAS, the applicant represents that the small size of the site and its irregular configuration would not provide efficient floorplates for a conforming hotel or office development at the site; and

WHEREAS, as to the adjacency to the subway, the applicant represents that the Lexington Avenue subway line is approximately 20 feet deep and located within between 12 and 19 feet of the site along Lafayette Street; and

WHEREAS, accordingly, the applicant states that the New York City Transit Authority (NYCTA) has requirements for the design and construction of a temporary excavation support system at this location; and

WHEREAS, specifically, the requirements include that

piles must be drilled rather than driven and that the excavation support system must be laterally braced in accordance with NYCTA design and performance guidelines; and

WHEREAS, additionally, the applicant represents that the NYCTA requires monitoring of the tunnel structure during foundation construction; and

WHEREAS, the applicant submitted an engineer's report in support of these assertions, which document the anticipated expenses of the noted supplemental measures; and

WHEREAS, further, the applicant notes that since such a large portion of the site has frontage on Lafayette Street, a large portion of the site is affected by the subway conditions; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram, which reflects that of the 40 lots within the radius with subway frontage, only two have a higher ratio of subway frontage to lot area; and

WHEREAS, as to the subsurface conditions, the applicant represents that removal and disposal of at least two or three underground storage tanks will be required; and

WHEREAS, additionally, the applicant represents that at least 40 percent of the soil volume to be excavated is expected to be regulated non-hazardous waste, which must be disposed of in a landfill; and

WHEREAS, the applicant documented the additional costs associated with the clean up of the site due to its historic use as a gasoline service station and an automotive repair facility; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building and an as of right hotel building; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the size of the lot, as well as premium construction costs associated with the irregular site conditions; and

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

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

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

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, in support of the above statements, the

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applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of eight dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, the applicant represents that the NoHo Historic District and the surrounding area are characterized by 19th Century retail and loft buildings, many of which are cast iron, and early 20th Century commercial buildings; and

WHEREAS, accordingly, the color, texture, and details of the proposed building were designed to be compatible with the context for cast iron facades and to emphasize the industrial quality of cargo containers in keeping with the industrial loft quality of the neighborhood; and

WHEREAS, the applicant represents that the building heights in the surrounding area range from four to eight stories and the adjacent property to the west is occupied by a six-story mixed-use building; and

WHEREAS, the applicant notes that since the adjacent property to the south is occupied by a one-story building, the proposed building will be clearly visible along Bond Street and the Landmarks Preservation Commission (LPC) requires that the exterior of that portion of the building also be designed to be compatible with the context of the neighborhood; and

WHEREAS, additionally, the applicant agreed to create a screen wall around the outdoor terrace space on the fifth and sixth floors in order to provide an uninterrupted street wall on Lafayette Street and Great Jones Street; and

WHEREAS, the applicant received a Certificate of Appropriateness from the LPC, dated March 23, 2007; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due in part to the historic widening of the street; and

WHEREAS, the Board observes that the proposed building of eight dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the applicant states that the standard residential and commercial floor area in the building results in a total FAR of 5.0, but because the terrace on the fifth floor is partially enclosed in order to maintain the street wall, it counts as an additional 363 sq. ft. of floor area and results in the proposed FAR of 5.12; and

WHEREAS, the Board notes that the proposed FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA034M, dated November 1, 2006; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a November, 2006 Environmental Assessment Statement, (2) a October, 2005 Phase I Environmental Site Assessment and (3) a December 2005 Limited Phase II Environmental Site; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Restrictive Declaration was executed on March 8, 2007 and submitted for recordation on March 12, 2007 for the subject property to address hazardous materials concerns; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-5B zoning district within the NoHo Historic District, the construction of a six-story, eight-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 1, 2006"—four (4) sheets and "Received March 6, 2007"—seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories, a total floor area of 15,556.5 sq. ft. (5.12 FAR), a residential floor area of 14,026 sq. ft. (4.62 FAR), a commercial floor area of 1,530.5 sq. ft. (0.50 FAR), a height of 70'-10 ¾", without bulkheads, and a total height of 79'-10 ¾", with bulkheads;

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

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

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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 17, 2007.

303-06-BZ

CEQR #07-BSA-039R

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications, Inc., for Verrazano Garden Apartments, Inc., owner.

SUBJECT – Application November 14, 2006 – Special Permit 73-30: Install non-accessory 75' radio tower, with related equipment, on a portion of the property (Block 3107, Lot 12), a lot consisting of 51,458 SF, located in an R3-2 zoning district.

PREMISES AFFECTED – 1081 Tompkins Avenue, 220' north of Tompkins Avenue and Richmond Avenue, Block 3107, Lot 12, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Daniel Braff.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 31, 2006, acting on Department of Buildings Application No. 500812855, reads in pertinent part:

“Proposed monopole (Use Group 6) is . . . not allowable within R3-2 district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City*

Record, and then to decision on April 17, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, certain individuals who live in proximity to the proposed installation appeared in opposition to the proposed installation, alleging concerns about aesthetics and possible health hazards; and

WHEREAS, the Board appreciates the sincerity of the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law; and

WHEREAS, further, as discussed immediately below, the facility will be disguised to resemble a flag pole, in order to address concerns about aesthetics; and

WHEREAS, the proposed facility will be located on a portion of the subject premises currently covered with existing vegetation; some of this vegetation will be cleared and a concrete base pad will be installed; and

WHEREAS, the premises is also occupied by a 36-unit multiple dwelling; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a 75-ft. high monopole, as well as related cabinets at the base of the pole; the facility will be surrounded by a six-ft. high fence; and

WHEREAS, the proposed monopole has been designed to resemble a flagpole, with six small panel antennas located inside and completely hidden from view; and

WHEREAS, the stealth design includes an American flag and a decorative gold ball with a maximum height of 77 feet; and

WHEREAS, three small equipment cabinets and a battery cabinet will be located at the base of the flagpole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within a six-foot high opaque locked fence enclosure, as noted above; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that

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there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-039R, dated November 17, 2006; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §§ 73-03 and 73-30 to allow, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received November 17, 2006”–(6) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

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

jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, April 17, 2007.

334-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Machia Abramczyk, owner.

SUBJECT – Application December 29, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1119 East 23rd Street, East 23rd Street between Avenue K and Avenue L, Block 7623, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 5, 2006, acting on Department of Buildings Application No. 302368800, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

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

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum rear yard of 30’.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

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WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Vice-Chair Collins; and

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

WHEREAS, the subject site is located on the east side of East 23rd Street, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a 2,725.43 sq. ft. (0.68 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,725.43 sq. ft. (0.68 FAR) to 4,016 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 2,532.72 sq. ft. to 2,190.04 sq. ft. (a minimum open space of 3,000 sq. ft. is required); and

WHEREAS, the proposed enlargement will increase the non-complying front yard from 2'-5" to 12'-5" (a minimum front yard of 15'-0" is required); and

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

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, the applicant initially submitted plans which provided for a home that encroached into the sky exposure plane; and

WHEREAS, at hearing, the Board asked the applicant to revise the plans so that there was no non-compliance as to the sky exposure plane; and

WHEREAS, the applicant revised the plans so as to comply with the requirements for the sky exposure plane except that a pre-existing non-complying condition which encroaches into the required setback will be maintained; and

WHEREAS, the Board also directed the applicant to maintain the front wall at the second floor; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the building height; and

WHEREAS, in response, the applicant submitted information on three nearby buildings with heights ranging from 35'-6" to 38'-6"; and

WHEREAS, the Board notes that the proposed enlargement will result in a home with a perimeter wall height of 21'-10" and a total height of 35'-4", which is compatible with the homes nearby; 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, 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 R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 3, 2007"-(5) sheets and "April 17, 2007"-(1) sheet; and *on further condition:*

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 470.12 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,016 sq. ft., a total FAR of 1.00, a perimeter wall height of 21'-10", a total height of 35'-4", a front yard of 12'-5", a rear yard of 20'-0", and open space of 2,190.04 sq. ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, April 17, 2007.

1-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Jacqueline Savio and Alfred Buonanno, owner.

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SUBJECT – Application January 2, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary (§23-141) in that the proposed building exceeds the maximum permitted floor area ratio of .75 in an R4-1 zoning district.

PREMISES AFFECTED – 1792 West 11th Street, West 11th Street between Quentin Road and Highlawn Avenue, Block 6645, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #11BK

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 and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 18, 2006, acting on Department of Buildings Application No. 302263226, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.75.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R4-1 zoning district, the proposed enlargement of a single-family semi-detached dwelling, which does not comply with the zoning requirements for floor area and FAR, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of West 11th Street, between Quentin Road and Highlawn Avenue; and

WHEREAS, the subject site has a total lot area of 2,700 sq. ft., and is occupied by a 1,958 sq. ft. (0.73 FAR) single-family semi-detached home; 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 1,958 sq. ft. (0.73 FAR) to 2,813 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,025 sq. ft. (0.75 FAR); and

WHEREAS, the proposed enlargement will maintain the non-complying side yard of eight feet (one side yard with a width of ten feet is the minimum required) and the non-complying front yard of 5.6 feet (a front yard with a minimum depth of ten feet is required); and

WHEREAS, the proposed enlargement will provide a 26.13 ft. rear yard (no rear yard is required because the site is within 100 feet of a corner); 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, 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 R4-1 zoning district, the proposed enlargement of a single-family semi-detached dwelling, which does not comply with the zoning requirements for floor area and FAR, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 3, 2007”–(5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;
THAT the floor area of the attic shall be limited to 633 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,813 sq. ft., a total FAR of 1.04, a perimeter wall height of 23’-6”, total height of 34’-6”, a front yard of 5.6 feet, a side yard of 8 feet, and a rear yard of 26.13 feet, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other

MINUTES

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, April 17, 2007.

378-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for deferred decision.

327-05-BZ

APPLICANT– Rothkrug Rothkrug Weinberg & Spector, for John Damiano, owner.

SUBJECT – Application November 11, 2005 – Special Permit (§73-125) to allow a proposed ambulatory diagnostic treatment care facility (Use Group 4) limited to less than 10,000 sf of floor area to locate in an R3X district. The proposal calls for a one-story and cellar building and fourteen (14) accessory parking spaces.

PREMISES AFFECTED – 5135 Hylan Boulevard, between Wendy Drive and Bertram Avenue, Block 6499, Lot 95, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for decision, hearing closed.

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84,

Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for continued hearing.

25-06-BZ

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 & §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman, Eliot Berry and Joe Packman.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

141-06-BZ

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo Ledovid, owner.

SUBJECT – Application July 6, 2006 – Variance pursuant to §72-21 to permit the proposed three-story synagogue. The Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (§24-11); front yards (§24-34); side yard (§24-35); wall height and sky exposure plane (§24-521); and parking (§25-31).

PREMISES AFFECTED – 2084 60th Street, southwest corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik and Goldie Schick.

For Opposition: Leo Weinberger, Joseph Olivio, Natalie DeNicola, Vito Marinelli Jr., Joann Marinelli Jr., Walter Maffei, Loretta Oliva, Bill Finn, Rebecca Gray and Nicholas Shine.

ACTION OF THE BOARD – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

152-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit

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(§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

161-06-BZ

APPLICANT– Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.

PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik, Richard Roberts and Tim Tlanacan.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

216-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 and §11-412) for the re-establishment and extension of term for an existing automotive service station, which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

259-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application September 22, 2006 – Variance (§72-21) to permit the enlargement of an existing synagogue located in an R5 (OP) zoning district. The proposal is contrary to open space coverage (§24-11), side yards (§24-

35), front yards (§24-34), height and setback (§24-50 and §24-521), parking (§25-18 and §25-31), and front yard not fully landscaped (§113-30).

PREMISES AFFECTED – 1885-1891 Ocean Parkway, a/k/a 601 Avenue S, Block 6682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

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

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Jack H. Cooperman and Sol Mermelson.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

265-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Rev. Heung C. Rha, owner.

SUBJECT – Application September 28, 2006 – Variance (§72-21) to allow accessory use to U.G. 2 (multiple dwellings) on an R2 portion of a zoning lot split by district boundaries (R2 and R6); R6 portion of the lot will be developed with an as-of-right multiple dwelling and house of worship; contrary to use regulations (§ 22-00 and § 22-12).

PREMISES AFFECTED – 141-48 33rd Avenue, south side of 33rd Avenue between Parsons Boulevard and Union Street, Block 4981, Lot 37, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Marco Colon, Chuck Apelian of CB #7, Millicent O’Meally, Pauline Wilson, Patricia Vesseo and Christine Czarny.

ACTION OF THE BOARD – Laid over to May 22, at 1:30 P.M., for continued hearing.

279-06-BZ

APPLICANT– Gerald J. Caliendo, R.A., AIA, for Richard N. Seemungal, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-

MINUTES

21) to construct a two story, two family residential building on a corner lot that does not comply with the front yard requirement (§23-45) and is less than the minimum required side yard (§23-461(b)) in an R4 zoning district.

PREMISES AFFECTED – 144-29 South Road, corner formed by the southeast side of South Road and Inwood Street, Block 10045, Lot 18, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

For Opposition: Rene King.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for decision, hearing closed.

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (§24-162a), side yards (§24-35), and the number of stories (§24-33).

PREMISES AFFECTED – 1847 60th Street, north side of 60th Street, between 18th Avenue and 19th Avenue, Block 5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik and Peter Gee.

For Opposition: Rosanna LePiccolo.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

315-06-BZ

APPLICANT – Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35, 24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Jacob Fetman, Tammy Fetman, Lea Bruder and S. Octsh.

For Opposition: David Teichman, Chana Teichman, Sandy Kreitner, Edward Shusterman and Beth Rabiwzttl.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

318-06-BZ

APPLICANT – Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49th Street, Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 6:45 P.M.

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*CORRECTION

This resolution adopted on February 27, 2007, under Calendar No. 27-96-BZ and printed in Volume 92, Bulletin Nos. 9-10, is hereby corrected to read as follows:

27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner.

SUBJECT – Application October 23, 2006 – Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on October 16, 2006; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

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

WHEREAS, the subject premises is located on the west side of Coney Island Avenue between Beverly Road and Avenue C; and

WHEREAS, the site has a lot area of approximately 5,100 sq. ft. and is located within a C2-3 (R5) zoning district; and

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

WHEREAS, the PCE occupies a portion of the first floor and mezzanine; and

WHEREAS, on October 16, 1996, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years; and

WHEREAS, the instant application seeks approval of interior layout modifications including the rearrangement of the

eating and drinking area, the relocation of the sauna, steam room and shower, and the enlargement of the men’s locker room; and

WHEREAS, the applicant also requests a ten-year extension of term for the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested interior modifications and extension of term are appropriate, with the conditions 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 October 16, 1996, so that as amended this portion of the resolution shall read: “to grant approval of a the requested layout modifications and an extension of the term for a term of ten years from the expiration of the last grant to expire on October 16, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received January 12, 2007’–(3) sheets and ‘October 23, 2006’–(1) sheet; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years to expire on October 16, 2016;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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. 300326895)

Adopted by the Board of Standards and Appeals, February 27, 2007.

***The resolution has been corrected in the part of the plans date, which read: ‘Received January 10, 2007’–(4) sheets.. reads: ‘January 12, 2007’–(3) sheets and ‘October 23, 2006’–(1) sheet...’. Corrected in Bulletin No. 16, Vol. 92, dated May 3, 2007.**

BULLETIN

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May 3, 2007

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DOCKET

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84-07-A

12 Brook Avenue, Brook Avenue, off Hylan Boulevard, Block 4721, Lot(s) 45, Borough of **Staten Island, Community Board: 2**. General City Law Section 36, Article 3 & NYC Building Code 27-291-Proposal to construct a new building.

85-07-A

14 Brook Avenue, Brook Avenue, off Hylan Boulevard, Block 4721, Lot(s) 46, Borough of **Staten Island, Community Board: 2**. General City Law Section 36, Article 3 & NYC Building Code 27-291-Proposal to construct a new building.

86-07-A

64 Chatham Street, Southeast corner of intersection of Kenilworth Avenue and Chatham Street., Block 5724, Lot(s) 124, Borough of **Staten Island, Community Board: 3**. General City law Section 36-To permit the construction of a building.

87-07-A

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88-07-BZ

1633 East 29th Street, Eastern border of 29th Street, south of Avenue P. and north of Quentin Road, Block 6792, Lot(s) 62, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT)-73-622-Proposed enlargement of a two story frame dwelling.

89-07-A

460 Thornycroft Avenue, North of Oakdale Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place., Block 5238, Lot(s) 7, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

90-07-A

464 Thornycroft Avenue, North of Oakdale Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place., Block 5238, Lot(s) 8, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

91-07-A

468 Thornycroft Avenue, North of Oakdale Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place., Block 5238, Lot(s) 8, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

92-07-A

472 Thornycroft Avenue, North of Oakdale Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place., Block 5238, Lot(s) 13, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

93-07-A

476 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue and Pacific, south of Albans Place., Block 5238, Lot(s) 16, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

94-07-A

480 Thornycroft Avenue, North of Oakdale Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place., Block 5238, Lot(s) 17, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

95-07-A

281 Oakland Street, Between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5283, Lot(s) 2, Borough of **Staten Island, Community Board: 3**. General City Law Section 35-Proposed development.

DOCKET

96-07-A

41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lot(s) 48,50, Borough of **Queens, Community Board: 4.** Appeal-Legalization of required side setback pursuant to Section 23-661, Z.R; the applicable provision, in lieu of Section 24-551; incorrectly cited by the Department of Buildings.

97-07-BZ

80-16 Cooper Avenue, Southerly side of Cooper Avenue and the easterly side of 80th Street., Block 3810, Lot(s) 350, Borough of **Queens, Community Board: 5.** (SPECIAL PERMIT) 73-36-To allow the operation of a Physical Culture Establishment on the second floor of a two story commercial building contained within a commercial mall complex.

98-07-BZ

67 Amherst Street, North of Hampton Avenue, south of Shore Boulevard., Block 8727, Lot(s) 38, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT)73-622-To vary 23-141 (floor area ratio, open space, lot coverage). 23-47 (rear yard) and 23-461(side yards) for proposed residential dwelling..

99-07-BZ

170 Girard Street, North of Oriental Boulevard, south of Hampton Avenue., Block 8749, Lot(s) 271, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622-For proposed enlargement of a residential dwelling..

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 22, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 22, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

135-67-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Avenue “K” Corp., owner.

SUBJECT – Application April 3, 2007 – Extension of Term of a gasoline service station with minor auto repairs (Exxon) for 10 years which will expired on October 11, 2007 in an R3-2 zoning district.

PREMISES AFFECTED – 2063/91 Ralph Avenue, northwest corner of Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

90-95-BZ

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for 641 LLC, owner; Bally Total Fitness, lessee.

SUBJECT – Application November 6, 2006 – Extension of Term and waiver of the rules for a Special Permit (ZR 73-36) to allow a Physical Cultural Establishment (Bally’s) in a C6-3A/C6-2A zoning district which expired on December 5, 2005.

PREMISES AFFECTED – 641 6th Avenue, southwest corner of intersection of West 20th Street and 6th Avenue, Block 795, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #4M

189-96-BZ

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D’Angelo-CNandongga, lessee.

SUBJECT – Application March 14, 2007 – Extension of Term for a Special Permit (73-244) for a UG12 eating and drinking establishment with entertainment and dancing (Flamingos) in an C2-3/R-6 zoning district; and to increase the number of occupancy from 190 to 200 which will expired on May 19, 2007.

PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue, 58’ east side of Forley Street, Block 1502, Lot 3, Borough of Queens.

COMMUNITY BOARD #4Q

199-00-BZ, Vol. III

APPLICANT – John C. Chen, for En Ping, Ltd., owner; Valentin E. Partner Atlantis, lessee.

SUBJECT – Application February 23, 2007 – Extension of Term of a Special Permit (73-244) for a UG12 eating and

drinking establishment (Club Atlantis) in a C2-3/R-6 zoning district which expired March 13, 2007.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

142-06-A thru 148-06-A

APPLICANT – Sheldon Lobel, P.C., for Ideal Development Group, Ltd., lessee.

SUBJECT – Application July 6, 2006 – Proposed construction of four two- family homes and three three-family homes located partially within the bed of an unnamed mapped street which is contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 3209 Tiemann Avenue, t/b/k/a 1651, 1655, 1661, 1665, 1671, 1675 Burke Avenue, 3215 and 3225 Tiemann Avenue, Block 4752, Lots 173, 175, 182, t/b/k/a New Lots 170, 171, 172, 174, 176, 177, 178 & 180, Borough of Bronx.

COMMUNITY BOARD #12BX

326-06-A

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10’ west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

81-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Christine & James Pastore, lessee.

SUBJECT – Application April 17, 2007 – Reconstruction and enlargement of an existing single family dwelling and the upgrade of an existing non-conforming private disposal system not fronting on a mapped street which is contrary to Article 3, Section 36 of the General City Law. R4 Zoning district.

PREMISES AFFECTED – 10 Courtney Lane, south side of Courtney Lane, 177.31’ east of Beach 203rd Street, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

83-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point

CALENDAR

Cooperative, owner; Joseph Adinolfi, lessee.
SUBJECT – Application April 17, 2007 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District.
PREMISES AFFECTED – 134 Ocean Avenue, west side of Ocean Avenue, 143.88’ south of mapped 8th Avenue, Block 16350, Lot p/o400, Borough of Queens.
COMMUNITY BOARD #14Q

MAY 22, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 22, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

254-06-BZ

APPLICANT – Eric Palatnik, P.C., for Sarah Weiss, owner.
SUBJECT – Application September 18, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (23-141(a)) and side yard (23-461) in an R-2 zoning district.
PREMISES AFFECTED – 1327 East 21st Street, corner of Avenue L and East 21st Street, Block 7639, Lot 41, Borough of Brooklyn.
COMMUNITY BOARD #14BK

314-06-BZ

APPLICANT – Eric Palatnik, P.C., for Mikhail Kremerman, owner; Yana’s Spa, lessee.
SUBJECT – Application December 6, 2006 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment (aka spa) at the cellar level of the proposed structure.
PREMISES AFFECTED – 2565 East 17th Street, Block 7438, Lot 51, Borough of Brooklyn.
COMMUNITY BOARD #15BK

321-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Park Towers South Company LLC, owner; Yelo, LLC, owner.
SUBJECT – Application December 13, 2006 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment in a portion of the first floor of a multi-story mixed use building.
PREMISES AFFECTED – 315 West 57th Street, north side of West 57th Street, 200’ west of Eighth Avenue, Block

1048, Lot 20, Borough of Manhattan.
COMMUNITY BOARD #4M

43-07-BZ

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Covenant House, owner; Hampshire House Hotels & Resorts, lessee.
SUBJECT – Application February 8, 2007 – Zoning variance under § 72-21 to allow a proposed twelve (12) story mixed-use development containing seventy-four (74) apartment hotel rooms (U.G. 2), two-hundred and seventy (270) transient hotel rooms (U.G. 5) and retail use (U.G. 6) and/or a physical culture establishment (PCE) on the ground and cellar levels. Proposed commercial uses (transient hotel, retail and PCE) are contrary to use regulations (§ 22-00). Proposed apartment hotel rooms exceed maximum number of dwelling units (§ 23-22) and are contrary to recreation requirements of the Quality Housing Program (§ 28-32). Proposed development would also violate regulations for floor area (§ 23-145), lot coverage (§ 23-145), rear yard for interior portion of lot (§ 23-47), rear yard equivalent for through lot portion (§ 23-533), height and setback (§ 23-633), and location requirements for outdoor swimming pool (§ 12-10).
PREMISES AFFECTED – 346-360 West 17th Street, aka 351-355 West 16th Street, Block 740, Lot 55, Borough of Manhattan.
COMMUNITY BOARD #4M

57-07-BZ

APPLICANT – Omnipoint Communications, Inc., for Wagner College, owner.
SUBJECT – Application March 5, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communications facility and will consist of a 70-foot monopole/light-post, together with antennas (and stadium flood-lights).
PREMISES AFFECTED – 636 Howard Avenue, 75’ east of Highland Avenue and Howard Avenue, Block 597, Lot 65, Borough of Staten Island.
COMMUNITY BOARD # 1SI

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 24, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

81-74-BZ

APPLICANT – Martyn & Don Weston, for Bogopa Supermarket, Inc., owner; Food Bazaar Supermarket; lessee.
SUBJECT – Application January 29, 2007 – Extension of Term of a previously granted variance for the operation of a Use Group 6 (Food Bazaar Supermarket) in a C1-2/R6A & R6B zoning district which expired on February 27, 2007.
PREMISES AFFECTED – 97-27 57th Avenue, north side between 97th Place and 98th Street, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a supermarket and accessory parking lot, which expired on February 27, 2007; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in the *City Record*, and then to decision on April 24, 2007; and

WHEREAS, Community Board 4, Queens, recommends approval of this application citing concerns about bottle return policies, the maintenance of the site, and to avoid blocking the store’s aisles; the Community Board recommends that the term be limited to three years; and

WHEREAS, City Council Member Helen Shears recommends approval of this application; and

WHEREAS, the site occupies the entire block front on the north side of 57th Avenue, from 97th Place to 98th Street and is partially within a C1-2 (R6A) zoning district and partially within an R6B zoning district; and

WHEREAS, the site is improved upon with a supermarket and accessory parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 1962 when, under BSA Cal. No. 549-61-BZ, the Board granted a variance for the construction of a building for commercial use in a residential district; and

WHEREAS, on June 25, 1974, under the subject calendar number, the Board granted an application to permit, on a site

which was then partially within a C1-3 zoning district and partially within an R6 zoning district (the site has since been rezoned), the construction of a one-story enlargement to the existing supermarket; and

WHEREAS, subsequently, the term was extended by the Board twice; and

WHEREAS, most recently, on July 13, 1999, the term was extended, to expire on February 27, 2007; and

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

WHEREAS, the applicant represents that there have not been any changes to the site since the prior approval; and

WHEREAS, at hearing, the applicant addressed the Community Board’s concerns and agreed to modify its bottle collection policy and better maintain the site; and

WHEREAS, the Board notes that of the Community Board’s concerns, only the maintenance of the site is within its purview; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, as adopted on June 25, 1974, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 27, 2007 to expire on February 27, 2017, *on condition* that the use shall substantially conform to the approved drawings; and *on further condition*:

THAT the term of this grant shall expire on February 27, 2017;

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

THAT the site shall be maintained free of debris;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 402523827)

Adopted by the Board of Standards and Appeals, April 24, 2007.

163-04-BZII

APPLICANT – Rothkrug Rothkrug & Spector, for Mylaw

MINUTES

Realty Corp., owner; Crunch Fitness, lessee.

SUBJECT – Application August 28, 2006 – Amendment of a special permit (§73-36) to allow the enlargement and expansion of an existing physical culture establishment into an adjoining building, and to reflect a change in the name of the operator. C2-4(R6) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of Fulton Street and St. Felix Street, Block 2096, Lots 66 and 69, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for a Physical Culture Establishment (PCE); and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on April 24, 2007; and

WHEREAS, the subject premises is located on the northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R6) zoning district; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown; and

WHEREAS, the site is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor and mezzanine of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2005; and

WHEREAS, the approved plans provide for the occupancy of 5,692 sq. ft. of space in the cellar and 9,206 sq. ft. of floor area on the first floor; and

WHEREAS, the applicant now proposes to enlarge the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building; and

WHEREAS, the applicant represents that the adjacent building is under common ownership and that an interior connection between the two buildings will be created; and

WHEREAS, the applicant also proposes to extend the hours to 24 hours a day; and

WHEREAS, at hearing, the Board asked the applicant whether the large sign painted on the wall was complying; and

WHEREAS, in response, the applicant submitted photographs, which reflect that the sign has been removed; and

WHEREAS, lastly, although the applicant represents that, they were offered on a temporary basis, massages are not currently offered at the PCE; and

WHEREAS, the applicant agrees that if the PCE decides to offer massages in the future, only licensed massage therapists will be permitted to provide them; and

WHEREAS, based upon its review of the record, the Board finds that the requested enlargement and change of hours is appropriate, with the conditions 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 July 12, 2005, so that as amended this portion of the resolution shall read: “to grant approval of a the requested enlargement; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received August 28, 2006’-(4) sheets and ‘December 29, 2006’-(1) sheet; and *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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. 300326895)

Adopted by the Board of Standards and Appeals, April 24, 2007.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard,

MINUTES

northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for continued hearing.

346-98-BZ

APPLICANT – Vito J. Fossella, P.E., for Amboy Service Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an expired amendment granted on October 12, 1999 to permit the proposed conversion of an existing building accessory to a gasoline service station, into a convenience store, by enlarging the existing building and eliminating the use of the lubricatorium, car wash, motor adjustments and minor repairs, as well as the relocation and increase in the number of pump islands from two to four, with a metal canopy over the new pump islands; an extension of Time to obtain a Certificate of Occupancy and a waiver of the rules in an R3-2 (South Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for continued hearing.

592-71-BZ

APPLICANT – Vito J. Fossella, P.E., for FSD Realty, LLC, owner.

SUBJECT – Application February 2, 2007 – Extension of Term of a previously granted variance for the operation of (UG6) professional office building in an R3-2 & R-2 zoning district which expired on February 15, 2007; and for the extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 1010 Forest Avenue, south side of Forest Avenue, Block 316, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for continued hearing.

72-96-BZ, Vol. II

APPLICANT – The Law Office of Fredrick A. Becker, for 30 WS LLC, for New York Sports Club, lessee.

SUBJECT – Application December 29, 2006 – Extension of Term/Amendment-To allow the operation of a Physical Culture Establishment/Health Club on portions of the cellar, first floor, first floor mezzanine, second floor and third floor

of the existing twelve story commercial building located in a C5-5 (LM) zoning district. The application seeks to amend the hours of operation previously approved by the board.

PREMISES AFFECTED – 30 Wall Street, north side of Wall Street, 90' east of Nassau Street, Block 43, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for decision, hearing closed.

10-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Crislis Realty Corp., owner.

SUBJECT – Application March 14, 2007 – Extension of Time to complete construction and a waiver of the rules for a Variance (§72-21) to permit, in an R-5 zoning district, the proposed development of a one story building to be used as four retail stores (Use Group 6) which expired July 10, 2005.

PREMISES AFFECTED – 85-28/34 Rockaway Boulevard, southwest corner of the intersection formed between Rockaway Boulevard and 86th Street, Block 9057, Lots 27 and 33, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for decision, hearing closed.

83-02-BZ, Vol. II

APPLICANT – Law Offices of Howard Goldman, for Big Sue LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Time to Complete Construction for a Variance to permit in an M1-1 zoning district, the proposed conversion of a four-story industrial building into a residential building with 34 units which expired on February 25, 2007.

PREMISES AFFECTED – 925 Bergen Street, bounded by Classon and Franklin Avenues, Block 1142, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

54-05-A

APPLICANT – NYC Department of Buildings.
OWNER OF PREMISES: Yeshiva Imrei Chaim Viznitz.
SUBJECT – Application March 4, 2005 – Application to revoke Certificate of Occupancy No. 300131122, on the basis that the Certificate of Occupancy allows conditions at the subject premises that are contrary to the Zoning Resolution and the Administrative Code.
PREMISES AFFECTED – 1824 53rd Street, southeast corner of 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Angelina Martinez-Rubio.

ACTION OF THE BOARD – Appeal granted

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown3
Recused: Commissioner Hinkson.....1
Negative:.....0

THE RESOLUTION:

WHEREAS, the Department of Buildings (“DOB”) seeks to modify Certificate of Occupancy Number 300131122 (the “Current CO”), issued to the subject premises on May 26, 1999, on the basis that it improperly authorizes a non-conforming commercial use that had been discontinued for over two years in a building located in an R5 zoning district; and

WHEREAS, the Current CO reflects the following uses: (i) Use Group (“UG”) 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and

WHEREAS, the premises is owned and occupied by the Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter, the “Yeshiva”), and is improved upon with a three-story plus cellar building (the “New Building”); and

WHEREAS, the New Building currently contains a UG 3 religious school for approximately 625 boys, a UG 4 synagogue space, and a UG 9 catering establishment that serves the needs of the broader orthodox Jewish community in the vicinity of the site, located in the cellar; and

WHEREAS, when this application was originally filed, DOB sought a full revocation on the Current CO, based on concerns about bulk non-compliances; and

WHEREAS, a public hearing was held on the originally-

filed version of the application on May 17, 2005, after due notice by publication in the *City Record*, and was then scheduled for a continued hearing on July 12, 2005; and

WHEREAS, however, before this hearing, the Yeshiva obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings; and

WHEREAS, this court order also directed the Yeshiva to file a variance application at the Board for the UG 9 catering use; and

WHEREAS, the Yeshiva filed such an application under BSA Cal. No. 290-05-BZ; and

WHEREAS, the Yeshiva also filed an appeal of a DOB determination that the UG 9 catering use was not a UG 3 school or UG 4 synagogue accessory use, under BSA Cal. No. 60-06-A; and

WHEREAS, since the two matters were filed at the same time and both concerned the use of the New Building’s cellar for non-conforming commercial catering purposes, the Board, with the consent of all parties, heard the cases together; and

WHEREAS, through resolutions dated January 9, 2007, the Board denied both the variance application and the interpretive appeal; and

WHEREAS, these decisions are now the subject of a legal challenge; and

WHEREAS, subsequent to these denials, the Board was again permitted to hear DOB’s application concerning the Current CO; and

WHEREAS, by letter dated February 27, 2007, DOB amended its application such that it now seeks a modification of the Current CO to eliminate the UG 9 catering use listing at the cellar level; and

WHEREAS, however, in its most recent submission, dated April 17, 2007, DOB suggests that it may wish to revisit in the future the validity of the Current CO in its entirety; and

WHEREAS, specifically, DOB notes that during the course of this proceeding, counsel for the Yeshiva admitted in a submission that the one-story building that used to exist on the site (the “Prior Building”) was completely demolished, with all existing walls removed; and

WHEREAS, DOB claims that the Yeshiva, when pursuing permits that ultimately led to the issuance of the Current CO, never revealed this fact; and

WHEREAS, therefore, DOB states that it reserves the right to pursue a full revocation in the future, though it understands that the Board will proceed to decision on the cellar use issue since the hearing was closed and a decision date was set; and

WHEREAS, the Board agrees that while a full revocation is no longer sought in the current application, the decision reflected herein is without prejudice to further DOB enforcement action regarding the premises, including future applications to further modify or revoke the Current CO; and

WHEREAS, the premises, although currently located in an R5 zoning district, has a history of commercial use; and

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WHEREAS, specifically, the record reflects that a certificate of occupancy was issued on July 29, 1927 authorizing a public garage in the Prior Building; and

WHEREAS, DOB states that the Prior Building was converted to a motor vehicle repair shop (the "Repair Shop") in 1931, and a certificate of occupancy was issued on April 25, 1939 listing this use; and

WHEREAS, the record reflects that on May 27, 1958, the Board granted a use variance for a term of three years to allow the storage and shipping of U.S. servicemen's belongings in addition to the Repair Shop; and

WHEREAS, DOB states that on September 8, 1961, it issued another CO that indicates that the use of the premises reverted back to solely the Repair Shop; and

WHEREAS, DOB represents that the Repair Shop became a lawful, non-conforming UG 16 use in a residential district upon adoption of the revised Zoning Resolution in 1961; and

WHEREAS, DOB further represents that Z.R. § 52-332, a provision in the 1961 Zoning Resolution, allows a non-conforming UG 16 motor vehicle repair shop use to partially change to another UG 16 use as-of-right; and

WHEREAS, however, despite the existence of Z.R. § 52-332 in the 1961 Zoning Resolution, the record reflects that the Board re-opened the 1958 variance and issued a second variance on April 13, 1962, permitting the Prior Building to include a UG 16 storage garage as well as the Repair Shop; and

WHEREAS, the Board agrees with DOB that this 1962 variance is a nullity, since at the time of the second variance grant the applicant could have proceeded as-of-right at DOB to legalize the storage garage use; no variance was authorized since there was no non-compliance with the ZR; and

WHEREAS, thus, at this time, the Repair Shop and garage were lawful non-conforming uses by virtue of the zoning change, rather than Board-granted uses; and

WHEREAS, DOB represents that another CO was issued on October 21, 1965 listing both the Repair Shop and the garage use; and

WHEREAS, the Repair Shop use apparently continued at the premises for a period of time thereafter, under particular ownership and within the Prior Building; and

WHEREAS, however, the record indicates that a new owner purchased the Prior Building and held it during a period lasting from approximately 1982 to 1992; and

WHEREAS, certain neighbors to the site testified at hearing that during the time of this new ownership, no repair business operated at the site; in fact, one of the neighbors testified that the property was used for the storage of furniture; and

WHEREAS, the record indicates that on December 16, 1991, the Yeshiva, after purchasing the site, filed a permit application with DOB to change the occupancy of the Prior Building to a UG 3 school, a conforming use in an R5 district, as well as to relocate partitions and install a curb cut; DOB approved the application and issued a work permit on

November 4, 1992; and

WHEREAS, DOB states that its records indicate that from December 1990 through July 1998, the premises was not operated as a Repair Shop or any other commercial use, but instead was either vacant or undergoing intermittent construction; and

WHEREAS, DOB further states that the Yeshiva filed several post-approval amendments ("PAAs") between July of 1995 and March of 1998, seeking to extend the cellar and add a second and third story to the building for use as a conforming synagogue and school; and

WHEREAS, none of the PAAs during this time period proposed a non-conforming UG 9 catering use; and

WHEREAS, DOB denies that it approved any of the PAAs; and

WHEREAS, however, the record reflects that a temporary certificate of occupancy ("TCO") was issued by DOB for a three-story building on July 29, 1998, authorizing a UG 4 assembly hall and kitchen in the cellar, a UG 4 synagogue and UG 3 classrooms on the first and second floors, and UG 3 classrooms on the third floor; and

WHEREAS, this July 1998 TCO only authorized conforming uses; no authorization for the UG 9 catering use was given, since the Yeshiva never proposed it; and

WHEREAS, in a letter dated August 26, 1998, a DOB Deputy Commissioner stated that he had no objection to the filing of a PAA requesting that the use schedule be amended to add a UG 9 catering establishment; and

WHEREAS, DOB suggests that this August 26 letter is merely an invitation to apply for such an amendment, rather than confirmation that such an amendment was approvable or lawful; and

WHEREAS, the Board has reviewed the letter and agrees with DOB; and

WHEREAS, the context of the letter indicates that the Deputy Commissioner was responding to a request for permission to make such a filing, as evidenced by the reference to consideration of the short time the July 29 TCO had been in effect and then the statement "this office has no objection to the filing of" a PAA; and

WHEREAS, in other words, the letter is merely an authorization to proceed with a PAA, rather than a binding conclusion based on submitted evidence that the addition of the non-conforming use was justified; and

WHEREAS, all of the Board members, and, in a prior position, an individual commissioner (specifically, Commissioner Hinkson, a former DOB commissioner), have reviewed numerous DOB determinations, and are familiar enough with them to distinguish between an actual DOB substantive conclusion about a zoning issue and a mere authorization to submit an application for a permit amendment; and

WHEREAS, the record reveals that after the PAA application was made, the Yeshiva obtained TCOs reflecting the UG 9 catering use in the cellar on September 28, 1998 and

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December 29, 1998; and

WHEREAS, DOB states that an audit conducted on May 29, 2002 revealed that the PAAs that precipitated the issuance of these TCOs were approved in error; accordingly, the PAAs were marked disapproved and returned to the owner; and

WHEREAS, DOB subsequently sent out a letter revoking the underlying permit on October 17, 2002; and

WHEREAS, DOB's primary argument is that the prior non-conforming UG 16 use was discontinued pursuant to ZR § 52-61; and

WHEREAS, Z.R. § 52-61 provides, in pertinent part, "If, for a continuous period of two years . . . the active operation of substantially all of the non-conforming uses in any building . . . is discontinued, such . . . building . . . shall thereafter be used only for a conforming use. Intent to resume active operations shall not affect the foregoing."; and

WHEREAS, because the Current CO lists UG 9 catering at the cellar level in apparent reliance upon the prior UG 16 Repair Shop use, DOB further argues that the Current CO should be modified to remove this listing; and

WHEREAS, in support of its discontinuance argument, DOB submitted inspection reports from December 1990 and March 1991 that state that the Prior Building was vacant and the front entrance doors were masonry sealed; and

WHEREAS, DOB also cited to the Yeshiva's application to change the Prior Building to a conforming UG 3 use; and

WHEREAS, further, DOB submitted telephone book reports as evidence that there was no telephone line at the building from 1992 to 1997, a fact that DOB asserts is inconsistent with the active operation of a commercial motor vehicle repair shop; and

WHEREAS, additionally, DOB submitted a violation dated August 2, 1995 that states that the owner failed to provide required fencing during construction and that the entire premises was excavated approximately 16-feet deep; and

WHEREAS, DOB concludes that since the active operation of the non-conforming UG 16 use at the premises was discontinued for more than two years, the premises could only be used for a conforming use thereafter, and a UG 9 catering use is not a conforming use in an R5 zoning district; and

WHEREAS, the Board has reviewed the evidence submitted by DOB in support of its claim of discontinuance and finds it sufficient and credible; and

WHEREAS, there is no evidence in the record contradicting DOB's submitted records with respect to discontinuance of the non-conforming Repair Shop use; and

WHEREAS, nor did the Yeshiva attempt to argue that the Repair Shop in fact remained in active operation while the Prior Building was removed and the new three-story with cellar building was constructed; and

WHEREAS, accordingly, the Board finds that for a period of at least two years, the active operation of the lawful non-conforming use of the first floor of the Prior Building as a

UG 16 use had been discontinued; and

WHEREAS, consequently, the UG 9 catering use listing on the Current CO is in error and the CO must be modified to eliminate it; and

WHEREAS, the Yeshiva makes the following arguments in opposition: (1) that the filing of the initial permit application in 1991 – which sought only to change the occupancy of the one-story building to a UG 3 school, as well as to relocate partitions and install a curb cut – tolled the discontinuance period of ZR § 52-61; (2) the evidence of discontinuance is not compelling; (3) DOB should be prohibited from pursuing this application based upon the equitable defense of laches; (4) DOB should be estopped from pursuing this application; and

WHEREAS, as to the first argument, the Yeshiva claims that it has been DOB's long-standing policy to toll the two-year discontinuance period of ZR § 52-61 upon the filing of any permit for construction at the premises; and

WHEREAS, however, the Yeshiva fails utterly to cite to a single instance of the application of this alleged policy, nor is there any indication of such policy in any DOB procedure notice, letter, rule or directive that the Board is aware of; and

WHEREAS, further, the Board observes that the ZR contains no provision that codifies such a policy; and

WHEREAS, in fact, DOB disclaims such policy, explaining that at most it would allow a valid building permit to toll the discontinuance of a non-conforming use "only when the work is necessary to resume the non-conforming use or when a permit for legally mandated work on the non-conforming use prevents the continuance of the non-conforming use during the pending construction"; and

WHEREAS, here, the Yeshiva's 1991 permit application was for a change to a conforming use only; there was no application for retention of the UG 16 Repair Shop use, nor was there an application for a change in use to UG 9 catering; and

WHEREAS, these facts do not indicate that the proposed work was necessary to resume the non-conforming use, nor do they indicate that the permitted work was related to the non-conforming use; and

WHEREAS, the Board agrees that there is no preservation of the ability to maintain a prior non-conforming use or to change to another non-conforming use when there has been a two year or more discontinuance of such, pursuant to ZR § 52-61; and

WHEREAS, here, the Yeshiva did not initiate an application to modify the 1992 permit to propose a UG 9 use until approximately six years later, a period of time in which there was an actual discontinuance of the UG 16 use for a period of two years or more; and

WHEREAS, in fact, the Yeshiva went so far as to obtain a TCO that listed only conforming uses; and

WHEREAS, the Board finds it absurd to argue that the right to include a UG 9 catering establishment at the premises was preserved after the New Building was authorized for occupancy by only conforming uses, especially in light of the

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actual discontinuance; and

WHEREAS, the Yeshiva was unable to cite to any DOB or BSA precedent where in support of its argument; and

WHEREAS, as a supplement to its argument that DOB's policy is toll the discontinuance period upon issuance of any permit, the Yeshiva cites to Hoffman v. Board of Zoning and Appeals of Russell Gardens, 155 A.D.2d 600 (2nd Dep't, 1989); and

WHEREAS, in the Hoffman case, the court held that where a lawful non-conforming restaurant suffered fire damage and the owner filed to reconstruct the restaurant, the applicable non-conforming use discontinuance provision would be tolled while the restaurant underwent reconstruction and was not open for business; and

WHEREAS, DOB responds that it has not applied Hoffman broadly to non-fire damaged buildings, and it would expect, as occurred in Hoffman, that the permit applicant apply for a permit to reconstruct the non-conforming use within the tolling period; and

WHEREAS, the Board also agrees that Hoffman must be applied with some common sense, and approves of the approach proposed by DOB; and

WHEREAS, here, the Yeshiva's course of action during the permitting and construction process is not similar to what occurred in Hoffman: the building was not fire damaged and there was no permit filing for reconstruction of the non-conforming use until after the tolling period had expired and the non-conforming use was discontinued for two years of more; and

WHEREAS, unlike in Hoffman, the Yeshiva sought approval only for conforming uses, and demolished the Prior Building and constructed the New Building in furtherance of that goal;

WHEREAS, accordingly, the Board finds that the Yeshiva's reliance upon Hoffman for its tolling argument is misplaced and the arguments based on the case are without merit; and

WHEREAS, the Yeshiva contends, however, that to the extent the Board is concluding that an intent to maintain the non-conforming use must be evident from the initial permit or permit application, as was the case

in Hoffman, such conclusion is contrary to law; and

WHEREAS, the Yeshiva cites to Matter of Toys "R" Us v Silva, 89 NY2d 411 (1996) in support of this argument; and

WHEREAS, the Yeshiva argues that the Toys "R" Us decision stands for the proposition that this Board may not consider the initial intent as expressed by the 1991 permit application when determining whether the two year period of ZR § 52-61 commenced or was tolled; and

WHEREAS, the Board observes, however, that the Toys "R" Us court, in its discussion of ZR 52-61, was addressing that part of the provision that reads: "An intent to resume active operations" shall not affect a determination that actual discontinuance of a non-conforming use mandates that the land only be used for conforming uses thereafter; and

WHEREAS, it is clear that the court was addressing the possibility that a property owner might somehow memorialize an intent to resume a non-conforming use but not actually engage in that non-conforming use; and

WHEREAS, the court merely observed that ZR § 52-61 would not allow consideration of such intent; the only consideration is actual cessation of use; and

WHEREAS, applying this observation here, the Board concludes that the Yeshiva is not entitled to reinstatement of the UG 16 use or the change to UG 9 use, since there was an actual cessation of use for more than the two year time period set forth in ZR 52-61; and

WHEREAS, in fact, the Toys "R" Us decision does not pertain to or even touch upon the argument presented here, which is that the filing of a permit tolls the ZR 52-61 discontinuance period; and

WHEREAS, when this argument is made, this Board may conclude that the intent reflected in the Yeshiva's permit is in fact relevant, since the reflected intent is to abandon the non-conforming use; and

WHEREAS, the Board notes that ZR §52-61 only provides that an intent to resume a non-conforming use is not relevant; it does not say that an intent to abandon non-conforming use is never relevant; and

WHEREAS, in light of the Yeshiva's argument about the permit issuance tolling the discontinuance period, the Board concludes that an examination of the permit is relevant; and

WHEREAS, in sum, since there was actual discontinuance of the UG 16 use, an application of Toys "R" Us dictates and ZR 52-61 dictates that there was no right to the UG 16 use nor the change to the UG 9 catering use in 1998; and

WHEREAS, regardless of the Yeshiva's tolling argument, the Board observes that the Yeshiva had absolutely no right whatsoever to accommodate the UG 9 catering use in the New Building, since it reflects, at a minimum, a structural alteration of the Prior Building; and

WHEREAS, pursuant to ZR § 52-22, "no structural alterations shall be made in a building . . . substantially occupied by a non-conforming use, except when made . . . in order to accommodate a conforming use" unless certain other Article V provisions apply; and

WHEREAS, here, the significant demolition of most, if not all, of the Prior Building, the creation of a new cellar and the addition of floors all constitute structural alteration, and none of the Article V provisions regarding permitted enlargements apply to commercial uses in residential districts; and

WHEREAS, in other words, the ZR does not authorize the Yeshiva to both change the prior UG 16 non-conforming use to UG 9 non-conforming use and also structurally alter the Prior Building; instead, it prevents this from happening; and

WHEREAS, thus, the 1998 amendment to the 1992 permit to reflect UG 9 catering use was unlawful; and

WHEREAS, even if one accepted the proposition that

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tolling could retroactively occur upon such amendment (which the Board does not), clearly such an amendment would have to be lawful; and

WHEREAS, nevertheless, the Yeshiva suggests that the alterations made to the building were in fact authorized by the ZR; and

WHEREAS, specifically, the Yeshiva cites to ZR § 11-412, which allows the Board to authorize alterations and enlargements to uses subject to Board variances granted under the 1916 zoning code; and

WHEREAS, the Yeshiva cites to the 1958 variance mentioned above; and

WHEREAS, however, as previously explained, this variance was time limited, and the subsequent action on the variance in 1961 was a nullity; and

WHEREAS, thus, any citation to ZR § 11-412 is entirely irrelevant, since there is no Board grant that affects the site; and

WHEREAS, further, even if the 1961 variance still was in effect, this Board would have to affirmatively approve upon formal application and hearing any alteration or enlargement to a pre-1961 variance-affected building pursuant to ZR § 11-412; and

WHEREAS, moreover, the Board would have to approve the change in use from UG 16 to UG 9 pursuant to ZR § 11-413; however, no alteration application under ZR § 11-412 is allowed in furtherance of a use authorized under ZR § 11-413; and

WHEREAS, in any event, the Yeshiva never sought from this Board any approval to enlarge or otherwise structurally alter the Prior Building; and

WHEREAS, instead, the Yeshiva only sought allegedly as of right building permits from DOB; and

WHEREAS, further, the addition of two new stories clearly violated the cap on additional floor area of 50 percent of existing floor area, as set forth in ZR § 11-412; and

WHEREAS, accordingly, the Board finds that the argument that ZR § 11-412 somehow validates the otherwise impermissible structural alteration and enlargement undertaken to accommodate, in part, the UG 9 catering use is without any merit whatsoever; and

WHEREAS, in sum, the Yeshiva's argument that the 1992 permit and the 1998 amendment somehow magically act together to preserve the right to a non-conforming use in the absence of any actual use for a period of more than two years is entirely without merit, because it is contrary to both DOB policy and the ZR and is not otherwise supported by case law; and

WHEREAS, further, even assuming *arguendo* that the Yeshiva's argument is correct, the UG 9 catering listing on the Current CO is still invalid because the Yeshiva impermissibly structurally altered the Prior Building to accommodate the UG 9 use; and

WHEREAS, as to the sufficiency of evidence, the Yeshiva argues that the 1995 inspection report should not be relied upon since the violation was dismissed, and that the

phone records should not be used when public utility records are more appropriate evidence; and

WHEREAS, the Board disagrees with the Yeshiva on both points; and

WHEREAS, first, the observations of the inspector may be relied upon even if the violation was dismissed, a position supported by a case cited by the Yeshiva in its March 13, 2006 submission (Culp v. City of New York, 146 A.D. 326 (2nd Dep't, 1911)); and

WHEREAS, second, the lack of phone records is considered by this Board to be credible evidence of a lack of a commercial establishment, and has been in the past as well; and

WHEREAS, in fact, the absence of such records supported, in part, the Board's conclusion in the Toys "R" Us case; and

WHEREAS, further, the Board notes that there was considerable testimony from the public at hearing establishing that the use of the Repair Shop was ceased while the Yeshiva sought to alter and enlarge the Prior Building, eventually replacing it with an entirely different three-story building; and

WHEREAS, the Board also notes that the earlier DOB inspections from 1991 establish the beginning of the period of the cessation of non-conforming use for purposes of ZR § 52-61; and

WHEREAS, finally, leaving aside the Yeshiva's failure to refute DOB's evidence of discontinuance, the Board again observes that there was not even a single attempt by the Yeshiva to introduce evidence that would establish actual continuance, which strikes the Board as being the most expedient way to refute DOB's argument; and

WHEREAS, however, the Board notes that its determination as to the actual discontinuance is based upon its review and acceptance of DOB's cited evidence; and

WHEREAS, accordingly, the Board reiterates that the evidence in the record supporting the claim of discontinuance for the period of December 1990 to at least December 1997 is credible and sufficient; and

WHEREAS, the Yeshiva's third argument is that the Board must deny this application based on laches; specifically, the Yeshiva alleges that DOB delayed pursuing revocation or modification to the Current CO and prevented the Yeshiva from obtaining records that would prove that their was no discontinuance of the Repair Shop use; and

WHEREAS, the Board notes that it is not a quasi-judicial tribunal as alleged, so it is not appropriate for it to entertain equitable defenses; and

WHEREAS, further, none of the alleged precedent cited by the Yeshiva in support of the notion that the Board can determine equitable defenses stands for this proposition; and

WHEREAS, accordingly, the Board declines to review this argument; and

WHEREAS, the Board reaches a similar conclusion about its ability to hear an argument based on principles of equitable estoppel, and thus declines to review this argument as well; and

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WHEREAS, based upon its consideration of the record and all the arguments made by DOB and the Yeshiva, the Board concludes that the reference on the Current CO to UG 9 catering facility use in the cellar was issued in error and is without legal effect; and

WHEREAS, the Board also concludes that the cellar of the New Building must hereafter be used only for conforming uses currently permitted in the underlying R5 zoning district, notwithstanding the existence of any prior certificate of occupancy issued to the subject premises; and

WHEREAS, in passing, the Board notes that pursuant to a stipulation entered into between the City and the Yeshiva and related to the above-mentioned legal challenge, this resolution will not be certified and filed immediately subsequent to decision; however, it is a final determination of the Board.

Therefore it is Resolved that the application brought by the Commissioner of the Department of Buildings, dated March 4, 2005, as amended, seeking modification of the cellar listing set forth on Certificate of Occupancy No. 300131122, is hereby granted, said listing shall be removed from the CO and the cellar of the building at the premises shall now only be used for conforming uses.

Adopted by the Board of Standards and Appeals, April 24, 2007.

20-07-BZY thru 31-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5030, 5040, and 5041 Goodridge Avenue and 5000, 5020, 5021, 5030, 5031, 5041, 5051, 5300, and 5310 Grosvenor Avenue, Bronx.

Block 5829, Lots 3630 and 3635; Block 5830, Lots 3912, 3920, 3930, and 3940; Block 5831, Lots 40, 50, 60, and 70; Block 5839, Lots 4018 and 4025, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, 12 single-family dwellings currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the buildings, in the interest of convenience, it heard the cases

together and the record is the same for all of the applications; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 17-07-BZY thru 19-07-BZY, for three additional homes to be constructed at the site; these three homes are not addressed here; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, and then to decision on April 24, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises are part of an approximately 15-acre site known as Chapel Farm; Goodridge Avenue and Grosvenor Avenue are adjacent semi-circular streets; and

WHEREAS, the premises are currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for all 12 homes and had completed the foundation for one home, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction of the entire development and to obtain certificates of occupancy; and

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(2) defines construction such as the proposed development, which involves the construction of two or more buildings on contiguous zoning lots, as a “major development”; and

WHEREAS, for “major development,” an extension of time to complete construction, previously authorized by a DOB vesting determination, based on the criteria set forth in ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and

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Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

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

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

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 200922519, 200922528, 200922537, 200922546, 200922555, 200922564, 200922573, 200922582, 200922591, 200922608, 200922617, and 200922626 (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and have been timely renewed; and

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

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

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

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

WHEREAS, in written statements and testimony,

the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permits includes site preparation, rock removal, excavation, roadwork, and the installation of a storm drainage field, sanitary sewer piping, and sewer catch basins; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, unimproved roads, the completed foundation on Lot 40, financial records, and copies of cancelled checks; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the completed foundation is \$350,000 (approximately 12 percent) out of a total \$32 million for the construction of all 12 homes; the applicant represents that \$2,875,000 (approximately 36 percent) has been spent on infrastructure for the entire 15-home development out of a total of approximately \$8 million; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

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

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

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

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure, six additional years will be needed to complete the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a major development to three terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining would require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review subsequent requests for extensions of time and determine whether it is appropriate to approve them by letter; and

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

Therefore it is Resolved that this application made

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pursuant to ZR § 11-332 to renew Building Permit Nos. 200922519, 200922528, 200922537, 200922546, 200922555, 200922564, 200922573, 200922582, 200922591, 200922608, 200922617, and 200922626, 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 certificates of occupancy for one term of two years from the date of this resolution, to expire on April 24, 2009.

Adopted by the Board of Standards and Appeals, April 24, 2007.

217-06-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon, LLC, owner.

SUBJECT – Application August 28, 2006 – Proposed construction of a daycare center which extends into the bed of a mapped street (Francis Lewis Blvd) contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard, a/k/a 196-23 42nd Street, north side of the intersection of Francis Lewis Boulevard and 42nd Avenue, Block 5361, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 8, 2007, at 10 A.M., for decision, hearing closed.

276-06-A

APPLICANT – Rothkrug Rothkrug and Spector, for Fred Corona, owner.

SUBJECT – Application October 13, 2006 – Appeal challenging the Department of Buildings determination that the subject premises fails to comply with Section 23-711 (Minimum Distance between buildings) and Section 23-88 (Minimum Distance between Lot lines and Building Walls within in LDGMA areas). R3A zoning district.

PREMISES AFFECTED – 8 and 12 Reynolds Street, south side of Reynolds Street, 100’ west of Mary’s Avenue, Block 2989, Lots 30 and 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Janine Gaylard, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

307-06-A

APPLICANT – Alec Shtromandel-FHSRI, for 58th Avenue Management, LLC, owner; Forest Hills Student Residences, lessee.

SUBJECT – Application November 22, 2006 – An appeal challenging Department of Buildings determination that the subject premises does not qualify as a Community Facility under Section 22-13 of the Zoning Resolution. R5 Zoning District.

PREMISES AFFECTED – 86-18 58th Avenue, east side of 58th Avenue, 160’ north of the corner formed by the intersection of Van Horn Street and 58th Avenue, Block 2872, Lot 15, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Alec Shtromandel.

For Administration: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown3
Recused: Commissioner Hinkson.....1
Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 11:20 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 24, 2007
1:30 P.M.**

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

ZONING CALENDAR

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application June 5, 2005 – Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Collins and

Commissioner Ottley-Brown.....3

Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 6, 2006, acting on Department of Buildings Application No. 301914178, reads, in pertinent part:

“Provide minimum side yards as per ZR 23-48

FAR exceeds that permitted by ZR 23-141.

Proposed wall height exceeds that permitted by ZR 23-631”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the legalization of a purported enlargement of a single-family dwelling, which does not comply with the zoning requirements for side yards, Floor Area Ratio, and perimeter wall height, contrary to ZR §§ 23-48, 23-141, and 23-631; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, with continued hearings on January 30, 2007 and March 13, 2007, and then to decision on April 24, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

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

WHEREAS, the Manhattan Beach Community Group also appeared in opposition to this application, and numerous other individuals made submissions in opposition; and

WHEREAS, certain individuals submitted letters in support of this application to the Community Board; and

WHEREAS, the subject lot is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, in the Manhattan Beach neighborhood of Brooklyn; and

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

WHEREAS, the subject lot has a total lot area of 3,241 sq. ft.; and

WHEREAS, the applicant states that the lot is now occupied by an illegal two-story single-family dwelling; and

WHEREAS, the applicant represents that the existing building has an FAR of 0.70, side yards of 0’-11” and 4’-9”, and a perimeter wall height of 23.3 feet; and

WHEREAS, the Department of Buildings (DOB) has ascertained, and the applicant concedes, that none of these bulk parameters comply with applicable R3-1 district regulations; and

WHEREAS, the applicant admits that the home was constructed to said parameters without first obtaining a special permit from this Board; and

WHEREAS, the chronology of recent development on the site, most of which was illegal, originated when the owner of the of the previously existing one-story single-family home at the site (the “Prior Building”) hired a contractor in January 2005 to assess the home for an enlargement; and

WHEREAS, as set forth in an affidavit from this contractor, submitted into the record by the applicant, the inspection allegedly revealed damaged wood caused by termites and age, as well as water damage to the foundations; and

WHEREAS, the project commenced thereafter in March 2005, with the owner’s architect filing plans at DOB for the alleged enlargement; and

WHEREAS, as indicated in the application materials, the contemplated work included partial demolition of the walls of the Prior Building, an addition, and the enlargement of the cellar; and

WHEREAS, the owner’s architect obtained a professionally certified permit for the proposed work (permit no. 301914178; hereinafter, the “Permit”), and construction commenced thereafter; and

WHEREAS, according to the applicant, in April 2005, an engineer, retained as a consultant and not as the structural engineer of record, performed a Windsor probe test on the concrete foundations and walls of the Prior Building; and

WHEREAS, the applicant submitted a report from this engineer with the date listed as April 12, 2005, which

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indicates probe results taken from the footings, the south wall and the north wall; and

WHEREAS, in the report, the engineer concludes “Based on Windsor probe test and visual observation (cracks and lack of rebars) the foundation is not structurally sound. This report is to be evaluated by structural engineer of record.”; and

WHEREAS, subsequently, the initially filed plans were revised and work proceeded according to these revised plans; and

WHEREAS, however, these revisions had nothing to do with the alleged problems with the structural stability of the Prior Building’s foundation and walls; further, even though the owner’s representatives had knowledge about the need for more extensive demolition, the revised plans did not accurately reflect this work; and

WHEREAS, instead, demolition of more of the Prior Building than allowed by the Permit and the revised plans occurred without DOB sanction; and

WHEREAS, on May 2, 2005, DOB issued a stop work order (“SWO-1”) and a violation for this illegal work; and

WHEREAS, the inspector’s comments on the violation read “WORK WITHOUT A PERMIT-HAZARDOUS WORK NOTED:ON A JOB THAT CALLS FOR PARTIAL DEMOLITION,THERE IS ONLY A 25FT SECTION OF CONCRETE WALL AT NORTH SIDE OF PROPERTY THAT REMAINS.ENTIRE ROOF AND CEILING JOISTS RAFTERS”; and

WHEREAS, as conceded by the applicant during hearing, though the south wall of the Prior Building was anticipated to remain, it was in fact demolished, even though the revised plans did not reflect this; and

WHEREAS, following the issuance of this violation, the owner’s representatives apparently contacted DOB and sought to have SWO-1 removed; and

WHEREAS, the applicant claims that these representatives submitted documentation to DOB establishing the allegedly deteriorated condition of the south wall that necessitated its demolition, even though both the initial plans and revised plans contemplated its retention; and

WHEREAS, there is no DOB record of what was submitted; and

WHEREAS, the applicant attached certain documents to its October 18, 2006 statement, seemingly to suggest that these were the documents submitted to DOB in May 2005; and

WHEREAS, however, only one of those documents, the aforementioned report from the consulting engineer, conclusively pre-dates DOB’s lift of SWO-1; and

WHEREAS, the attached letter from the project engineer is from one year later, and the other attached document was the affidavit from the project contractor; and

WHEREAS, though the Board cannot ascertain what DOB reviewed, DOB nevertheless lifted SWO-1 on June 10, 2005, and work recommenced; and

WHEREAS, unfortunately, even after this initial

enforcement action of DOB, the record reveals that work proceeded contrary to plans and the ZR, and the above-mentioned non-compliances were deliberately created; no further plan amendments to legalize this work were ever received by DOB; and

WHEREAS, DOB later responded to a complaint about this illegal work, and issued a notice of intent to revoke the Permit on March 13, 2006 (the “Notice”); and

WHEREAS, DOB also issued a second stop work order (“SWO-2”) on or around April 1, 2006, citing this illegal construction; and

WHEREAS, no work was done thereafter; and

WHEREAS, the owner’s representatives then managed to obtain a DOB determination dated August 22, 2006, allowing the Permit to still be categorized as an alteration, ostensibly for purposes of the application here, in spite of the illegal demolition and construction; and

WHEREAS, DOB accepted this request with the condition that the first floor joists and ceiling joists that were apparently indicated in existing condition plans shown to DOB at this time would be retained; if these elements were not retained, DOB indicated that a new building permit application would be required; and

WHEREAS, the applicant did not offer any conclusive proof into the record that these elements were retained; and

WHEREAS, based upon the above, the applicant has failed to convince the Board that the proposed legalization meets the parameters of the special permit; and

WHEREAS, specifically, the applicant failed to prove that the existing building reflects an actual enlargement of the Prior Building, as opposed to the construction of a new building; and

WHEREAS, as a threshold issue, as this Board has previously determined, DOB’s categorization of a construction plan as an alteration, for which an alteration permit is appropriate, or as a new building, for which a new building permit is appropriate, is a separate inquiry from that conducted by the Board for purposes of the instant special permit; and

WHEREAS, the Board previously took this position in another application for a home enlargement special permit (BSA Cal. No. 128-05-BZ), notwithstanding DOB’s determination that the proposed work was an alteration for permitting purposes; and

WHEREAS, instead, the Board looks to the text of ZR § 73-622, the definition of “enlargement” set forth at ZR § 12-10, other ZR definitions, and the facts at hand; and

WHEREAS, the Board notes that the text of ZR § 73-622 authorizes the Board to approve an enlargement of an existing building only; ground-up construction of a new non-complying building is not permitted; and

WHEREAS, the Board notes that the text repeatedly uses the word “enlargement”, which, pursuant to ZR § 12-10, is defined in part as “an addition to the floor area of an existing building”; and

WHEREAS, therefore, the Board takes the position that the special permit may not be used where there has been

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a demolition of the pre-existing building to the point where there is only one wall remaining as occurred here; and

WHEREAS, the Board notes that the remaining wall section was not even used or integrated into the new home, but was merely reinforced by a new structural wall; and

WHEREAS, under such circumstances, the Board can only conclude that a brand new home was built around the Prior Building's sole remaining structural element; and

WHEREAS, thus, the Board finds the construction performed at the premises does not meet the ZR definition of enlargement, nor is it an enlargement of the Prior Home in practice; and

WHEREAS, in response, the applicant suggests that ZR § 73-622 is ambiguous as to what is an enlargement of an existing home, and argues that since zoning is in derogation of the common law, any ambiguity should be resolved in favor the landowner; and

WHEREAS, however, there is no ambiguity here: the Prior Building was demolished except for one small portion of wall, and a new home was built around this portion; and

WHEREAS, as noted above, the applicable definitions are clear and unambiguous – such construction is not an enlargement; and

WHEREAS, the applicant also cites to a prior Board determination on another ZR § 73-622 application, BSA Cal. No. 133-05-BZ (hereinafter, the "Prior Decision") in support of the argument that a full demolition of a damaged building can occur yet the subsequent construction of a new building may still be eligible for the home enlargement special permit; and

WHEREAS, this application concerned the legalization of construction at 1231 East 21st Street, Brooklyn; and

WHEREAS, the applicant notes correctly that the home in question was also discovered to have termite damage, which necessitated that new walls be installed; and

WHEREAS, however, the alleged factual similarities between the two cases end there; and

WHEREAS, first, in the Prior Decision, the home was enlarged within an as of right envelope; and

WHEREAS, in other words, the home as enlarged possessed complying yards and perimeter wall height, unlike the existing building here; and

WHEREAS, the need for the special permit application only arose because the contractor filled in a double-height space with a new floor, thereby creating non-complying floor area; and

WHEREAS, second, there was no repeated failure to amend plans reflecting the actual course of contemplated construction with full knowledge of the damage to the building that obviously would necessitate amended plans, as occurred here; and

WHEREAS, most importantly, a fundamental difference between the two cases is reflected in a recital in the resolution for 133-05-BZ; and

WHEREAS, this recital reads: "further, the applicant rebuilt on the existing foundations as contemplated under the as

of right permit, which the Board views as evidence of an intent to comply with the permit, absent the termite damage"; and

WHEREAS, as noted above, even after DOB noticed the illegal demolition and issued SWO-1, construction proceeded in blatant disregard to the Permit and the plans underlying the Permit; and

WHEREAS, there was no attempt to rebuild on the existing foundation at all, which connotes a deliberate desire to not limit construction to the legal parameters under the zoning; and

WHEREAS, further, there was no intent to comply with the Permit, and had DOB not issued the Notice and SWO-2, the Board can legitimately question whether any proactive step to legalize the illegal construction would have been taken by the owner or the representatives; and

WHEREAS, further, that the construction in the Prior Decision reused the prior foundation walls is more akin to an enlargement than what occurred in the instant case, where there was construction of a completely new building around a portion of a wall not used at all for structural support; and

WHEREAS, the applicant attempts to show there was no intent to demolish the Prior Building illegally by submitting the construction contract, which does not explicitly mention demolition; and

WHEREAS, however, the Board notes that the application for the Permit clearly contemplates partial demolition; thus, the absence of such language in the construction contract proves nothing; and

WHEREAS, for the above reasons, the Board finds that the Prior Decision does not compel the approval of the instant application; and

WHEREAS, in sum, the Board observes the following:

(1) the project contractor swears that he was aware of the alleged problems with the walls of the Prior Building even before the original plans were professionally certified; (2) in spite of this knowledge, the plans associated with the Permit nevertheless reflect the retention of the walls that were of concern; (3) a consulting engineer assessed the Prior Building and concluded that the walls allegedly had problems; (4) in spite of this knowledge, the owner's representatives modified the Permit plans without reflecting the allegedly necessary full demolition of the north wall; (5) only after DOB issued SWO-1 did the owner's representatives explain to DOB why they allegedly demolished the north wall; (6) even though the owner's representatives were before DOB to address SWO-1, they did not modify the plans to reflect the impending illegal construction; (7) having deliberately failed to seek Board approval at that time for the impending non-complying construction and even after DOB had been involved with the construction on the site as part of its enforcement mandate, the construction proceeded contrary both to the approved plans and the ZR for close to a year; and (8) in a ploy to retain the ability to seek the instant special permit, the owner's representatives obtained a determination from DOB as to the Permit being an alteration; and

WHEREAS, based upon the above and its review of the record, the Board finds that: (1) the construction that

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occurred at the site was not the enlargement of an existing building, as required by ZR § 73-622; and (2) the Prior Decision is not binding precedent; and

WHEREAS, accordingly, the Board is without authority to grant the instant application.

Therefore it is Resolved that the decision of the Brooklyn Borough Commissioner, dated October 6, 2006, acting on Department of Buildings Application No. 301914178, is hereby upheld and that this application for a special permit pursuant to ZR § 73-622 is hereby denied.

Adopted by the Board of Standards and Appeals, April 24, 2007.

136-06-BZ

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00), FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Paul Proux.

ACTION OF THE BOARD – Laid over to May 8, 2007, at 1:30 P.M., for deferred decision.

87-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).

PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik and Hege Eilertsen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for decision, hearing closed.

425-05-BZ

APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§23-141c and §24-162), front yard (§24-34), side yards (§24-35), lot coverage (§23-141 and §24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 and 104, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for decision, hearing closed.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a PCE in a portion of the cellar and a portion of the first floor in a three-story building in a C2-3/R6 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

86-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Emil Moshkovich, owner.

SUBJECT – Application May 5, 2006 – Variance (§72-21) to allow Use Group 7 (tire sales with installation services) and Use Group 16 (automotive repair) in an R3-2/C1-2 district; contrary to use regulations (§32-10). An as-of-right eating and drinking establishment (Use Group 6) is also proposed. Additionally, a Special Permit under §73-44 is requested to allow the reduction of required off-street parking requirements.

PREMISES AFFECTED – 145-70 Guy R. Brewer Boulevard, northwestern corner of the intersection between

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Guy Brewer and Farmers Boulevards, Block 13309, Lots 36, 42, 44, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for an adjourned hearing.

103-06-BZ

APPLICANT – Eric Palatnik, P.C., for Charles Mandelbaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)) and rear yard (23-47) in R-2 zoning district.

PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for an adjourned hearing.

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for an adjourned hearing.

59-07-A

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application March 8, 2007 – Proposed building frontage is contrary to BC 27-291 Article 2. Provide Fire Department Approval. R6B Zoning District.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Borough of 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 5,

2007, at 1:30 P.M., for an adjourned hearing.

154-05-BZ

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to Sections 42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, 42-13 (There are no residential bulk regulations in a M1-5B zoning district), and 13-12 (The proposed public parking garage is not permitted in a residential development.)

PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ken Lowenstein, Jack Freeman, Steven Jacobs and Bob Esnard.

For Opposition: Doris Diether of CB#2, Andrew Berman GRSHP and Stuart A. Klein.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

119-06-BZ

APPLICANT – Harold Weinberg, P.E., for Jack Erdos, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141) and side yard (23-461) in an R4(OP) zoning district.

PREMISES AFFECTED – 444 Avenue W, south side 70'-0" east of East 4th Street, between Avenue R and S, Block 7180, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

261-06-BZ

APPLICANT – Sheldon Lobel, P.C, for Congregation Mazah, owner.

SUBJECT – Application September 25, 2006 – Variance (§72-21) to permit the construction and operation of a Yehsiva (Use Group 3A) and accessory synagogue (Use Group 4A) in a M1-2 zoning district. The proposal is contrary to section 42-10.

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PREMISES AFFECTED – 87-99 Union Avenue, west side of Union Avenue at the intersection of Harrison Avenue, Union Avenue and Lorimer Street, Block 2241, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Richard Lobel and Israel Nelman.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

306-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (42-00), floor area and lot coverage (24-11), front yard (24-34), side yards (24-35), and front wall (24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel and Councilmember Simcha Felder.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for continued hearing.

309-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Melody Silvers and Morris Silvers and Morris Silvers, owners.

SUBJECT – Application November 30, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23141(a)) and side yard requirement (23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2817 Avenue M, between East 28th and East 29th Street, Block 7646, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 4:45 P.M.

BULLETIN

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Volume 92, Nos. 18-19

May 17, 2007

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

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New Case Filed Up to May 8, 2007

100-07-BZ

642 Barclay Avenue, West side of Barclay Avenue 0' south of Hylan Boulevard., Block 6398, Lot(s) 9, Borough of **Staten Island, Community Board: 3.** (SPECIAL PERMIT)-72-01(b) & 72-21-To permit the construction of a one story and cellar community facility building (medical offices (UG4).

101-07-BZ

2306 Avenue M, Southside, 40'-0" east of East 23rd Street between East 23rd & East 24th Streets., Block 7627, Lot(s) 42, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) 73-622-Proposed to erect a one story rear enlargement to the existing one family residence.

102-07-BZ

1268 Forest Avenue, southeast corner of Forest Avenue and Ordell Avenue., Block 388, Lot(s) 48, Borough of **Staten Island, Community Board: 1.** (SPECIAL PERMIT) 73-36-To legalize the existing Physical Culture Establishment.

103-07-BZ

91-10 146th Street, Premises located at north west corner 146th Street & 91st Avenue approximately 80 feet north of Archer Avenue., Block 9986, Lot(s) 61, Borough of **Queens, Community Board: 12.** (SPECIAL PERMIT) 73-19-.

104-07-BZ

1243 East 29th Street, South side of Avenue L., Block 7647, Lot(s) 28, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) 73-622-Extend rear at all floors.

105-07-A

198-24 47th Avenue, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5618, Lot(s) 49, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

106-07-A

198-28 47th Avenue, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5619, Lot(s) 20, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

107-07-A

47-17 199th Street, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5619, Lot(s) 120, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

108-07-A

47-18 199th Street, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5618, Lot(s) 149, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

109-07-BZ

33-57 59th Street, Triangle formed by 59th Street, 34th Avenue and 60th Street., Block 1183, Lot(s) 70, Borough of **Queens, Community Board:** Under 72-21-Front yard, side yard and lot coverage variances are being sought to construct a single family home on a steeply tapered triangle shaped property.

110-07-BZ

53 Crosby Street, Located on east side of Crosby Street between Spring Street and Broome Street., Block 482, Lot(s) 7, Borough of **Manhattan, Community Board: 2.** (SPECIAL PERMIT) 73-01,73-03-To permit the enlargement of a non-residential building.

111-07-BZ

155 Norfolk Street, East side, 325'0" north of Oriental Boulevard between Oriental Boulevard and Shore Boulevard., Block 8757, Lot(s) 34, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622-Proposed to remove the non-complying roof and replace it with a complying one and show compliance with Section 73-622.

112-07-BZ

1089-1093 East 21st Street, Between Avenue I and Avenue J (approximately 299' north of Avenue J), Block 7585, Lot(s) 21 & 22 (tent. 21), Borough of **Brooklyn, Community Board: 14.** Under 72-21-To allow the construction of a synagogue at the subject location. The synagogue will replace an existing synagogue already located on the site.

DOCKET

113-07-BZ

155 Clay Pit Road, Northeast corner of the intersection of Veterans Road East and Clay Pit Road., Block 7105, Lot(s) 679, Borough of **Staten Island, Community Board: 3.** (SPECIAL PERMIT) 73-30-For a non-accessory radio tower, which is a public utility wireless communication facility and will consist of an 82-foot stealth, together with antennas mounted therein and related equipment at the base thereof.

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

JUNE 5, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 5, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

198-66-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners, Corp., owner.

SUBJECT – Application April 17, 2007 – Extension of Time to Complete Construction to permit modification to the size, configuration and design of an existing plaza for a residential high rise building which expired on January 19, 2006; an Extension of Time to obtain a Certificate of Occupancy which expired on October 19, 2006 and a waiver of Rules of Practice and Procedure located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, southeast corner of 2nd Avenue and East 74th Street, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

215-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for East 72nd Realty, LLC, owner.

SUBJECT – Application May 13, 2007 – Extension of Term/Waiver for an additional ten years the term of a variance previously granted pursuant to Section 60(3) of the Multiple Dwelling Law, allowing surplus parking spaces in an attended accessory garage to be used for transient parking located in an R10, R8B and C2-8/R10A zoning district.

PREMISES AFFECTED – 1353-1367 York Avenue, west side of York Avenue between East 72nd and 73rd Streets, Block 1467, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

305-01-BZ thru 320-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district.

PREMISES AFFECTED – 65-77, 79, 81, 83 through 87, 89, 91, 93, 95, 97, 99, 101, 103 Terrace Court, Block 3605, Lot 200, Borough of Queens.

COMMUNITY BOARD #5Q

37-03-BZ thru 39-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district.

PREMISES AFFECTED – 65-78, 80, 82 Terrace Court, Block 3605, Lot 200, Borough of Queens.

COMMUNITY BOARD #5Q

170-06-A & 171-06-A

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

COMMUNITY BOARD #12BX

173-06-A

APPLICANT – Adam Rothkrug, Esq., for Hamid Kavian, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of a single family home to be located within the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning District.

PREMISES AFFECTED – 240-28 128th Avenue, southwest corner 128th Avenue and Hook Creek Boulevard, Block 12857, Lot 32, Borough of Queens.

COMMUNITY BOARD #13Q

CALENDAR

JUNE 5, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 5, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

39-06-BZ

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§ 72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #1BK

227-06-BZ

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot 90, Borough of Staten Island.

COMMUNITY BOARD #2SI

15-07-BZ

APPLICANT– Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application January 11, 2007 – Variance (§ 72-21) to allow a new nine (9) story hospital building (U.G. 4) that exceeds maximums for floor area ratio (§ 24-11), lot coverage (§ 24-11) and height and setback (§ 24-522). R8 district.

PREMISES AFFECTED – 199 Mt. Eden Parkway, between Selwyn Avenue and Morris Avenue, Block 2824, Lot 19, Borough of Bronx.

COMMUNITY BOARD #4BX

APPLICANT – Law Office of Slater & Beckerman LLP for Hudson Alley, Incorporated, owner; Cadence Cycling & Multisport Centers, lessee.

SUBJECT – Application April 3, 2007 – (SPECIAL PERMIT) §73-36 – To permit a cellar and on the first floor of six-story building, a Physical Culture and Health Establishment. The Premises are located within an M1-5 zoning district within the Special Tribeca Mixed Use District (Area B1), and in the Tribeca North Historic District.

PREMISES AFFECTED – 174 Hudson Street, Southeast corner of Vestry Street and Hudson Street, Block 220, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

75-07-BZ

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**REGULAR MEETING
TUESDAY MORNING, MAY 8, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

72-96-BZ, Vol. II

APPLICANT – The Law Office of Fredrick A. Becker, for
30 WS LLC, for New York Sports Club, lessee.

SUBJECT – Application December 29, 2006 – Extension of
Term/Amendment – To allow the operation of a Physical
Culture Establishment/Health Club on portions of the cellar,
first floor, first floor mezzanine, second floor and third floor
of the existing twelve story commercial building located in a
C5-5 (LM) zoning district. The application seeks to amend
the hours of operation previously approved by the board.

PREMISES AFFECTED – 30 Wall Street, north side of
Wall Street, 90' east of Nassau Street, Block 43, Lot 5,
Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the
Rules of Practice and Procedure, a reopening, an amendment
to change the hours of operation, and an extension of the
term for a previously granted special permit for a Physical
Culture Establishment (PCE), which expired on May 31,
2006; and

WHEREAS, a public hearing was held on this
application on April 24, 2007 after due notice by publication
in *The City Record*, and then to decision on May 8, 2007; and

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

WHEREAS, the subject premises is located on the north
side of Wall Street, 90 feet east of Nassau Street; and

WHEREAS, the site is located within an C5-5 zoning
district within the Special Lower Manhattan District, and is
occupied by a 12-story commercial/office building; and

WHEREAS, the PCE occupies 4,724 sq ft. on the cellar
level, 6,892 sq. ft. on the first floor, 1,867 sq. ft. on the first
floor mezzanine, 7,408 sq. ft. on the second floor, and 7,788 sq.
ft. on the third floor for a total floor space of approximately
28,379 sq. ft.; and

WHEREAS, the PCE is operated as New York Sports

Club; and

WHEREAS, on April 29, 1997, under the subject
calendar number, the Board granted a special permit, pursuant
to ZR § 73-36, to permit the continued operation of the PCE in
the subject building; and

WHEREAS, on February 8, 2000, the Board permitted:
(1) the expansion of the PCE onto the third floor, (2) layout
modifications to the second floor, and (3) a change in the hours
of operation to Monday through Friday, 6:30 a.m. to 10:00
p.m., and closed on Saturday and Sunday; and

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

WHEREAS, additionally, the applicant proposes to
legalize a change in the hours of operation to Monday through
Thursday, 6:30 a.m. to 10:00 p.m.; Friday, 5:30 a.m. to 9:00
p.m.; Saturday 9:00 a.m. to 6:00 p.m., and to remain closed on
Sunday; and

WHEREAS, the applicant does not propose any change
to the approved bulk, egress, floor area, or occupancy; and

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

Therefore it is Resolved that the Board of Standards and
Appeals *waives* the Rules of Practice and Procedure, *reopens*,
and *amends* the resolution, dated April 29, 1997, so that as
amended this portion of the resolution shall read: “to grant an
extension of the variance for a term of ten years from the
expiration of the last grant to expire on May 31, 2016 and to
legalize a change in the hours of operation; *on condition* that
any and all work shall substantially conform to drawings as
they apply to the objections above noted, filed with this
application marked “Received December 29, 2006”–(8) sheets;
and; and *on further condition*:

THAT there shall be no change in ownership or
operating control of the PCE without prior approval from the
Board;

THAT this grant shall expire on May 31, 2016;

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

THAT a new Certificate of Occupancy shall be obtained
by November 9, 2007;

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. 102100487)

Adopted by the Board of Standards and Appeals, May
8, 2007.

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10-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Crislis Realty Corp., owner.

SUBJECT – Application March 14, 2007 – Extension of Time to complete construction and a waiver of the rules for a Variance (§72-21) to permit, in an R-5 zoning district, the proposed development of a one story building to be used as four retail stores (Use Group 6) which expired July 10, 2005.

PREMISES AFFECTED – 85-28/34 Rockaway Boulevard, southwest corner of the intersection formed between Rockaway Boulevard and 86th Street, Block 9057, Lots 27 and 33, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 one-story building, which expired on July 10, 2005; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the subject premises is located on the southwest corner of Rockaway Boulevard and 86th Street; and

WHEREAS, on July 10, 2001, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit, within an R5 zoning district, the construction of a one-story commercial building with four retail stores; and

WHEREAS, the applicant represents that construction was 80 percent complete in March 2006, but was delayed in part because of complications with a sewer connection sign-off; the applicant represents that now all exterior construction is complete and only interior work remains; and

WHEREAS, the applicant now requests an additional year to complete construction; and

WHEREAS, the Board finds that a one-year extension is appropriate, with the conditions 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 July 10, 2001, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of one year from the date of this grant; *on condition* that the use and operation of the building shall substantially conform to BSA-approved plans; and *on condition*:

THAT construction shall be completed by May 8, 2008;

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. 401191223)

Adopted by the Board of Standards and Appeals, May 8, 2007.

44-06-BZ, Vol. II

APPLICANT – Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215’ east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 16, 2006, acting on Department of Buildings Application No. 402282123, reads, in pertinent part:

“1. Proposed enlargement of an existing non-complying one-family dwelling, without the required side yard is contrary to 54-31 and 23-461 ZR. Note: Existing exterior wall is greater than 6” from lot line and cannot be considered as lot line wall.”

2. Proposed enlargement of one-family dwelling, which will exceed permitted floor area ratio, is contrary to Section 23-141 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; and

WHEREAS, an initial public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, however, after this decision date, the Board

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learned that the applicant did not have proof that the proper notice had been performed, specifically that the property owners within a 200-ft. radius of the site had been notified; and

WHEREAS, therefore, the Board scheduled a re-hearing; and

WHEREAS, the re-hearing was held on this application on December 5, 2006, after due notice by publication in *The City Record*, with continued hearings on January 9, 2007, January 30, 2007, March 6, 2007, and April 10, 2007, and then to decision on May 8, 2007; and

WHEREAS, accordingly, this resolution supersedes the resolution dated August 8, 2006 and the plans associated with it, marked "Received August 7, 2006"– (4) sheets, which are hereby nullified; and

WHEREAS, the Board notes that the applicant provided documentation that the affected property owners (within a 200-ft. radius of the site) received proper notification of the re-hearing; the Board received nine forms for objection and consent from affected property owners and several property owners provided testimony at the re-hearing, as noted below; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, recommended approval of this application; and

WHEREAS, the Queens Borough President, Helen Marshall, recommended approval of this application; and

WHEREAS, the Concerned Homeowners Association provided a letter in opposition to the application, citing concerns about not being given the opportunity to discuss the project with the Community Board before its vote on the project, not being notified about the Board's initial hearing, scheduling conflicts with the hearings, and general concerns about the proposed home enlargement; and

WHEREAS, at hearing, certain neighbors provided testimony about the potential impact the enlargement might have on adjacent property owners' access to open space and privacy; and

WHEREAS, the site is located on the south side of 18th Avenue, 215 feet east of 150th Street; and

WHEREAS, the site is 20 ft. in width and 100 ft. in depth, with a total lot area of 2,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a 728 sq. ft. one-story with cellar single-family home; and

WHEREAS, the applicant represents that available records indicate that the existing structure was constructed in 1931; and

WHEREAS, on December 15, 1961, the site was mapped within an R3-1 zoning district, but on December 21, 2005, the area was rezoned to R3A; and

WHEREAS, the applicant proposes to add a second story to the existing one-story house; and

WHEREAS, this addition will increase the floor area from 728 sq. ft. (0.36 FAR) to 1,320 sq. ft. (FAR of 0.66); the maximum floor area permitted is 1,200 sq. ft. (FAR of 0.60);

and

WHEREAS, the proposed enlargement will maintain the two non-complying 0'-11" side yards (one side yard of 8'-0" is required); and

WHEREAS, the enlargement will maintain the complying front yard of 12'-0" (a minimum front yard of 10'-0" is required) and rear yard of 48'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, although the side yards will remain the same, the proposed enlargement will increase the degree of non-compliance because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the narrow width of the site and (2) the existing non-complying side yards; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which showed that out of approximately 116 lots within the radius, only four are 20 feet wide and the subject site is the only one with a width of 20 ft. within the R3A zoning district; and

WHEREAS, the Board notes that the majority of lots within the radius diagram have widths greater than 30 ft.; and

WHEREAS, the applicant notes that the two existing 0'-11" side yards create additional obstacles to constructing an enlargement in compliance with relevant zoning regulations in that a complying enlargement would be 12 ft. in width, so narrow that it would be unusable; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that a complying enlargement using available floor area would be habitable; and

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

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding one- and two-family two-story residences; and

WHEREAS, the applicant notes that the existing home has an attic, and, therefore the addition of a second floor will only increase the height by four feet, from 21'-0" to 25'-0"; and

WHEREAS, the Board notes that the proposed height is within the permitted parameters of the zoning district; and

WHEREAS, moreover, the Board notes that the requested FAR increase to 0.66, ten percent more than the district allows, is within the guidelines of ZR § 73-621, a special permit that would allow a ten percent increase in floor area; and

WHEREAS, however, the special permit does not

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allow development within non-complying side yards; and

WHEREAS, further, the applicant asserts that any impact is minimized because the non-complying side yards already exist and there is a driveway to the west of the home which provides open space; and

WHEREAS, however, at hearing, in response to the neighbors' concerns and in order to provide a higher degree of privacy, the Board directed the applicant to stagger the second floor windows on both sides of the home so that none of them directly faced the windows of the adjacent homes; and

WHEREAS, in response, the applicant relocated the windows on the second floor so that they are aligned with the exterior wall space between the windows of the adjacent homes rather than directly facing the windows; and

WHEREAS, the Board found this change acceptable and it is reflected on the new plans; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 27, 2007" – (3) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.66; a floor area of 1,320 sq. ft.; two side yards of 0'-11"; a front yard of 12'-0"; and a rear yard of 48'-0";

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

THAT the use and layout of the cellar shall be as approved by DOB;

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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 8, 2007.

177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025 Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

258-90-BZ

APPLICANT – Sheldon Lobel, P.C., for John Isikli, owner.

SUBJECT – Application December 13, 2006 – Extension of Time to obtain a Certificate of Occupancy for the operation of a restaurant and banquet hall (UG9) in an R5 zoning district which expired on December 7, 2006.

PREMISES AFFECTED – 2337 Coney Island Avenue, east side, between Avenue T and Avenue U, Block 7315, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

118-95-BZ, Vol. II

APPLICANT – Windels Marx Lane & Mittendorf, LLP, for White Castle System, Inc., owner.

SUBJECT – Application April 9, 2007 – Extension of Term of a Special Permit for an accessory drive-through facility, located in an C1-2/R7B zoning district, in conjunction with an (UG6) eating and drinking establishment (White Castle) which expired on July 25, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on June 11, 2002

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and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 89-03 57th Avenue, northeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Courtney M. Merriman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125’ east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Sarem Ozdusal.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application April 18, 2007 – Request for a waiver of Practice and Procedure and for an extension of time to complete construction and to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 6778 Hylan Boulevard, southeast corner of Page Avenue, Block 7734, Lots 13 & 19, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

217-06-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon, LLC, owner.

SUBJECT – Application August 28, 2006 – Proposed construction of a daycare center which extends into the bed of a mapped street (Francis Lewis Blvd) contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard aka 196-23 42nd Street, north side of the intersection of Francis Lewis Boulevard and 42nd Avenue, Block 5361, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 2, 2006, acting on Department of Buildings Application No. 402430231, reads in pertinent part:

“Proposed application to build in the bed of a mapped street requires approval from the New York City Board of Standards and Appeals pursuant to GCL Section 35.”; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in the *City Record*, and then to decision on May 8, 2007; and

WHEREAS, by letter dated February 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated January 9, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 19, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, Community Board 11, Queens, submitted a letter in opposition to this application, citing concerns about potential impacts on traffic and children’s safety while being dropped off at the site or at the adjacent school; and

WHEREAS, City Council Member Tony Avella submitted a letter in opposition to this application, citing the same concerns as the Community Board; and

WHEREAS, the Board reviewed these concerns, but notes that the proposed use is permitted as of right, and all regulations including bulk and parking as well as Building Code requirements must be complied with; and

WHEREAS, further, the Board notes that DOT reviewed the application, both within the context of its proposed capital

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plans and for traffic safety, and did not have any objections; and

WHEREAS, after the hearing was closed, the Community Board, State Senator Frank Padavan, City Council Member Tony Avella, the Auburndale Improvement Association, and certain community members requested that the Board re-open the hearing to permit them to provide comment since they were not notified of the hearing; and

WHEREAS, the Board has reviewed this request, and notes that for appeals made under the General City Law Section 35, its Rule §1-07(e) requires only that the Board submit a copy of the application to the Community Board, DEP, DOT, and FDNY; and

WHEREAS, further, the Board notes that the rules do not require notification for hearing; and

WHEREAS, the Board has reviewed written testimony from the Community Board and Council Member Avella submitted into the record; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 2, 2006, acting on Department of Buildings Application No. 402430231, 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 April 3, 2007"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, May 8, 2007.

17-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 421 West 250th Street, Grosvenor Avenue and Goodridge Avenue, Block 5831, Lot

10, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, one single-family dwelling currently under construction at the subject premises; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 18-07-BZY, 19-07-BZY, and 20-07-BZY thru 31-07-BZY, for 14 additional homes to be constructed at the site; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is part of an approximately 15-acre site known as Chapel Farm and is located at the intersection of Grosvenor Avenue and Islelin Avenue; and

WHEREAS, the premises is currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the home and had completed and backfilled 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

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

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

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

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development”; and

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

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

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

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

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

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 200805655-01 NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and has been timely renewed; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an

application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

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

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

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

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes site preparation, rock removal, excavation, 100 percent of the foundation work, and partial decking and framing; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, completed foundations, and partial framing; affidavits from the contractor and engineer; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant notes that work on the infrastructure that will benefit all 15 of the homes within the major development and the minor developments has been completed; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the home is \$784,000, or 28 percent, out of the \$2,811,000 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

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

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

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

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure for the entire site, more than two years may be needed to complete

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the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a minor development to two terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining may require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review any subsequent request for an extension of time and determine whether it is appropriate to approve by letter; and

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 200805655-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 8, 2009.

Adopted by the Board of Standards and Appeals, May 8, 2007.

18-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§ 11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5000 Iselin Avenue, Grosvenor Avenue and Goodridge Avenue, Block 5831, Lot 20, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, one single-family dwelling currently under construction at the subject premises; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 17-07-BZY, 19-07-BZY, and 20-07-BZY thru 31-07-BZY, for 14 additional homes to be constructed at the site; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in

The City Record, and then to decision on May 8, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is part of an approximately 15-acre site known as Chapel Farm and is located at the intersection of Grosvenor Avenue and Islelin Avenue; and

WHEREAS, the premises is currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the home and had completed and backfilled 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

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

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

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

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

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

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development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

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

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

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 200805539-01 NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and has been timely renewed; and

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

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

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

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

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes site preparation, rock removal, excavation, 100 percent of the foundation work, and partial decking and framing; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, completed foundations, and partial framing; affidavits from the contractor and engineer; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant notes that work on the infrastructure that will benefit all 15 of the homes within the major development and the minor developments has been completed; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the home is \$591,000, or 21 percent, out of the \$2,811,000 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

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

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

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

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure for the entire site, more than two years may be needed to complete the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a minor development to two terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining may require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review any subsequent request for an extension of time and determine whether it is appropriate to approve by letter; and

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 200805539-01 NB, as well as all related permits for various

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work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 8, 2009.

Adopted by the Board of Standards and Appeals, May 8, 2007.

19-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5020 Iselin Avenue, Grosvenor Avenue and Goodridge Avenue, Block 5831, Lot 30, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, one single-family dwelling currently under construction at the subject premises; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 17-07-BZY, 18-07-BZY, and 20-07-BZY thru 31-07-BZY, for 14 additional homes to be constructed at the site; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is part of an approximately 15-acre site known as Chapel Farm and is located at the intersection of Grosvenor Avenue and Iselin Avenue; and

WHEREAS, the premises is currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted

in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the home and had completed and backfilled 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

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

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

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

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

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

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued

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prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.";

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

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 200805548-01 NB, (hereinafter, the "New Building Permit"); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and has been timely renewed; and

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

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

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

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

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permits includes site preparation, rock removal, excavation, and 100 percent of the foundation work; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, and completed foundations; affidavits from the contractor and engineer; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant notes that work on the infrastructure that will benefit all 15 of the homes within the major development and the minor developments has been completed; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the home is \$393,000, or 14 percent, out of the \$2,811,000 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

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

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

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

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure for the entire site, more than two years may be needed to complete the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a minor development to two terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining may require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review any subsequent request for an extension of time and determine whether it is appropriate to approve by letter; and

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 200805548-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 8, 2009.

Adopted by the Board of Standards and Appeals, May 8, 2007.

28-05-A

APPLICANT – Alex Ng

OWNER OF PREMISES: Bill Petit

SUBJECT – Application February 17, 2005 – Appeal seeking to challenge the Department of Building's determination that a fenced refuse area in any yard or open space does not violate any Building Code or Zoning Resolution.

PREMISES AFFECTED – 72-02 Ridge Boulevard, a/k/a Flag Court, Block 5906, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Alex Ng, Santa L. El. Dada and Ingrid Farrell.

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For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard, Block 3122, Lot 213, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

300-06-A

APPLICANT – Eric Palatnik, P.C., for Tony Wan Yiu Cheng, owner.

SUBJECT – Application November 14, 2006 – Proposed construction of a 4 story mixed use building which extends into the mapped street (44th Avenue) which is contrary to Section 35 of the General City Law. C2-5/R6-B zoning district.

PREMISES AFFECTED – 43-17 104th Street, north side of the corner formed by the intersection of 44th Street and 104th Avenue, Block 1987, Lot 67, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

317-06-A

APPLICANT – John Dydland-NYCDEP, for Department of Environmental Protection, owner.

SUBJECT – Application December 7, 2006 – Proposed construction of a Groundwater Remediation System at a NYCDEP owned site (Station 24) which is located in the bed of mapped street 109th Avenue which is contrary to General City Law Section 35 .R3X Zoning District.

PREMISES AFFECTED – 180th Street and 106th Road, premises is situated at the following intersections – 176th

Street and 109th Avenue and Fern Place, 177th Street and Watson, Block 10343, Lots 300, 32, 12, 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Donald K. Cohen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for adjourned hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 8, 2007
1:30 P.M.**

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

ZONING CALENDAR

302-05-BZ

CEQR #06-BSA-023K

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR §32-14 (use), §33-121 (FAR), §101-721 and §101-41(b) (street wall height), §101-351 (curb cut), and §35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100’ east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Adopted by the Board of Standards and Appeals, May 8, 2007.

49-06-BZ

CEQR #06-BSA-066K

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

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

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2006, acting on Department of Buildings Application No. 301997258, reads, in pertinent part:

“1. Proposed FAR is contrary to ZR 33-121

2. Proposed parking is contrary to ZR 36-21.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C1-2 (R3-2) zoning district, the proposed construction of a two-story commercial building, which does not comply with applicable zoning requirements concerning FAR and parking, contrary to ZR §§ 33-121 and 36-21; and

WHEREAS, the building, will have a total floor area of 7,352 sq. ft. (1.42 FAR) (5,181 sq. ft. of floor area and an FAR of 1.0 are the maximum permitted), a complying street wall and total height of 24 feet (without bulkhead), and eight parking spaces (25 are required); and

WHEREAS, the Board notes that the application as originally filed contemplated a three-story building, with the same waivers as indicated above, but also with a higher degree of non-compliance as to floor area and FAR (11,636 sq. ft. of floor area and an FAR of 2.25 were initially proposed); and

WHEREAS, additionally, the applicant initially requested a height and setback waiver because a three-story building with a street wall and total height of 33’-2” was proposed (a building with a street wall height of 30 feet or two stories is the maximum permitted); and

WHEREAS, the applicant initially proposed 12 parking spaces, and 39 were required under the original scenario; and

WHEREAS, as discussed in greater detail below, the Board expressed concerns about the project as originally proposed, primarily because there was not a clear justification that the alleged unique physical conditions created the need for such significant FAR, street wall and setback, and parking waivers; and

WHEREAS, a public hearing was held on this application on September 19, 2006, after due notice by publication in the *City Record*, with continued hearings on October 31, 2006, November 21, 2006, January 9, 2007, February 27, 2007, and April 10, 2007, and then to decision on May 8, 2007; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject premises is located on the southeast corner of Flatbush Avenue and Baughman Place, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site has a nearly triangular shape with

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approximately 123 feet of frontage on Baughman Place, and approximately 87 feet of frontage on Flatbush Avenue; and

WHEREAS, the site has a lot area of 5,181 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story automotive repair station, which will be demolished in anticipation of the new building; and

WHEREAS, the site is the subject of a prior Board action, under BSA Cal. No. 312-51-BZ, which permitted the reconstruction of a gasoline service station and lubritorium at the site; that grant was subsequently amended to include automotive repairs; and

WHEREAS, the Board notes that the proposed use would eliminate a non-conforming use and replace it with a conforming use that is more compatible with the surrounding uses; and

WHEREAS, the applicant states that the proposed first floor will be occupied by retail use and the second floor will be occupied by commercial office use; the cellar will be occupied by parking; and

WHEREAS, as noted above, however, the proposed building requires certain waivers; thus, the instant variance application was filed; and

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

WHEREAS, as to size and shape, the applicant states that the triangular shape causes two immediate problems: (1) the sharply-angled lot and pinched interior of the site require the building to have a high ratio of perimeter wall to floor area, which results in premium construction costs; and (2) irregularly-shaped and inefficient floor plates compromise the amount of usable space for office use and parking; and

WHEREAS, the Board agrees that the size and the shape of the site are unique, and that constraints are placed on an as of right development; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the parking requirement while still providing a reasonable site plan and layout for uses on the first floor; and

WHEREAS, as to the historic use at the site, the applicant states that the existing one-story automotive repair shop is obsolete and does not provide a reasonable return on the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed an as of right residential alternative; and an as of right commercial alternative, with the required parking; and

WHEREAS, the applicant also analyzed the original non-complying three-story commercial alternative; and

WHEREAS, the study concluded that neither complying

scenario would realize a reasonable return, since a complying building would have compromised and inefficient floor plates; and

WHEREAS, the Board directed the applicant to examine a two-story commercial alternative, as discussed below, which provided a greater degree of compliance; and

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

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

WHEREAS, the applicant represents that the area is occupied by residential uses, mixed-use buildings, showrooms, automobile-related uses, and other commercial uses; and

WHEREAS, the applicant notes that the proposed height is compatible with adjacent residential buildings including a four-story multi-family building to the east and a two-story commercial building to the south; and

WHEREAS, further, the applicant represents that there is a four-story multi-family building and a three-story school located across Flatbush Avenue; and

WHEREAS, the Board notes that the current proposal respects the height and street wall requirements of the subject zoning district; and

WHEREAS, accordingly, in terms of its bulk, the current proposal is even more contextual with the surrounding neighborhood than the original proposal, which required waivers of height and setback; and

WHEREAS, the Board observes that, although the required parking is not being provided, the following measures are provided to help mitigate any parking impact: (1) the existing expansive curb cuts on Flatbush Avenue and curb cut near the intersection on Baughman Place will be eliminated and replaced by a single curb cut further from the intersection on Baughman Place; and (2) the applicant is working with the Department of Transportation to recapture the street frontage currently occupied by existing curb cuts for a potential gain of nine on-street parking spaces; and

WHEREAS, finally, the Board notes that after reducing the amount of floor area and FAR, the applicant significantly reduced the number of parking spaces required, from 39 to 25; and

WHEREAS, thus, since eight off-street parking spaces will be provided, and nine may be recaptured on-street, the total made available through the redesign of the site will be approximately 17 out of the required 25; and

WHEREAS, the Board further notes that the elimination of the wide curb cut on Flatbush Avenue generally improves the site conditions and impact on the street; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development

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of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size and shape of the lot; and

WHEREAS, in addition to the two complying scenarios discussed above, the applicant also analyzed its initial proposal, of 2.25 FAR and 11,636 sq. ft., which required waivers for street wall height, setback, FAR, floor area, and parking; and

WHEREAS, the applicant concluded that although this scenario would also not realize a reasonable return, the owner required the additional floor area; and

WHEREAS, however, the Board expressed concern about (1) the excessive FAR, (2) the inefficient layout of the building which potentially increased costs, and (3) the insufficiency of 12 parking spaces to satisfy the parking demand for a building of that size (39 spaces were required under that scenario); and

WHEREAS, as noted above, the Board did not view the initial proposal as the minimum variance; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06-BSA-066K, dated March 17, 2006; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within a C1-2 (R3-2) zoning district, the proposed construction of a two-story commercial building,

which does not comply with applicable zoning requirements concerning FAR and parking, contrary to ZR §§ 33-121 and 36-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 1, 2007"- (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: floor area of 7,352 sq. ft. (1.42 FAR), a wall and total height of 24 feet (without bulkhead), and eight parking spaces, as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, May 8, 2007.

79-06-BZ

CEQR #06-BSA-080K

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 13, 2006, acting on Department of Buildings Application No. 302145578, reads in pertinent part:

"Proposed Use Group 2 residential building is not permitted in an M1-1 zoning district as per Sec. 42-00 Z.R."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a five-story residential building, which is contrary to ZR § 42-00; and

WHEREAS, the proposed building will have a total floor area of 7,698 sq. ft. (2.20 FAR); a street wall height of 37'-4";

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a total height of 46'-8", without bulkheads, and 55'-4", with bulkheads; a rear yard of 30'-0"; and nine dwelling units (the "Proposed Building"); and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in the *City Record*, with continued hearings on February 13, 2007, March 13, 2007, and April 10, 2007, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 8, Brooklyn, recommends disapproval of the application, citing concerns about a lack of affordable housing in the community and the displacement of current neighborhood residents; and

WHEREAS, City Council Member Letitia James submitted a letter in opposition to the application, citing the same concerns as the Community Board; and

WHEREAS, the site is located on the north side of Bergen Street, between Classon Avenue and Franklin Avenue, within an M1-1 zoning district; and

WHEREAS, the site comprises two tax lots, lots 85 and 86, which have been under common ownership and have been merged into the zoning lot known as Lot 85; and

WHEREAS, the site has a total width of 42 feet and a depth which is 65 feet on the eastern portion of the site (tax lot 85) and 100 feet on the western portion of the site (tax lot 86), and a lot area of 3,500 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building will provide for two dwelling units on each of the first through fourth floors, and one dwelling unit on the fifth floor; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance applicant for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site has a shallow depth; and (3) the historic use of the site; and

WHEREAS, as to the size of the site, the combined lot area of the two tax lots is only 3,500 sq. ft.; and

WHEREAS, as to the depth of the eastern portion of the site, the applicant represents that the depth is only 65 feet for that half of the site; and

WHEREAS, the applicant represents that the small size and shallow depth results in conditions that could not accommodate a modern conforming use; and

WHEREAS, as to the uniqueness of this condition, the land use maps show that there are no other vacant sites within the radius with a depth as shallow as 65 feet; and

WHEREAS, the applicant represents that any other sites with a similar small size are already occupied by residential use; and

WHEREAS, further, the applicant represents that of the nine lots in the surrounding area used for industrial use, only

one has a lot area of even less than 5,000 sq. ft., and it is still larger than the subject 3,500 sq. ft. site; and

WHEREAS, as to the historic use of the site, the applicant represents that from at least 1888 until 1951, there was a residential use at the site; and

WHEREAS, additionally, records show that from since at least 1963, the site has been vacant; and

WHEREAS, the Board observes that the two tax lots are small when viewed individually, but are also small when viewed as one merged zoning lot; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial building; and

WHEREAS, the applicant concluded that the conforming scenario would not realize a reasonable return; and

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

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

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

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including adjacent residential buildings, those across the street, and others on the subject block; and

WHEREAS, as to the character of the neighborhood, the applicant provided a 400-ft. radius land-use diagram which shows that of the 76 improved lots within the radius, 54 are occupied by residential uses; and

WHEREAS, there are residential uses on both sides of the subject site; and

WHEREAS, the applicant represents that the adjacent sites which are occupied by conforming uses already adjoin lots with residential buildings, so the impact of the proposed use is minimized; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of nine dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

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WHEREAS, the Board has reviewed the comments of the Community Board and Council Member James but notes that the requirement for affordable housing is not within its jurisdiction; and

WHEREAS, further, the Board notes that the proposed building fits within the parameters for a Quality Housing building on a narrow street and would be permitted as of right within the R6 zoning district mapped directly across Bergen Street from the site; and

WHEREAS, the Board also notes that nearby residential uses are characterized by three- and four-story multi-unit buildings, including two adjacent four-story buildings to the west and two adjacent three story buildings to the east; there is also a five-story building along Classon Avenue; and

WHEREAS, in order to minimize any impact of the partial fifth floor, the Board directed the applicant to set the fifth floor back 15 feet from the front property line, rather than the nine feet initially proposed; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a setback of only nine feet above the fourth floor in the front; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

WHEREAS, the Board also directed the applicant to analyze two four-story alternatives: (1) a building which accommodated the same 2.20 FAR, but with an increased building footprint and (2) a building which accommodated 1.80 FAR on the proposed footprint; and

WHEREAS, the applicant determined that neither alternative resulted in a reasonable return; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA080K, dated September 18, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land

Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: December 6, 2006 EAS, the November 2005 Phase I Environmental Site Assessment Report; and the November 6, 2006 and May 4, 2007 Air Quality and Noise response submissions; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on May 3, 2007 and submitted for proof of recording on May 8, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a five-story residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 22, 2007" –(6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: five stories; a total floor area of 7,698 sq. ft. (2.20 FAR); a street wall height of 37'-4"; a total height of 46'-8", without bulkheads, and 55'-4", with bulkheads; a rear yard of 30'-0"; and nine dwelling units, all as indicated on the BSA-approved plans;

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

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as

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site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

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

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

Adopted by the Board of Standards and Appeals, May 8, 2007.

136-06-BZ

CEQR #06-BSA-106K

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00), FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Kenneth Fisher.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 4, 2007, acting on Department of Buildings Application No. 301564162, reads, in pertinent part:

1. The proposed conversion and enlargement of an existing manufacturing building to a residential use when located in a M2-1 zoning district is contrary to Section 42-10 of the Zoning Resolution.

2. The existing building is a non-complying structure in that it exceeds the maximum allowable Floor Area Ratio of 2.0 permitted under Section 43-12 of the Zoning Resolution. As such, the addition of the fifth floor will constitute an increase in degree of non-compliance contrary to Section 54-31 of the Zoning Resolution.

3. The proposed residential enlargement of the fifth floor with a rear yard of less than 20 feet is contrary to Section 43-26 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M2-1 zoning district within the Fulton Ferry Historic District, the residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, which is contrary to ZR §§ 42-10, 43-12, 43-26, and 54-31; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in the *City Record*, with a continued hearing on March 20, 2007, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the north side of Old Fulton Street, between Front Street and Water Street, within an M2-1 zoning district; and

WHEREAS, the site comprises three tax lots (Lots 7, 8, and 9) and has a total lot area of 5,770 sq. ft.; the tax lots are proposed to be merged into a single zoning lot, tentatively Lot 9; and

WHEREAS, from east to west, tax lot 7 has a depth ranging from 76 feet to 90 feet; tax lot 8 has a depth of 106 feet; and tax lot 9 has a depth of approximately 60 feet; and

WHEREAS, each lot is occupied by a four-story building and the buildings are separated by party walls; and

WHEREAS, the applicant proposes to retain the existing buildings which are currently vacant; and

WHEREAS, the applicant proposes to demolish portions of the second, third, and fourth floors at the rear of the buildings on tax lots 7 and 8 and to retain only the first floor of those portions; and

WHEREAS, further, the applicant proposes to construct a partial fifth floor, which will be setback 28 feet from the street line at the eastern side of the property and 29'-6" from the street line at the western side of the property; and

WHEREAS, the proposed building will have a total floor area of 22,948 sq. ft. (3.98 FAR), a residential floor area of 17,562 sq. ft. (3.08 FAR), a commercial floor area of 5,237 sq. ft. (0.90 FAR), a height ranging from 42'-7" at the west to 44'-5" at the east before the setback, due to a slope, and a total height ranging from 51'-7" at the west to 52'-11" at the east,

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without bulkheads; and

WHEREAS, the cellar level will be occupied by commercial use and mechanicals; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance; and

WHEREAS, the second and third floors will each be occupied by five residential units; the fourth floor will be occupied by five residential duplex units, three of which will be duplexes with space on the fifth floor and a fourth unit will have access to outdoor space on the fifth floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site is irregularly-shaped; and (3) the existing historic buildings are obsolete and cannot accommodate a conforming use; and

WHEREAS, as to the size, the applicant represents that tax lot 9 is considered a shallow interior lot pursuant to ZR § 23-52; and

WHEREAS, further, tax lot 9 also has a width of only approximately 21'-4"; tax lot 8 has a width of 25'-0"; and tax lot 7 has a width of 24'-0"; and

WHEREAS, as noted above, the tax lots also have depths ranging from 60'-2" at the western property line to 106'-0" at a small triangular point in the middle, which creates a jagged rear lot line; and

WHEREAS, as to the site's shape, tax lots 7 and 8 have a rectangular shape, like tax lot 9 at the street frontage, but they come to a sharp angle along their rear lot lines; and

WHEREAS, individually, the three lots have small size and irregular shape, but even as a merged zoning lot, it is small (5,000 sq. ft.) and irregularly-shaped, and cannot support a conforming use; and

WHEREAS, as to the historic use of the buildings, the applicant represents that the buildings are at least 150 years old and historic records reflect that the buildings were originally built for local retail on the ground floor and residential use above and were not designed for commercial uses, exclusively; and

WHEREAS, further, records show that the westernmost building (on tax lot 9) was occupied by a commercial use on the first floor and residential uses above; records show that the other two buildings may have existed even prior to the 1820s and were occupied by commercial and industrial uses, and a hotel at various times; and

WHEREAS, the applicant represents that in recent years, the buildings, which are within between 50 and 75 feet of the Brooklyn Bridge, have been largely vacant or used for storage; and

WHEREAS, the applicant asserts that although there has been some historic conforming use at the site, the buildings are not viable for modern manufacturing uses, which require large unobstructed floor plates, truck access, and greater ceiling heights; and

WHEREAS, as to the obsolescence, the applicant states that the buildings cannot accommodate loading docks and do not have elevator space large enough for freight; and

WHEREAS, the floor plates, even of a combined building, are too small for manufacturing use and the two small openings between the buildings of approximately five feet in diameter that connect the three buildings cannot be enlarged without great cost because they penetrate load-bearing walls; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building and a mixed-use residential/commercial use without a penthouse; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the unique conditions of the site; and

WHEREAS, the applicant represents that the partial fifth floor is required to make the project feasible, particularly with the demolition and loss of floor area at the rear portion of the building; and

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

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

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

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 15 dwelling units and ground floor retail will not impact any nearby conforming uses; and

WHEREAS, further, the applicant represents that the area now known as the Fulton Ferry Historic District was characterized by residential use until the Brooklyn Bridge was built; and

WHEREAS, specifically, the applicant represents that the row of buildings on Old Fulton Street, from numbers 7 through 23 were all designed for commercial use on the ground floor and residential use on the floors above at about the same time; the applicant represents that many of them have continually been used for those purposes; and

WHEREAS, additionally, across the street from the site is a large nine-story building occupied by residential use; and

WHEREAS, the applicant represents that sound attenuation measures will be followed in order to minimize any impact due to the proximity to the Brooklyn Bridge; and

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WHEREAS, the proposed demolition at the rear of the building will increase the depth of the rear yard and the amount of open space; and

WHEREAS, additionally, the applicant represents that the partial-fifth floor will be setback above the fourth floor so as to minimize its visibility from the street; and

WHEREAS, the applicant proposes to restore the facades to be in keeping with their historic character; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission, dated February 15, 2007; and

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

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

WHEREAS, the Board observes that the proposed building of 15 dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Board notes that the proposed net increase in floor area and FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA106K, dated June 29, 2006 and an EAS addendum for potential noise impacts dated April 23, 2007; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a June, 2006 Environmental Assessment Statement, (2) an April, 2007 EAS addendum for potential noise impacts and (3) a July, 2002 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential impacts for hazardous materials, noise and air quality; and

WHEREAS, a Restrictive Declaration was executed on April 20, 2007 and recorded on April 25, 2007 for the subject property to address hazardous materials concerns; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M2-1 zoning district within the Fulton Ferry Historic District, the residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, which is contrary to ZR §§ 42-10, 43-12, 43-26, and 54-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 23, 2007" – thirteen (13) sheets and "Received May 1, 2007" – one (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: five stories; a total floor area of 22,948 sq. ft. (3.98 FAR); a residential floor area of 17,562 sq. ft. (3.08 FAR); a commercial floor area of 5,237 sq. ft. (0.90 FAR); an average street wall height of 46.7 feet; and an average total height of 53.7 feet, without bulkheads;

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

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

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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 8, 2007.

**14-07-BZ
CEQR #07-BSA-053M**

APPLICANT – Ivan Khoury, Esq., for Green Tea Inc., owner; Da Spa, LLC, dba Delluva Day Spa, lessee.
SUBJECT – Application January 11, 2007 – Special Permit (§73-36) to legalize a PCE (spa) located in the Tribeca West Historic District and a M1-5 zoning district. The proposal is

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contrary to §42-10.

PREMISES AFFECTED – 152 Franklin Street, 150.33’ east of the intersection of Franklin and Hudson Streets, Block 189, Lot 7506, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 12, 2006, acting on Department of Buildings Application No. 104556464, reads in pertinent part:

“Proposed use of physical cultural establishment in Manufacturing district M1-5 at first floor is contrary to ZR 42-10- (uses permitted as of right).”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, within the Special Tribeca Mixed Use District, the legalization of a physical culture establishment (PCE) on the first floor and a portion of the cellar level of an existing seven-story mixed-use residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the north side of Franklin Street, between Varick Street and Hudson Street; and

WHEREAS, the site is occupied by a seven-story mixed-use residential/commercial building; and

WHEREAS, the PCE occupies 2,369 sq. ft. of floor area on the first floor and 1,285 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE, which is operated under the name Delluva Day Spa, began operations at the site on January 26, 2007; and

WHEREAS, the applicant represents that the PCE offers spa treatments including facial massages, hydrotherapy, and other beauty and skin care services; and

WHEREAS, the proposed hours of operation are: Monday through Wednesday, 9:00 a.m. to 7:00 p.m.; Thursday 8:00 a.m. to 8:00 p.m.; Friday and Saturday, 8:00 a.m. to 9:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA053M, dated March 24, 2007; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, within the Special Tribeca Mixed Use District, the legalization of a physical culture establishment on the first floor and a portion of the cellar level of an existing seven-story mixed-use residential/commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 27, 2007”- (3) sheets and *on further condition*:

THAT the term of this grant shall expire on January 26, 2017;

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

THAT the hours of operation shall be limited to: Monday through Wednesday, 9:00 a.m. to 7:00 p.m.; Thursday 8:00 a.m. to 8:00 p.m.; Friday and Saturday, 8:00 a.m. to 9:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 8, 2007.

41-07-BZ

CEQR #07-BSA-058M

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for 17th and 10th Associates, LLC, owner; Equinox 17th Street, Inc., lessee.

SUBJECT – Application February 5, 2007 – Special Permit (§73-36) to permit the proposed PCE on the cellar, ground, and mezzanine levels of a 24-story building under construction. The Premises is located in a C6-3 zoning district and Sub Area 1 of the Special West Chelsea District. The proposal is contrary to §22-00.

PREMISES AFFECTED – 450 West 17th Street, a/k/a 100 Tenth Avenue, east side of Tenth Avenue between West 16th and West 17th Streets, Block 714, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 31, 2007, acting on Department of Buildings Application No. 104318908, reads in pertinent part:

“Proposed use of physical culture establishment is not permitted as of right in C6-3 zoning district and within the Special West Chelsea District under section 98-02 ZR. This use is contrary to section 32-10 ZR and requires a special permit from the BSA under section 73-36 ZR.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3 zoning district, within Sub Area I of the Special West Chelsea District, the establishment of a physical culture establishment (PCE) on portions of the cellar, first floor, and mezzanine levels of a proposed 24-story mixed-use residential/commercial building, contrary to ZR §§ 32-10 and 98-02; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, on the condition that a special discount be offered to residents occupying the building’s affordable units; and

WHEREAS, the subject site is located on the east side of Tenth Avenue, between West 16th Street and West 17th Street; the western portion of the site is traversed by the High Line elevated rail line; and

WHEREAS, the site is currently under construction and will be occupied by a 24-story mixed-use residential/commercial building; and

WHEREAS, the PCE will occupy 21,676 sq. ft. of floor space in the cellar, 8,332 sq. ft. of floor area on the first floor and 2,749 sq. ft. of floor area on the first floor mezzanine; and

WHEREAS, the PCE, will be operated as an Equinox fitness club; and

WHEREAS, the applicant represents that the PCE will offer fitness classes, instruction and programs for physical improvement, bodybuilding, weight reduction, aerobics, and massage treatments; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Board has reviewed the Community

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Board's recommendation, however it notes that the PCE's fee schedule is not relevant to the required findings; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA058M, dated February 5, 2007; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3 zoning district, within Sub Area I of the Special West Chelsea District, the establishment of a physical culture establishment on portions of the cellar, first floor, and mezzanine levels of a proposed 24-story mixed-use residential/commercial building, contrary to ZR §§ 32-10 and 98-02; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 16, 2007"-(2) sheets and "April 9, 2007"-

(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 8, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

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

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 8, 2007.

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44-07-BZ

CEQR #07-BSA-061M

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Rubin-Lobo LLC d/b/a Bikram Yoga NY, lessee.

SUBJECT – Application February 8, 2007 – Special Permit (§73-36) to legalize a PCE (Yoga Studio) on a portion of the second floor in a six-story mixed-use building. The Premises is located in a C1-9 zoning district. The proposal is contrary to §32-18.

PREMISES AFFECTED – 171-173 East 83rd Street, northwest corner East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 11, 2007, acting on Department of Buildings Application No. 104506429, reads in pertinent part:

“Proposed Physical Culture Establishment (Yoga Studio) is not permitted as of right in C1-9 zoning district and it is contrary to ZR 32-18.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the legalization of a physical culture establishment (PCE) on a portion of the second floor of an existing six-story mixed-use residential/commercial building, contrary to ZR § 32-18; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the northwest corner of East 83rd Street and Third Avenue; and

WHEREAS, the site is occupied by a six-story mixed-use residential/commercial building; and

WHEREAS, the PCE occupies 3,679 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE is operated as Bikram Yoga New York; and

WHEREAS, the applicant represents that the PCE offers specialized yoga classes and massage treatments; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:30 a.m. to 8:00 p.m.; and

WHEREAS, at hearing the Board asked the applicant to confirm that the PCE activity was confined to the portion of the site within the C1-9 zoning district; and

WHEREAS, the applicant responded that the PCE use is confined to the eastern portion of the site which is wholly within the C1-9 zoning district and provided a second floor plan reflecting this; and

WHEREAS, additionally, the Board asked the applicant if this use was permitted on the second floor, which is also occupied by a residential use in the western portion of the building; and

WHEREAS, the applicant responded that DOB had approved the location of the use on the second floor and provided documentation supporting this claim; and

WHEREAS, the applicant also provided information reflecting that there has been continuous commercial use for a period of at least 80 years within the PCE space on the second floor; and

WHEREAS, further, the applicant submitted a statement describing the PCE space in relation to the rest of the building program which includes a separate entrance to the second floor, used only by the yoga studio, the absence of any connections between the yoga studio and other uses in the building; and

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

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

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA061M, dated February 2, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use,

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Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the legalization of a physical culture establishment on a portion of the second floor of an existing six-story mixed-use residential/commercial building, contrary to ZR § 32-18; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 23, 2007"- (2) sheets "Received April 20, 2007"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on May 8, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:30 a.m. to 8:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May

8, 2007.

65-06-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Zhen Xiang, owner.

SUBJECT – Application April 11, 2006 – Zoning variance under §72-21 to allow a proposed residential building containing three (3) dwelling units to violate applicable front yard (§23-45(a)) and side yard requirements (§23-462(a)). R5 zoning district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1357, Lot 46, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

98-06-BZ & 284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for continued hearing.

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.

SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

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For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

163-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3) story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (23-141c), front yard (23-45), side yards (23-462), and off-street parking (25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43rd Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

253-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Jamila Maleh and Asian Azrak, owners.

SUBJECT – Application September 15, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary side yard (§23-461) and rear yard (§23-47) in an R4 zoning district.

PREMISES AFFECTED – 2243 Homecrest Avenue, east side of Homecrest Avenue between Avenue V and Gravesend Neck Road, Block 7373, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson. 4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for decision, hearing closed.

278-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Christopher Wright.

ACTION OF THE BOARD – Laid over to May 15, 2007, at 1:30 P.M., for deferred decision.

301-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111' north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

302-06-BZ

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Institute, owner.

SUBJECT – Application November 15, 2006 – Variance (§72-21) to permit the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building. The premise is located in a R6 zoning district and the Ocean Parkway Special Zoning District Sub-District. The proposal is contrary to Section 24-11.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner Avenue R, north side Avenue R between Ocean Parkway and East 77th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, Isidro Figueroa, Michael Casentano and Pinchos Hecht.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for decision, hearing closed.

13-07-BZ

APPLICANT – Jesse Masyr, Wachtel & Masyr, LLP, for Zahav Enterprises, Inc., owner; Unicorp National Development, Inc., lessee.

SUBJECT – Application January 11, 2007 – pursuant to

MINUTES

§11-413 of the Zoning Resolution seeking approval to change the use on the project site from parking and storage of motor vehicles and auto rental (Use Group 8) to accessory off-street parking (Use Group 6). The accessory off-street parking would provide the required parking for an adjacent drug store. The subject application is located in an R6 zoning district.

PREMISES AFFECTED – 1120 East New York Avenue, a/k/a 5 Rockaway Parkway, northeast corner of East New York Avenue and Rockaway Parkway, Block 4600, Lots 1 & 7, Borough of Brooklyn.

COMMUNITY BOARD # 17BK

APPEARANCES –

For Applicant: Jerry Johnson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

32-07-BZ

APPLICANT– Omnipoint Communications Inc., for E.C. Hassell Inc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application January 24, 2007 – Special Permit §73-30 and §22-21 – In an R3-2 zoning district, for a non-accessory radio tower for a public utility wireless communications facility and consist of a 62-ft. stealth flagpole (gold ball on top), together with antennas mounted and equipment cabinets on roof of nearby commercial building.

PREMISES AFFECTED – 146-10/16 Guy R. Brewer Boulevard, 240' south of the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, Block 13310, Lots 69 & 70, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Bandioso.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

42-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Cong. & Yeshiva Lev Somejach, owner.

SUBJECT – Application February 6, 2007 – Variance (§72-21) to permit the proposed conversion and extension of an existing synagogue. The Premises is located in an R5 Ocean Parkway Special District. The proposal is requesting waivers of open space and lot coverage (§113-11 and §23-141c) and side yards (§113-11 and §23-462a).

PREMISES AFFECTED – 203 Avenue F, a/k/a 201-203 Avenue F, 717-727 East 2nd Street, Block 5396, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss, owner.

SUBJECT – Application February 23, 200 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1776 East 26th Street, west side of 26th Street, between Avenue R and Quentin Road, 200' north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Robert Akerman, Harold Weinberg.

For Opposition: Katherine A. Levine and Edward Jaworski.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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CORRECTION

This resolution adopted on April 17, 2007, under Calendar No. 288-06-BZ and printed in Volume 92, Bulletin No. 16, is hereby corrected to read as follows:

288-06-BZ

CEQR #07-BSA-033Q

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of §24-111 (FAR), §24-521 (wall height, setback and sky exposure plane), §24-34 (front yard) and §24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223rd and 224th Streets, Block 10796, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402846954, reads, in pertinent part:

“Proposed community facility FAR and total FAR is contrary to Zoning Resolution Section 24-111.

Proposed front yard is contrary to Zoning Resolution Section 24-34.

Proposed side yard is contrary to Zoning Resolution Section 24-35.

Proposed wall height, setback and sky exposure plane is contrary to Zoning Resolution Section 24-521.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521; and WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of the application; and

WHEREAS, Council Member Leroy Comrie provided a

letter in support of the application; and

WHEREAS, the owner of an adjacent property to the rear provided testimony in support of the application; and

WHEREAS, the application is brought on behalf of the Church of God of St. Albans (the “Church”), a non-profit religious institution; and

WHEREAS, the site is located on the north side of Hempstead Avenue, between 223rd Street and 224th Street; and

WHEREAS, the site has a width of 80 ft. and a depth ranging from 102.34 feet to 105.44 feet, with a total lot area of 8,314 sq. ft.; and

WHEREAS, the western portion of the site is currently occupied by a two-story semi-detached building (the “Existing Building”), which is located on the front lot line, and a one-story garage, which is occupied by the Church; the eastern portion of the site is currently vacant; and

WHEREAS, the applicant proposes to enlarge the Existing Building to the east (the Existing Building and the enlargement, hereinafter the “New Building”); and

WHEREAS, the New Building will have a total floor area of 8,024 sq. ft. (0.965 FAR); a maximum floor area of 4,157 sq. ft. (0.5 FAR) is permitted for a community facility in the subject zoning district; and

WHEREAS, the applicant proposes to maintain the existing streetwall condition by locating the New Building on the front lot line, without any front yard (a minimum front yard of 15’-0” is required); and

WHEREAS, the applicant also proposes to maintain the semi-detached condition of the Existing Building and to provide a single side yard of 40’-0” (two side yards with a minimum width of 8’-0” each are required) to the east of the New Building; and

WHEREAS, the applicant proposes to retain the existing 26’-2” perimeter wall and to add a pitched roof with a total height of 38’-3” without a setback to a portion of the New Building; a maximum perimeter wall height of 25’-0” is permitted in the subject zoning district; and

WHEREAS, the applicant proposes for the cellar level to be occupied as a community center/multi-purpose room to be used for youth and after school programs and a kitchen, accessory storage, and restrooms; and

WHEREAS, the applicant proposes for the first floor to be occupied primarily with the 98-seat worship space and also accessory office and storage space and restrooms; and

WHEREAS, the applicant proposes for the second floor to be occupied with a Bible study and meeting room, conference room, accessory office and storage space, and additional restrooms; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Church, which seeks to build a new building in order to accommodate the growing congregation and its accessory services; and

WHEREAS, specifically, the applicant represents that the proposed FAR and floor area are necessary to accommodate the programmatic needs discussed below and that the side yard, front yard, height, and setback waivers are necessary to

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accommodate the worship space on one level while accommodating the required parking spaces in a single accessory parking lot; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Church: (1) a need to accommodate the significant increase in attendance over the past 30 years; (2) a need to accommodate accessory educational, meeting, and community center space; and (3) a need to improve access and modernize facilities; and

WHEREAS, as to attendance, the applicant represents that since its founding in 1976, the Church's congregation has increased substantially and has outgrown two prior facilities; and

WHEREAS, the applicant represents that the Church has a congregation of approximately 120 members and the current facility is overcrowded; and

WHEREAS, the applicant represents that the Church currently occupies a total of 4,120 sq. ft. of floor area in the Existing Building but that this cannot accommodate the required amount of worship space, offices, and accessory services; and

WHEREAS, the applicant represents that the Church's worship space is limited to the first floor of the existing building and the second floor is partially occupied by administrative use and partially occupied as a residence for the Church's custodian; and

WHEREAS, additionally, the applicant represents that the Existing Building does not have sufficient seating to accommodate the congregation and that, routinely, some attendees are required to stand during Church services; and

WHEREAS, the applicant represents that the proposed 98 seats will accommodate the current congregation and allow for some growth; and

WHEREAS, as noted, the Church offers a number of accessory services including educational and youth programs, after school programs, and meeting space available to the community, which cannot all be accommodated in the Existing Building; and

WHEREAS, as to the facilities, the proposed improvements include a larger entrance, which will be handicapped-accessible, and additional restrooms; and

WHEREAS, the applicant also proposes to provide a single accessory parking lot with eleven parking spaces on the eastern portion of the site; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the construction of the New Building is necessary to address the Church's needs, given the limitations of the Existing Building; and

WHEREAS, further, the Board notes that the New Building will be integrated with and relate to the Existing Building in an efficient manner; and

WHEREAS, the Board notes that the site's existing conditions (the Existing Building with its non-compliances) necessitates the additional waivers including front and side yards and height and setback; and

WHEREAS, accordingly, based upon the above, the

Board finds that the limitations of the Existing Building, when considered in conjunction with the programmatic needs of the Church, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by one- and two-story buildings occupied by residential uses and by a number of commercial buildings with frontage on Hempstead Avenue; and

WHEREAS, the three attached buildings to the west of the site are occupied by commercial uses and do not have front yards; and

WHEREAS, the front of the New Building will be integrated into the Existing Building and provide a consistent street wall with the attached row of commercial buildings; and

WHEREAS, the applicant proposes to provide an open space, with parking, with a width of 40'-0" between the New Building and the existing one-story detached building to the east; and

WHEREAS, the applicant proposes to provide a parking lot with 11 spaces (ten spaces are the minimum required), which is sufficient to accommodate the parking demand; and

WHEREAS, additionally, the applicant notes that the Church has occupied the site since approximately 1983 and is a fixture in the community; and

WHEREAS, the Board agrees that the proposed New Building is compatible with the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Church; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Church; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Church to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under

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ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA033Q, dated February 8, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2007"-(6) sheets and *on further condition*:

THAT the building parameters shall be: a total floor area of 8,024 sq. ft. (0.965 FAR), a total height of 38'-3", 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 objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 17, 2007.

***The resolution has been corrected to change the width, which read: '40'-8"... " now reads: '40'-0"... ". Corrected in Bulletin Nos. 18-19, Vol. 92, dated May 17, 2007.**

BULLETIN

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May 24, 2007

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DOCKETS

New Case Filed Up to May 15, 2007

115-07-A

334 Ramona Avenue, Ramona Avenue and Huguenot Avenue., Block 6836, Lot(s) 63 (tent 55 & 59), Borough of **Staten Island, Community Board: 3**. Appeal – To permit the construction of one (1) family detached house.

116-07-A

335 Ramona Avenue, Ramona Avenue and Huguenot Avenue., Block 6836, Lot(s) 63 (tent 55 & 59), Borough of **Staten Island, Community Board: 3**. Appeal – To permit the construction of (1) one family detached house.

117-07-BZ

222 East 34th Street, South side of East 34th Street between Second and Third Avenues., Block 914, Lot(s) 36, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) – To allow the operation of the proposed PCE on a portion of the first floor and the second floor in vacant space in an existing 21-story mixed-use building. The Premises is located in a C1-9A "TA" zoning district. The proposal is con.

118-07-BZ

49 Cedar Grove Avenue, Between Wavecrest Street and Seaform Street., Block 4087, Lot(s) 1 and 70, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-44) – To allow the proposed two-story, Use Group 6B office development which has less than the required parking. The proposal is contrary to §36-21. C1-1/R3-2 district.

119-07-BZ

443 39th Street, Northern side of 39th Street, midblock between 4th Avenue and 5th Avenue., Block 705, Lot(s) 59, Borough of **Brooklyn, Community Board: 7**. Under §72-21 – To permit the conversion of a commercial building to a community facility use (UG4A).

120-07-BZ

24 West 30th Street, On the southside of 30th Street, 350 feet to the west of Fifth Avenue., Block 831, Lot(s) 53, Borough of **Manhattan, Community Board: 5**. Zoning variance under §72-21 – To allow the partial conversion to residential use of an existing 12-story mixed-use building; contrary to use regulations (§42-00). M1-6 zoning district.

121-07-BZ

400 Victory Boulevard, Between Austin Place and Cebra Avenue, Block 579, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the legalization of a Physical Culture Establishment on the first and second floors of an existing nonconforming warehouse building. The proposal is contrary to §22-00. The Premises is located in an R3-2 zoning district.

122-07-BZ

1630 East 15th Street, Westerly side of East 15th Street 50 feet north of Kings Highway., Block 6777, Lot(s) 17 and 24, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on portions of the first and second floors of a three-story commercial building. The proposal is contrary to §32-00. C4-4A zoning district.

123-07-A

723R Driggs Avenue, South of the corner formed by the intersection of Driggs Avenue and South First Street., Block 2407, Lot(s) 141, Borough of **Brooklyn, Community Board: 1**. General City Law §36 – To permit the proposed development.

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

JUNE 12, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 12, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

102-95-BZIV

APPLICANT – The Law Office of Fredrick A. Becker, for The Argo Corporation as agent for 50 West 17 Realty Company, owner; Renegades Associate d/b/a Splash Bar, lessee.

SUBJECT – Application May 8, 2007 – Extension of Term of a special permit (§73-244) for a previously granted UG12 eating and drinking establishment with dancing (Splash Bar) for a term of three years which expired on March 5, 2007 in a C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

149-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Brodcom West Development Company, owner; AGT Crunch, lessee.

SUBJECT – Application January 12, 2007 – Extension of term/Amendment for a physical culture establishment in a C4-7 zoning district, including legalization of change in operating entity and amend the hours of operations.

PREMISES AFFECTED – 35/75 West End Avenue, northwest corner of West End Avenue and West 61st Street, Block 1171, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #7M

196-02-BZII

APPLICANT – Peter Hirshman, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application April 24, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy to a previously granted variance (ZR 72-21) for the addition of sleeping accommodations of 16 beds to an existing community facility (Dynamic Youth Community Inc.) in C8-2 zoning district.

PREMISES AFFECTED – 1826-32 Coney Island Avenue, west side of Coney Island Avenue, 46' North of Avenue O, Block 6549, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

APPEALS CALENDAR

70-06-A & 71-06-A

APPLICANT – Eric Palatnik, P.C., for James Pullano, owner.

SUBJECT – Application April 19, 2006 – Proposed construction of a two- story, three family dwelling located within the bed of mapped street (Zev Place) is contrary to General City Law Section 35. Premises is located within an R3-2 Zoning District.

PREMISES AFFECTED – 4 & 8 Rockwell Avenue, west of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lots 1& 3 (tent), Borough of Staten Island.

COMMUNITY BOARD #1SI

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

JUNE 12, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 12, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

131-06-BZ

APPLICANT– Papa Architects, for Beach-Land Realty, owner.

SUBJECT – Application June 23, 2006 – Special Permit pursuant to Z.R. 73-36 to permit the legalization of an existing Physical Culture Establishment in a one-story portion of the existing building. The Premise is located in a C4-2 zoning district. The proposal is contrary to Z.R. 32-10. PREMISES AFFECTED – 146 New Dorp Lane, a/k/a 146-154 New Dorp Lane, Block 4209, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2 SI

CALENDAR

46-07-BZ

APPLICANT– Sheldon Lobel, P.C., for Moishe Bergman, owner.

SUBJECT – Application February 15, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1328 East 23rd Street, located on the west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

99-07-BZ

APPLICANT - Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (23-141) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

COMMUNITY BOARD#15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 15, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

878-62-BZ

APPLICANT – Sheldon Lobel, P.C., for Sutton House, Inc., owner.

SUBJECT – Application February 20, 2007 – Extension of Term of a Variance for the use of transient parking for the unused and surplus car spaces in an existing multiple dwelling accessory garage which will expire on July 5, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 23, 1999 in an R10/C1-5 zoning district.

PREMISES AFFECTED – 399-423 East 52nd Street; 404-20 East 53rd Street, north side of 52nd Street, between 1st Avenue and FDR Drive, Block 1364, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance for transient parking, which expires on July 5, 2007; and

WHEREAS, a public hearing was held on this application on April 17, 2007 after due notice by publication in *The City Record*, and then to decision on May 15, 2007; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, however, requests that the term be limited to five years; and

WHEREAS, the subject premises is located between First Avenue and Franklin D. Roosevelt Drive, with frontage on both East 52nd Street and East 53rd Street; and

WHEREAS, the site is located partially within an R10 (C1-5) zoning district and partially within an R10 zoning district and is occupied by a 19-story with cellar and sub-cellar residential building; and

WHEREAS, the transient parking is located in portions of the cellar and sub-cellar; and

WHEREAS, on December 18, 1962, under the subject calendar number, the Board granted a variance, pursuant to Section 60(3) of the Multiple Dwelling Law, to permit the use of transient parking for the unused and surplus car spaces in an existing multiple dwelling accessory garage for a term of 15 years; and

WHEREAS, the grant was subsequently amended and extended three times; and

WHEREAS, most recently, on June 23, 1998, the term was extended for a period of ten years from the expiration of the prior grant; and

WHEREAS, one of the conditions of the prior grant was that a new certificate of occupancy be obtained by June 23, 1999; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, additionally, the applicant now seeks an additional ten year term; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy, and extension of term are appropriate, with the conditions 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 December 18, 1962, so that as amended this portion of the resolution shall read: “to grant a six-month extension of time to obtain a certificate of occupancy, and a ten-year extension of term from the date of this grant to expire on May 15, 2017; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; and *on further condition*:

THAT this grant shall expire on May 15, 2017;

THAT there shall be a maximum total of 270 parking spaces used for transient parking at the cellar and sub-cellar levels at the subject premises;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be maintained in a conspicuous place within the garage;

THAT the above conditions and all conditions from the prior resolution shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by November 15, 2007;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. 127/1962)

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Adopted by the Board of Standards and Appeals, May 15, 2007.

1059-84-BZ, Vol. II

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for BMS Realty Co., LLC, owner; Bally Total Fitness Corp., lessee.

SUBJECT – Application December 22, 2006 – Extension of term of a special permit for the operation of a physical culture establishment (PCE) in a C4-2 zoning district within the Special Ocean Parkway District.

PREMISES AFFECTED – 943/61 Kings Highway, a/k/a 2032 Coney Island Avenue, northwest corner of intersection Kings Highway and Coney Island Avenue, Block 6666, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Barbara Hair.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on May 7, 2005; and

WHEREAS, a public hearing was held on this application on April 17, 2007 after due notice by publication in *The City Record*, and then to decision on May 15, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject premises is located on the northwest corner of Kings Highway and Coney Island Avenue; and

WHEREAS, the site is located within a C4-2 zoning district, within the Special Ocean Parkway District, and is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies 10,235 sq ft. on the cellar level, 5,511 sq. ft. on the first floor, and 13,060 sq. ft. on the second floor; and

WHEREAS, the PCE is operated as Bally’s Total Fitness; and

WHEREAS, on May 7, 1985, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the expansion of the existing PCE onto the second floor of the subject building; and

WHEREAS, the grant was subsequently extended once and amended once to permit the extension of the use onto the first floor; and

WHEREAS, the instant application seeks to extend the

term of the variance for an additional ten years; and

WHEREAS, the applicant proposes several minor interior layout modifications, but no other changes to the prior grant; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 7, 1985, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on May 7, 2015; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 22, 2006” – (3) sheets; and; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on May 7, 2015;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 302158974)

Adopted by the Board of Standards and Appeals, May 15, 2007.

83-02-BZII

APPLICANT – Law Offices of Howard Goldman, for Big Sue LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Time to Complete Construction for a Variance to permit in an M1-1 zoning district, the proposed conversion of a four-story industrial building into a residential building with 34 units which expired on February 25, 2007.

PREMISES AFFECTED – 925 Bergen Street, bounded by Classon and Franklin Avenues, Block 1142, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction and conversion of a four-story building to residential use, which expired on February 25, 2007; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in *The City Record*, and then to decision on May 15, 2007; and

WHEREAS, the subject premises is located on the north side of Bergen Street, between Franklin Avenue and Classon Avenue; and

WHEREAS, on February 25, 2003, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit, within an M1-1 zoning district, the conversion of a vacant four-story manufacturing building to residential use; and

WHEREAS, the applicant represents that construction has been delayed due to resources being allocated to another project, which was recently completed; and

WHEREAS, the applicant now requests an additional four years to complete construction of the subject building; and

WHEREAS, the Board finds that a four-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 25, 2003, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of four years from the date of this grant; *on condition* that the use and operation of the building shall substantially conform to BSA-approved plans; and *on condition*:

THAT construction shall be completed by May 15, 2011;

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. 301126528)

Adopted by the Board of Standards and Appeals, May 15, 2007.

52-55-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bouck Oil Corp., owner.

SUBJECT – Application November 28, 2006 – Amendment, filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.

PREMISES AFFECTED – 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

592-71-BZ

APPLICANT – Vito J. Fossella, P.E., for FSD Realty, LLC, owner.

SUBJECT – Application February 2, 2007 – Extension of Term of a previously granted variance for the operation of (UG6) professional office building in an R3-2 & R-2 zoning district which expired on February 15, 2007; and for the extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 1010 Forest Avenue, south side of Forest Avenue, Block 316, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for decision, hearing closed.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 5,
2007, at 10 A.M., for decision, hearing closed.

142-70-BZ

APPLICANT – Barbara Hair, Esq., for Target Realty LLC,
owner.

SUBJECT – Application December 12, 2006 – Amendment
to a variance previously approved pursuant to section 72-21
of the zoning resolution which allowed commercial office
space (Use Group 6) on the cellar level of a residential
building located in a R7-2 zoning district. The application
seeks a change of use in the existing commercial space on
the cellar level from Use Group 6 office to Use Group 6
store.

PREMISES AFFECTED – 8 St. Marks Place, south side,
126' east of 3rd Avenue, Block 463, Lot 13, Borough of
Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Barbara Hair.

For Opposition: John F (Councilmember Mendez), David
Barkin, Brandon K, Gregory Brender(Glick), David Chang
(Senator Duane), Susanne Schrepp(Saint Hauks T.A.)
Herman F. Hewitt(CB3Man.) Teresa Hommel, Katherine B.
Wolpe, Gabriel Bobek and Bernadette Bigley.

ACTION OF THE BOARD – Laid over to June 19,
2007, at 10 A.M., for continued hearing.

737-86-BZ

APPLICANT – Rampulla Associates Architects, for Angelo
Falato, owner.

SUBJECT – Application February 9, 2007 – Extension of
Term of a previously granted Variance (§72-21) for an
existing one story retail store (Use Group 6) which will
expire on June 2, 2007. R3-1 zoning district.

PREMISES AFFECTED – 3304 Amboy Road, between
Buffalo Street and Hopkins Avenue, Block 4964, Lot 11,
Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil Rampulla and Linda Doxsey.

ACTION OF THE BOARD – Laid over to June 12,
2007, at 10 A.M., for continued hearing.

520-89-BZ

APPLICANT – Law Office of Fredrick A. Becker, for SJF
Audubon Realty, LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of
Term for a previously granted variance to permit in an R7-2
zoning district a (Use Group 8) parking lot for more than 5
vehicles which expired on April 18, 2005; a waiver of rules

of practice and procedure and an Extension of Time to
obtain a Certificate of Occupancy which expired on
November 21, 1996.

PREMISES AFFECTED – 65 Audubon Avenue, easterly
side of Audubon Avenue, 30' southerly of West 169th Street,
Block 2125, Lots 30 & 31, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 19,
2007, at 10 A.M., for decision, hearing closed.

214-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.
SUBJECT – Application October 18, 2006 – Extension of
Term/Extension of time to obtain a Certificate of Occupancy
and Amendment of a Special Permit granted pursuant to
§73-242 to permit within a C3 zoning district an eating and
drinking establishment.

PREMISES AFFECTED – 2761 Plumb Second Street,
northeast corner formed by intersection of Plumb Second
Street and Harkness Avenue, Block 8841, Lot 500, Borough
of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to June 12,
2007, at 10 A.M., for continued hearing.

135-05-BZ

APPLICANT – Judith Gallent, Esq., Bryan Cave, LLP for
L&M Equity Participants Ltd. and Harlem Congregations
for Community Improvement, Inc, contract vendees

SUBJECT – Application April 18, 2007 – To reopen and
amend a previously -approved zoning variance under ZR
§72-21 that allowed the residential conversion of an existing
non-complying building previously used as a school (former
PS 90) located in an R7-2 district; contrary to ZR §23-142,
ZR §23-533, & ZR §23-633. The proposed amendment
would permit a 5,987 sf. ft. enlargement to the existing sixth
floor.

PREMISES AFFECTED – 217 West 147th Street, located
on block bounded by West 147th and West 148th streets and
Adam Clayton Powell, Jr. and Frederick Douglas
Boulevards, Block 2033, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Judith M. Gallent.

For Administration: Jolene Saul, HPD.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 5,
2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Incorporated, owner. Thomas Carroll, lessee.
SUBJECT – Application September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code regarding access and fire safety. R4 - Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination from the Queens Borough Commissioner, dated August 24, 2006, stating that the Department of Buildings (DOB) determined that the applicant complied with all relevant sections of the Administrative Code and the Zoning Resolution and no grounds existed for the revocation of DOB Permit Nos. 402074045 and 402293530; and

WHEREAS, this appeal challenges DOB’s decision not to revoke the above-noted permits; and

WHEREAS a public hearing was held on this application on March 20, 2007 after due notice by publication in *The City Record*, and then to dismissal on May 15, 2007; and

WHEREAS, the premises is located within the Breezy Point Cooperative, which is a 403-acre privately-owned community incorporated in 1960; the Cooperative property is comprised of 2,834 separate residential plots leased to individual shareholders/proprietary tenants; and

WHEREAS, the subject site is an individual plot within the Cooperative and is occupied by a single-family home, which was constructed pursuant to the building permit described below; and

WHEREAS, this appeal is brought on behalf of the neighbor at 2 Bayside Avenue; and

WHEREAS, the appellant, the Cooperative, and the proprietary tenant at 2 Bayside Avenue were represented by counsel in this appeal; and

WHEREAS, on May 10, 2006, DOB issued a demolition permit (No. 402293530) to the propriety tenant at 607 Bayside Drive; and

WHEREAS, on May 17, 2006, DOB issued a new building permit (No. 402074045) (the “New Building Permit”) for the construction of a single-family home; and

WHEREAS, on September 6, 2006, appellant filed an appeal in opposition to DOB’s approval and the New Building Permit; and

WHEREAS, the appellant makes the following assertions: (1) the lot area is contrary to the minimum lot area requirements of ZR § 23-32 and is not subject to the small lot exception of ZR § 23-33; (2) the premises violates the rear yard requirements set forth in ZR § 23-47; (3) the premises does not provide the required ten-foot front yard, per ZR § 23-45; (4) the setback of the terrace from Bayside Drive is contrary to the depth and level of the front yard as set forth in ZR §§ 23-45 and 23-42; (5) the required minimum distance between buildings is not provided per ZR § 23-711; (6) the premises is contrary to the Building Code’s Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; (7) the premises is not approved without prior certification from the City Planning Commission, per ZR § 62-71; and (8) the premises does not comply with the off-street parking requirements set forth in ZR § 25-22; and

WHEREAS, by letter dated February 27, 2007, DOB issued a ten-day notice of its intent to revoke the approval and New Building Permit based on the owner’s failure to provide the required front yard; and

WHEREAS, by letter dated April 11, 2007, DOB informed the project architect that to avoid revocation of the New Building Permit, the plans needed to be revised to reflect a complying front yard; and

WHEREAS, by letter dated April 27, 2007, DOB issued a letter stating that the New Building Permit is revoked; and

WHEREAS, subsequent to the revocation, Board staff informed the appellant that because the New Building Permit had been revoked, as requested, the appeal was moot and the Board would dismiss it at the May 15, 2007 hearing; and

WHEREAS, notwithstanding the revocation of the permit, the appellant made a submission, dated May 3, 2007, requesting that the Board not dismiss the case for the following reasons: (1) the basis for the revocation of the New Building Permit is only one of the issues claimed in the appeal, and DOB’s basis for the determination is flawed; (2) the remaining issues, which were part of the litigation preceding this appeal, have not been decided; (3) DOB has not upheld its responsibility to enforce the ZR; (4) DOB has made procedural errors; and (5) the appellant’s property rights are denied; and

WHEREAS, the Board notes that DOB has revoked the

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New Building Permit based on its reconsideration of the front yard question and that, although the revocation is only associated with one issue, the permit is revoked in full; and

WHEREAS, further, the Board notes that the revocation of the New Building Permit is the remedy the appellant sought and because the permit has been revoked in full, this remedy has been obtained; and

WHEREAS, the Board also notes that DOB has directed the proprietary tenant at 2 Bayside Avenue to submit new building plans; and

WHEREAS, the Board disagrees with the appellant and finds that without new plans to review, its decision on any remaining issues, raised in this appeal or in another forum, would be speculative in nature; and

WHEREAS, accordingly, because the New Building Permit has been revoked and DOB is no longer considering approval of the building plans associated with this appeal, the Board has determined that it is premature to decide any of the remaining issues; and

Therefore it is resolved that the instant appeal is dismissed on the basis of mootness.

Adopted by the Board of Standards and Appeals, May 15, 2007.

34-07-A

APPLICANT – Valentino Pompeo, for Gorian Papa, owner.
SUBJECT – Application January 24, 2007 – Proposed alteration of an existing one family home located within the bed of a mapped street (72nd Lane) which is contrary to Section 35 of the General City Law. R4-1 Zoning District.
PREMISES AFFECTED –72-40 Myrtle Avenue, south of Myrtle Avenue, east of 72nd Street, Block 3511, Lot 27, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Valentino Pompeo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 17, 2007, acting on Department of Buildings Application No. 402453572, reads in pertinent part:

“A1- The existing building to be altered partially lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.”; and

WHEREAS, a public hearing was held on this application on May 15, 2007 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated May 8, 2007, the Fire Department states that it has reviewed the above project and

has no objections; and

WHEREAS, by letter dated March 28, 2007, the Department of Transportation (DOT) states that it has reviewed the above project and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter dated February 28, 2007, the Department of Environmental Protection states that it reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 17, 2007, acting on Department of Buildings Application No. 402453572, 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 5, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2007.

76-07-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner.

SUBJECT – Application April 4, 2007 – Proposal to reconstruct and enlarge an existing one family dwelling and the upgrade of an existing private disposal system which does not front on mapped street, contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 485 Seabreeze Walk, east side of Seabreeze Walk, 204.11’ south of Beach 213th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michel Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 23, 2006, acting on Department of Buildings Application No. 40254413, reads in pertinent part:

“A1 - The street giving access to the existing building to be replaced is not duly placed on the map of the City of New York. And

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law;

b) Existing Dwelling to be replaced does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A-2 - The proposed upgrade of the private disposal system is contrary to the Department of Buildings policy.”; and

WHEREAS, a public hearing was held on this application on May 15, 2007 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated April 11, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 23, 2006, acting on Department of Buildings Application No. 40254413, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 4, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2007.

Jeffrey Mulligan, Executive Director

Adjourned: 11:20 A.M.

REGULAR MEETING TUESDAY AFTERNOON, MAY 15, 2007 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

318-05-BZ

APPLICANT – Marc A. Chiffert, P.E., for 2040 MLK Realty, LLC, owner.

SUBJECT – Application November 1, 2005 – Zoning variance under §72-21 to allow a proposed horizontal enlargement of an existing one-story non-conforming commercial building in an R7-1 district. The proposal calls for Use Group 6 retail use and is contrary to §52-22.

PREMISES AFFECTED – 2040 Dr. MLK JR. Boulevard f/k/a 2040 University Avenue, northeast corner of intersection of West Burnside Avenue and Dr. MLK Jr. Boulevard, Block 3210, Lot 2, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Marc A. Chiffert.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated May 1, 2006, acting on Department of Buildings Application No. 200948715, reads in pertinent part:

“In an R7-1 zoning district, the proposed enlargement of a non-conforming use (retail store, Use Group 6) is contrary to Section 52-22 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-1 zoning district, the enlargement of a one-story commercial building to be occupied by Use Group 6 retail use, which is contrary to ZR § 52-22; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in the *City Record*, with a continued hearing on April 10, 2007, and then to decision on May 15, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Bronx, recommends approval of the application; and

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WHEREAS, City Council Member Joel Rivera provided a letter in support of this application; and

WHEREAS, the site is located on the northeast corner of West Burnside Avenue and Dr. Martin Luther King, Jr. Boulevard, within an R7-1 zoning district; and

WHEREAS, the site has frontage on two streets, but is otherwise surrounded by the Aqueduct Walk Park on its north and east sides; the ribbon-shaped park extends for a distance north and south of the site; and

WHEREAS, the site is the only lot that is not part of the park on the western half of the subject city block and is the only site adjacent to the park on two sides; and

WHEREAS, the site is irregularly-shaped with a total lot area of 1,542 sq. ft.; and

WHEREAS, the site is occupied by a one-story commercial building (UG 6) with a floor area of 379 sq. ft., occupied by an automotive repair shop; the remainder of the site is occupied by parking; and

WHEREAS, the applicant proposes to build a 1,674 sq. ft. one-story, with mezzanine, enlargement to the commercial building; and

WHEREAS, the proposed enlargement provides for two separate retail uses with one store having a 744 sq. ft. first floor and a 248 sq. ft. mezzanine and an adjacent store having a 798 sq. ft. first floor and a 266 sq. ft. mezzanine, and

WHEREAS, the combined floor area for the existing building and the proposed enlargement is approximately 2,053 sq. ft. (1.33 FAR), which is less than the maximum permitted under zoning district regulations; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is small and irregularly shaped; (2) the site has a significant slope; and (3) the history of development at the site; and

WHEREAS, as to shape, the site is in the shape of a narrow wedge, ranging from a depth of 8'-10" at the northern edge to a depth of approximately 25'-9" at the southern edge with a cutout at the wider end; and

WHEREAS, the applicant represents that this condition causes the following problems: (1) the irregularly-shaped site requires the building to have a high ratio of perimeter wall to floor area, which results in premium construction costs; and (2) irregularly-shaped and inefficient floor plates compromise the amount of usable space for a conforming use; and

WHEREAS, as to the site's size, the applicant states that the 1,542 sq. ft. lot is too small to accommodate a multi-dwelling building (1,700 sq. ft. is the minimum lot size for a multi-dwelling building); and

WHEREAS, accordingly, the only permitted development would be a single- or two-family home; the applicant represents that in addition to the impractical floor plans of a residential use at this site, there is no context for single-family homes in the vicinity of the site and it cannot feasibly be accommodated, as discussed in more detail below; and

WHEREAS, the applicant submitted plans reflecting a conforming development, which reflects an irregularly-shaped single-family home and occupies five different levels accessed by four staircases; and

WHEREAS, accordingly, the applicant asserts that the site could not feasibly accommodate a conforming use; and

WHEREAS, the applicant notes that although the as of right scenario proposed the use of all of the available floor area, the layout of the many-leveled home is highly inefficient; and

WHEREAS, accordingly, without the multi levels, the proposed enlargement does not provide for all the available floor area; a maximum floor area of 3,084 sq. ft. (2.0 FAR) is permitted; and

WHEREAS, as to the uniqueness of the size and shape, the applicant notes that this is the smallest site within a 400-sq. ft. radius and it is the only one with such an irregular shape; and

WHEREAS, the Board agrees that the size and the shape of the site are unique, and that constraints are placed on a conforming development; and

WHEREAS, as to the slope, the applicant represents that the slope at the site results in inefficient floor plates and that the proposed design of two separate stores – one at the lower level and one at the upper level – is necessary to provide efficient floor plates and accessibility, given the grade change across the site; and

WHEREAS, because each store will be small, the applicant proposes mezzanines to help accommodate additional floor area and make the units viable; and

WHEREAS, as to the historic use at the site, the applicant states that the site has been used for commercial use for many decades and has provided photographs which document its use as a gas station and an automotive repair shop with parking; and

WHEREAS, the applicant represents that the existing one-story automotive repair shop is obsolete and does not provide a reasonable return on the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in strict compliance with zoning district regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a single-family home; as noted, the lot is too small to accommodate a multi-dwelling building; and

WHEREAS, the study concluded that the conforming scenario would not realize a reasonable return, because a conforming building would have compromised and inefficient floor plates and because there is no market for a single-family home at this location, which is heavily-trafficked and

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characterized by large multi-unit buildings; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the site, which is isolated and surrounded by a park and is at a heavily-trafficked intersection is not marketable for a single-family home; and

WHEREAS, based upon its review of the submissions of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the site is located in an area characterized by a mix of uses including five- and six-story multi-dwelling unit buildings, a number of commercial uses, and the Aqueduct Walk Park, as noted; and

WHEREAS, the applicant notes that the site has been occupied by a commercial use for many decades; and

WHEREAS, the applicant notes that the proposed height of one-story with mezzanine is compatible with nearby buildings; and

WHEREAS, the Board notes that the current proposal respects the height and street wall requirements of the subject zoning district; and

WHEREAS, the Board further notes that the elimination of the wide curb cut on and Dr. Martin Luther King, Jr. Boulevard and the elimination of parking at the site generally improves the site conditions and impact on the street and the park; and

WHEREAS, the applicant also agrees to provide exterior lighting on the side of the building facing the park and to design the site so as to minimize visual impact on the park; and

WHEREAS, the Board agrees that the proposed use would eliminate an existing non-conforming use and replace it with a use that is more compatible with the surrounding area; and

WHEREAS, additionally, the Community Board has stated that the current use is unattractive and not compatible with the neighborhood and that the proposed use would be a desirable change; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board notes that the proposed plan is for 2,053 sq. ft. (1.33 FAR) and the maximum floor area

permitted in the closest commercial district is 3,084 sq. ft. (2.0 FAR); an FAR of 3.44 is permitted for a conforming use at the site; and

WHEREAS, accordingly, the Board finds that the requested floor area is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA091X, dated August 8, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R7-1 zoning district, the enlargement of a one-story commercial building to be occupied by Use Group 6 retail use, which is contrary to ZR § 52-22, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 29, 2007"- five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the new building: one story and mezzanine, a total floor area of 2,053 sq. ft. (1.33 FAR), and a total height of 23'-0", all as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2007.

327-05-BZ

APPLICANT– Rothkrug Rothkrug Weinberg & Spector, for John Damiano, owner.

SUBJECT – Application November 11, 2005 – Special Permit (§73-125) to allow a proposed ambulatory diagnostic treatment care facility (Use Group 4) limited to less than 10,000 sf of floor area to locate in an R3X district. The proposal calls for a one-story and cellar building and fourteen (14) accessory parking spaces.

PREMISES AFFECTED – 5135 Hylan Boulevard, between Wendy Drive and Bertram Avenue, Block 6499, Lot 95, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 12, 2005, acting on Department of Buildings Application No. 500750225, reads in pertinent part:

“The proposed ambulatory diagnostic or treatment health care facility, in an R3X zoning district, requires a special permit from the Board of Standards and Appeals pursuant to Section 73-125 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district, within the Special South Richmond Development District (SRD), the construction of a one-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 14 parking spaces, contrary to ZR § 22-14(a); and

WHEREAS, a public hearing was held on this application on March 6, 2007 after due notice by publication in *The City Record*, and with a continued hearing on April 17, 2007, and then to decision on May 15, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application, citing the following concerns: (1) there is a designated school bus stop

in front of the site, (2) the potential impact on traffic, (3) parking is not permitted on surrounding streets, (4) there are already several medical buildings in the area, (5) additional curb cuts will impact traffic flow on Hylan Boulevard, and (6) the site is within a private community, which limits the use on the site to residential use; and

WHEREAS, the Jansen Court Homeowners Association provided testimony in opposition to the application, stating that, per the Association’s by-laws, only residential use is permitted at the site; the Association also reiterated the concerns cited by the Community Board; and

WHEREAS, certain neighbors provided testimony in opposition to the application, citing concerns about the potential impact the proposed use would have on traffic safety; and

WHEREAS, the subject site is located on the north side of Hylan Boulevard, between Wendy Drive and Bertram Avenue, within an R3X (SRD) zoning district ; and

WHEREAS, the site has a lot area of 12,262.4 sq. ft. and is currently vacant; and

WHEREAS, the facility will occupy 2,749.67 sq. ft. of floor area (0.22 FAR) on the first floor and approximately 2,718 sq. ft. of floor space in the cellar; and

WHEREAS, because there will be office space in the cellar level, the floor space in the cellar is included in the total floor area when calculating the required parking; therefore, the total floor area for parking calculation purposes is 5,467 sq. ft.; and

WHEREAS, accordingly, 14 parking spaces will be provided at the rear of the building (one space per every 400 sq. ft. of floor area); and

WHEREAS, the applicant represents that the facility will provide Use Group 4 ambulatory diagnostic and treatment health care services, including internal medicine/pediatrics, physical therapists, and outpatient surgery; and

WHEREAS, the applicant initially proposed to provide one curb cut on either side of the building, with the eastern curb cut limited to entrance and the western curb cut limited to exit; and

WHEREAS, at hearing, the Board asked the applicant to analyze the proposed curb cuts in light of the existing bus stop in front of the site and the general traffic conditions; and

WHEREAS, the applicant responded that the bus top is not used by New York City Transit, but is used by the private high school across the street, once a day for the purpose of picking up students at the end of the school day; and

WHEREAS, the applicant represents that DOT has been consulted about relocating the bus stop in front of the site, but there has not yet been confirmation that it will be moved; and

WHEREAS, at the Board’s direction, the applicant redesigned the traffic circulation at the site to eliminate one of the curb cuts and to provide a single curb cut at the eastern side of the site to accommodate entrance and exit;

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and

WHEREAS, further, in an effort to minimize the potential impact on traffic and safety, the applicant agrees to post signs at the entrance/exit to the parking lot directing drivers that children may be present and that only right turns are permitted; and

WHEREAS, the Board notes that the applicant is providing all of the required parking and does not anticipate overflow; and

WHEREAS, finally, the Board directed the applicant to provide landscaping around the perimeter of the site and around the front walkway; and

WHEREAS, the Board notes that the proposed building provides for 78 percent open space (45 percent is the minimum required); and

WHEREAS, accordingly, the Board finds that the amount of open area and its distribution on the lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, the facility 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, as to the Homeowners Association's assertion that the property owner is bound by its by-laws and the proposed use is not permitted, the Board notes that it does not have the authority to enforce the bylaws, which are part of a private agreement that does not override the ZR; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-125 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA030R, dated November 30, 2006; and

WHEREAS, the EAS documents that the operation of the facility would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and

Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district, within the Special South Richmond Development District, the construction of a one-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 14 parking spaces, contrary to ZR § 22-14(a); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 15, 2006"--four (4) sheets and "Received April 24, 2007"--one (1) sheet; and *on further condition*:

THAT there shall be no change in use of the facility without prior application to and approval from the Board;

THAT landscaping shall be provided and maintained, as per the approved plans;

THAT signs shall be posted at the entrance/exit of the parking lot stating that exits shall be restricted to right turns and to caution for children;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the parameters of the building shall be as follows: 2,749.67 sq. ft. of floor area on the first floor, 2,718 sq. ft. of floor space in the cellar, and 14 parking spaces, as per the approved plans;

THAT the curb cut and relocation of the bus stop shall be approved by DOT and/or New York City Transit, as required, prior to the issuance of any permits;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
May 15, 2007.

425-05-BZ

APPLICANT-- Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT -- Application December 28, 2005 -- Variance (§72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§23-141c

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and §24-162), front yard (§24-34), side yards (§24-35), lot coverage (§23-141 and §24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 and 104, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 7, 2007, acting on Department of Buildings Application No. 302041270, reads in pertinent part:

- “1. Proposed floor area is contrary to ZR §§ 23-141 and 24-162.
2. Proposed front and side yard are contrary to ZR §§ 24-34 and 24-35 respectively.
3. Proposed lot coverage and open space are contrary to ZR §§ 23-141 and 24-111 respectively.
4. Proposed minimum distance between legally required windows and lot lines is contrary to ZR § 23-86(a).
5. Proposed number of parking spaces is contrary to ZR § 25-22.”; and

WHEREAS, the decision of the Brooklyn Deputy Borough Commissioner, dated May 7, 2007, acting on Department of Buildings Application No. 302041270, reads in pertinent part:

“Maximum width of curb cut to be 15’-0”.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the proposed construction of a three-story mixed-use residential and community facility building, which does not comply with applicable zoning requirements concerning floor area, FAR, front and side yards, lot coverage, minimum distance between legally required windows and lot lines, number of parking spaces, and curb cut width, contrary to ZR §§ 23-141, 23-86, 24-111, 24-162, 24-34, 24-35, 25-22, and 25-631; and

WHEREAS, the proposed building will have a community facility floor area of 1,010 sq. ft. (0.24 FAR), a residential floor area of 7,621 sq. ft. (1.80 FAR), and a total floor area of 8,631 sq. ft. (2.04 FAR) (7,408 sq. ft. of floor area and an FAR of 1.75 are the maximum permitted), a complying street wall and total height of 33 feet (without bulkhead), three parking spaces (five are required), and a curb cut width of 22’-0” (15’-0” is the maximum permitted); and

WHEREAS, a public hearing was held on this application on January 30, 2007 after due notice by publication in the *City Record*, with a continued hearing on April 24, 2007, and then to decision on May 15, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject premises is located on the north side of Avenue Z, between East 24th Street and Bedford Avenue, within an R4 zoning district; and

WHEREAS, the site comprises tax lot 1, which has a small triangle shape with frontage on Avenue Z, and tax lot 104, a long narrow trapezoid which has frontage on Avenue Z and abuts tax lot 1 along its rear lot line; together, the lots form the approximate shape of a large triangle; and

WHEREAS, the lots are proposed to be merged into a single zoning lot, Lot 104; and

WHEREAS, the site has approximately 142’-11” of frontage on Avenue Z and a lot area of 4,233 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant two-story building which was formerly used as a deli/grocery store and will be demolished in anticipation of the new building; and

WHEREAS, the applicant proposes to construct an 8,631-sq. ft., three-story, five-family mixed-use residential/community facility building; and

WHEREAS, specifically, a portion of the cellar and first floor will be occupied by community facility use; the remainder of the first floor will be occupied by one dwelling unit and the second and third floors will each be occupied by two dwelling units; two parking spaces will be enclosed on the first floor and one parking space will be provided outside the building; and

WHEREAS, as noted above, the proposed building requires certain waivers; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying building: (1) the site is small and irregularly shaped; and (2) the adjacent built conditions constrain the development of the site; and

WHEREAS, as to the shape and size of the site, the applicant states that the site has frontage of approximately 142’-11” on Avenue Z and has a depth ranging from 57’-0” at its eastern end to 0’-0” at its western end; and

WHEREAS, the applicant represents that, due to these conditions, if the required front yard of 10’-0” were provided, the building depth would range from only 11 to 38 feet and the FAR would only be 1.02 (1.75 is the maximum permitted FAR); and

WHEREAS, accordingly, the applicant represents that the site does not have sufficient area and depth to support a

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complying residential or mixed-use structure over a substantial portion of the site and to provide the required yards; and

WHEREAS, the applicant notes that the front yard and the eastern side yard are existing non-complying conditions which will be maintained; and

WHEREAS, further, the applicant notes that the second side yard will be provided at varying widths of approximately 3'-6" due to the need to provide right angles at the rear of the building to accommodate an adequate building depth and efficient layout; and

WHEREAS, the applicant states that the triangular shape causes two additional problems: (1) the sharply-angled site requires the building to have a high ratio of perimeter wall to floor area, which results in premium construction costs; and (2) irregularly-shaped and inefficient floor plates compromise the amount of usable space for dwelling units and parking; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the parking requirement while still providing a reasonable site plan and layout for the building; and

WHEREAS, specifically, the shallow depth of the site makes it infeasible to accommodate parking below grade and the five required parking spaces cannot be feasibly accommodated at the site; and

WHEREAS, the applicant represents that, due to the constraints of the site, the 22'-0" curb cut is required in order to accommodate access to the three parking spaces; and

WHEREAS, as to the surrounding conditions, the adjacent building on Lot 68, with frontage around the corner on East 24th Street, abuts the lot line at the narrowest portion of the subject site; and

WHEREAS, additionally, the existing building on the site is attached to a two-story mixed-use commercial building at the corner of Avenue Z and Bedford Avenue, which is not part of this application; and

WHEREAS, the applicant represents that the conditions on these adjacent lots limits the ability to develop the lot in compliance with all regulations; and

WHEREAS, the applicant represents that the configuration of the lot and the built conditions (1) confines the development to only a portion of the site and (2) requires that certain required windows be provided without sufficient distance from the lot line; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that this site is one of approximately five irregularly-shaped sites within the 400-ft. radius and one of only two which also have surrounding conditions which so limit the development of the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed an as of right mixed-use community facility/residential alternative, which provided for a two-

story with attic building with community facility use on the ground floor and a total of three residential units on the upper floors; and

WHEREAS, the study concluded that the complying scenario would not realize a reasonable return, since a complying building would have compromised and inefficient floor plates and would not accommodate all of the available floor area; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the area is occupied by a mix of uses including two- and three-story two family residences, detached single-family homes, three- and four-story multi-family residences, and two-story mixed-use buildings with commercial use on the first floor; and

WHEREAS, the applicant initially proposed a four-story building but reduced the height to three stories to be more compatible with nearby uses; and

WHEREAS, the applicant also agreed to provide the outdoor parking away from and provide landscaping along the westernmost portion of the rear lot line to diminish the impact on the adjacent residential use built to the lot line; and

WHEREAS, the applicant also agreed to set the building back one foot from the street line in order to match the street wall of the adjacent commercial building on Avenue Z; and

WHEREAS, the Board notes that the current proposal respects the height and street wall requirements of the subject zoning district; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size and shape of the lot; and

WHEREAS, as noted, the applicant initially proposed a four-story building with an FAR of 2.68; these parameters have been reduced to a three-story building with an FAR of 2.04; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR Part 617; and

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WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA045K, dated August 17, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §72-21 and grants a variance to permit, on a site within an R4 zoning district, the proposed construction of a mixed-use three-story residential and community facility building, which does not comply with applicable zoning requirements concerning floor area, FAR, front and side yards, lot coverage, minimum distance between legally required windows and lot lines, number of parking spaces, and curb cut width, contrary to ZR §§ 23-141, 23-86, 24-111, 24-162, 24-34, 24-35, 25-22, and 25-631 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 1, 2007"—ten (10) sheets and "Received May 1, 2007"—one (1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a community facility floor area of 1,010 sq. ft. (0.24 FAR), a residential floor area of 7,621 sq. ft. (1.80 FAR), and a total floor area of 8,631 sq. ft. (2.04 FAR), a street wall and total height of 33 feet (without bulkhead), three parking spaces, and a curb cut width of 22'-0", as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2007.

278-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Christopher Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 13, 2006, acting on Department of Buildings Application No. 302207010, reads in pertinent part:

“Proposed residential use is not permitted in M1-1 district pursuant to Section 42-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §72-21, to permit, on a site partially within an M1-1 zoning district and partially within an R6 zoning district, a four-story with mezzanine residential building, which is contrary to ZR §42-00; and

WHEREAS, the proposed building will have a total floor area of 11,585 sq. ft. (2.20 FAR), a street wall height of 44'-6"; a total height of 54'-6", without bulkheads, and 64'-10", with bulkheads; a rear yard of 41'-11"; and 16 dwelling units (the "Proposed Building"); and

WHEREAS, a public hearing was held on this application on March 13, 2007 after due notice by publication in the *City Record*, with continued hearings on April 10, 2007 and May 8, 2007, and then to decision on May 15, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 8, Brooklyn, recommends disapproval of the application, citing concerns about the need for affordable housing and the displacement of current residents of the area; and

WHEREAS, City Council Member Letitia James submitted a letter in opposition to the application, citing the same concerns as the Community Board; and

WHEREAS, the site is located on the north side of

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Bergen Street, between Classon Avenue and Franklin Avenue; and

WHEREAS, the portion of the site within 12 feet of the western property line is located within an R6 zoning district and the remainder of the site is located within an M1-1 zoning district; and

WHEREAS, the site has a total width of 48 feet, a depth of 110 feet, and a lot area of 5,280 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building will provide for four simplex dwelling units on each of the first three floors, and four duplex dwelling units on the fourth floor and mezzanine; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance applicant for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site is narrow and split between an M1-1 zoning district and an R6 zoning district; and (3) there are residential uses on both sides of the site; and

WHEREAS, as to the size and width of the site, as noted, the site has a lot area of 5,280 sq. ft. with a width of only 48 feet; and

WHEREAS, the applicant represents that the small size and narrow width results in conditions that could not accommodate a modern conforming use; and

WHEREAS, the applicant submitted evidence reflecting that the site had been advertised for a year and was not marketable for a conforming use; and

WHEREAS, as to the uniqueness of this condition, the applicant distinguished all of the other vacant lots within a 400-ft. radius of the site in that they all are either: (1) much larger, (2) abut conforming uses with considerable street frontage, or (3) front on a street which is wholly within the M1-1 zoning district; and

WHEREAS, the applicant notes that there are also several vacant lots within the radius, which are within the R6 zoning district; and

WHEREAS, further, since the westernmost 12 feet (25 percent of the total width) are within an R6 zoning district, leaving a width of only 36 feet within the M1-1 zoning district; and

WHEREAS, the Board notes that the uses permitted within the 12 ft. wide portion of the site within the R6 zoning district and those permitted within the 36 ft. wide portion of the site within the M1-1 zoning district are not compatible; and

WHEREAS, accordingly, neither portion of the site has an insufficient width to feasibly accommodate a conforming use therein; and

WHEREAS, further, even if the entire site could be used for conforming use in accordance with ZR § 77-00 – Special Provisions for Zoning Lots Divided by District Boundaries – the footprint would be limited in width and size and would not

be able to accommodate a conforming use; and

WHEREAS, as to the adjacent uses on both sides of the site, the applicant notes that the small size of the site cannot be remedied by combining with the sites on either side because those sites are occupied by established residential uses; and

WHEREAS, as noted, the western portion of the site is included within the large R6 zoning district, which also includes the entire block directly across Bergen Street; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial building; and

WHEREAS, the applicant concluded that the conforming scenario would not realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including all of the adjacent buildings to the west along Classon Avenue, and the three adjacent buildings to the east; and

WHEREAS, the applicant represents that the proposed building complies with all of the requirements of the adjacent R6 zoning district, except for the parking requirement discussed below; and

WHEREAS, the character of the residential buildings adjacent to the site and in the close vicinity is a height of three or four stories; and

WHEREAS, all of the adjacent residential buildings are four-story; and

WHEREAS, the Board notes that the partial fifth floor is setback 15 feet from the street to minimize its visibility; and

WHEREAS, the applicant initially proposed 17 dwelling units and five parking spaces below grade at the rear of the building; and

WHEREAS, at hearing, the Board questioned whether,

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notwithstanding the R6 zoning district parking requirement (nine spaces), the use of the rear yard for parking was not compatible with adjacent uses; and

WHEREAS, in response, the applicant analyzed the current proposal (16 dwelling units without any parking) and two proposals with 17 dwelling units and five parking spaces, one with partially-covered below grade parking and one with parking at grade; and

WHEREAS, the applicant demonstrated that the alternative without parking provided the benefit to adjacent uses of a large open rear yard and also resulted in an improved layout of the building, including its access to light and air at the rear; and

WHEREAS, the applicant also performed a parking study which demonstrated that, during peak hours, there were 39 available on-street parking spaces out of a total of 62 within a single block of the site; and

WHEREAS, further, the applicant noted that the area is well-served by public transportation including a subway stop one block away; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of 16 dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the Board has reviewed the comments of the Community Board and Council Member James but notes that the requirement for affordable housing is not within its jurisdiction; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, after the plans were revised to provide for open space at the rear of the building instead of parking, the applicant modified the interior layout and the number of dwelling units necessary to provide a reasonable return was reduced from 17 to 16; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA029K, dated October 7, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: October 7, 2006 EAS, the July 2006 Phase I Environmental Site Assessment Report; and the March 29, 2007 and January 15, 2007 Air Quality response submissions; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials and Air Quality; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on April 23, 2007 and submitted for proof of recording on April 27, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance on a site partially within an M1-1 zoning district and partially within an R6 zoning district, a four-story residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 7, 2007"-(10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: four stories, with a fourth floor mezzanine; a total floor area of 11,585 sq. ft. (2.20 FAR); a street wall height of

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44'-6"; a total height of 54'-6", without bulkheads, and 64'-10", with bulkheads; a rear yard of 41'-11"; and 16 dwelling units, all as indicated on the BSA-approved plans;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2007.

309-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Melody Silvers and Morris Silvers and Morris Silvers, owners.

SUBJECT – Application November 30, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)) and side yard requirement (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2817 Avenue M, between East 28th and East 29th Street, Block 7646, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 20, 2006, acting on

Department of Buildings Application No. 302221851, 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(a)
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space ratio, which is contrary to ZR Section 23-141(a)
3. Proposed enlargement increases the degree of non-compliance of an existing building with respect to side yards, which is contrary to ZR Section 23-461(a).”;

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on April 24, 2007, after due notice by publication in *The City Record*, and then to decision on May 15, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Avenue M, between East 28th Street and East 29th Street; and

WHEREAS, the subject site has a total lot area of 2,700 sq. ft., and is occupied by a 1,771.47 sq. ft. (0.656 FAR) single-family home; 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 1,771.47 sq. ft. (0.656 FAR) to 2,613.47 sq. ft. (0.968 FAR); the maximum floor area permitted is 1,350 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 97.4 percent to 49.9 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-10 1/4" (side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the applicant notes that because the home is within 100 feet of the corner, no rear yard is required; and

WHEREAS, the Board notes that the enlargement will be located entirely at the rear of the existing home; 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, Board finds that the proposed project will not interfere with any pending public improvement project;

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and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; *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 November 30, 2006"--(4) sheets and "March 20, 2007"--(8) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,613.47 sq. ft., a total FAR of 0.968, a perimeter wall height of 22'-7", total height of 30'-0", a front yard of 10'-1 1/2", side yards of 6'-0 3/4" and 2'-10 1/4", and open space of 1,306.16 sq. ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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 15, 2007.

378-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story

residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for deferred decision.

29-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Iliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district. PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Irving Minkin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for decision, hearing closed.

75-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to §72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§23-142 and §35-22), open space ratio (§23-142, §35-22 and §35-33) and sky exposure plane (§23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for adjourned hearing.

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100-06-BZ

APPLICANT– Francis R. Angelino, for Old Gowanus Road, LLC, owner.

SUBJECT – Application May 23, 2006 – Variance (§72-21) to allow a proposed residential building to violate regulations for maximum height (§23-633), minimum dimensions of inner court (§23-851) and permitted obstructions in courts (§23-87). The proposed building will contain five (5) dwelling units and three (3) parking spaces. Site is located in an R6B district.

PREMISES AFFECTED – 638-640 President Street, between 4th and 5th Avenues, Block 958, Lots 35 and 36, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Francis R. Angelino, Jack Freeman and Shael Shapiro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

152-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug, Gregory Montalbano and Joe Albano.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

259-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application September 22, 2006 – Variance (§72-21) to permit the enlargement of an existing synagogue located in an R5 (OP) zoning district. The proposal is contrary to open space coverage (§24-11), side yards (§24-35), front yards (§24-34), height and setback (§24-50 and §24-521), parking (§25-18 and §25-31), and front yard not fully landscaped (§113-30).

PREMISES AFFECTED – 1885-1891 Ocean Parkway, a/k/a 601 Avenue S, Block 6682, Lot 60, Borough of

Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for decision, hearing closed.

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district. PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Jack H. Cooperman and Sol Mermelson.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for an adjourned hearing.

318-06-BZ

APPLICANT– Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49th Street, Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to May 22, 2007, at 1:30 P.M., for decision, hearing closed.

43-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Emmanuel Charismatic Church, owner.

SUBJECT – Application March 13, 2006 – Zoning variance

MINUTES

under §72-21 to allow a proposed house of worship to violate requirements for lot coverage (§24-11), front wall height (§24-521), front yard (§24-34), side yards (§24-35(a)), and accessory parking (§25-31). R5 district.

PREMISES AFFECTED – 31-09 35th Avenue, north side of 35th Avenue, 80' 10" east of 31st Street, Block 608, Lots 3 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker, Melguisedee Quintero and Evelyn M. Acevedo,

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

212-06-BZ

APPLICANT– Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application August 22, 2006 – Variance (§72-21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to §22-10.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey Chester, Robert Pauls and Rudy Klofsman.

For Opposition: Peter Bovdovyas (State Senator Frand Padavan), Charles Duffy (Deep Dale Gardens)

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

308-06-BZ

APPLICANT– Eric Palatnik, P.C., for David Levitan, owner.

SUBJECT – Application November 22, 2006 – Special Permit (§73-622) for the enlargement of two semi-attached single family homes to be converted to a detached single family home. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district.

PREMISES AFFECTED – 1458-1460 East 26th Street, between Avenue “N” and Avenue “O”, Block 7679, Lots 77 & 79, Borough Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

322-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Hamid Kavian, owner.

SUBJECT – Application December 13, 2006 – Variance (§72-21) to permit the construction of a two family dwelling on a vacant lot with less than the required side yards contrary to ZR § 23-48 in an R3-2 zoning district.

PREMISES AFFECTED – 117-57 142nd Place, east side of 142nd Place, between 119th Road and Foch Boulevard, Block 12015, Lot 317, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing

72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado, owner.

SUBJECT – Application March 28, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1941 East 26th Street, eastern side of 26th Street between Avenue S and Avenue T, Block 7305, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing

Jeff Mulligan, Executive Director

Adjourned: 4:45 P.M.

BULLETIN

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May 31, 2007

DIRECTORY

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Commissioners

Jeffrey Mulligan, *Executive Director*

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DOCKETS

New Case Filed Up to May 22, 2007

124-07-BZ

521 Broome Street, Through lot running between Broome and Watts Streets, midblock between Thompson Street and Sixth Avenue., Block 476, Lot(s) 23, Borough of **Manhattan, Community Board: 2**. Under §72-21 – To allow the conversion of the first floor and cellar of an existing seven-story building to a (UG6) restaurant.

125-07-BZ

2075 Richmond Avenue, East side of Richmond Avenue 461.94 north feet from corner of Rockland Avenue., Block 2015, Lot(s) 28, Borough of **Staten Island, Community Board: 2**. Under §72-20 – To permit the continuance of a retail establishment (UG6) with accessory parking in open area.

126-07-BZ

555 West 42nd Street, North side of West 42nd Street at 11th Avenue., Block 1071, Lot(s) 1, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) – To legalize the operation of a Physical Culture Establishment on a portion of the ground floor, second floor mezzanine, and on part of the second floor in a 43-story residential building. The proposal is contrary to §32-00.

127-07-BZ

19-03 75th Street, Southeast corner of hazen Street and 75th Street, Block 943, Lot(s) 1, Borough of **Queens, Community Board: 1**. Under §72-21 – Proposed addition of second floor and mezzanine in existing non-complying and non-conforming manufacturing building (UG16).

128-07-BZ

1382 East 26th Street, West side of East 26th Street between Avenue M and Avenue N (approximately 100' north of Avenue N)., Block 7661, Lot(s) 76, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) – For the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); less than the minimum side yards (§23-461 & §23-48) and rear yard (§23-47) in an R-2 zoning district.

130-07-BZ

1501 Copper Avenue, Corner formed by west side of Cooper Avenue and Irving Avenue., Block 3542, Lot(s) 1, Borough of **Queens, Community Board: 5**. Under §72-21 – To permit the construction of five three story three family residences on site.

131-07-BZ

1503 Copper Avenue, Corner formed by west side of Cooper Avenue and Irving Avenue., Block 3542, Lot(s) 95, Borough of **Queens, Community Board: 5**. Under §72-21 – To permit the construction of five three story three family residences on site.

132-07-BZ

1505 Copper Avenue, Corner formed by west side of Cooper Avenue and Irving Avenue., Block 3542, Lot(s) 94, Borough of **Queens, Community Board: 5**. Under 72-21 – To permit the construction of five three story three family residences on site.

133-07-BZ

1507 Copper Avenue, Corner formed by west side of Cooper Avenue and Irving Avenue., Block 3542, Lot(s) 93, Borough of **Queens, Community Board: 5**. Under §72-21 – To permit the construction of five three story three family residences on site.

134-07-BZ

1509 Copper Avenue, Corner formed by west side of Cooper Avenue and Irving Avenue., Block 3542, Lot(s) 92, Borough of **Queens, Community Board: 5**. Under §72-21 – To permit the construction of five three story three family residences on site.

135-07-BZ

920 East 24th Street, West side of East 24th Street 140 feet south of Avenue I., Block 7587, Lot(s) 54, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) – For the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yard (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

136-07-BZ

1275 East 23th Street, East side of East 23 Street 160 feet north of Avenue M., Block 7641, Lot(s) 14, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) – For the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2

DOCKET

zoning district.

137-07-A

19 Janet Lane, North side of Janet Lane 190.95' east of Beach 203rd Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** Reconstruct and enlargement of an existing single family home and the upgrade of an existing non-conforming private disposal system not fronting on a mapped street contrary to General City Law §36. R4 Zoning District.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 19, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 19, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1236-27-BZII

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corporation, owner; BP Products, lessee.

SUBJECT – Application February 22, 2007 – Extension of Term for a previously granted special permit of a UG 16 Automotive Service Station (BP Products North America) which expired on February 22, 2007 in a C2-2/R3-1 zoning district.

PREMISES AFFECTED – 163-01 Cross Bay Boulevard, southeast corner of 163rd Street, Block 14201, Lot 63, Borough of Queens.

COMMUNITY BOARD #10Q

704-59-BZ

APPLICANT – Peter Hirshman, for S & B Bronx Realty Associates, owner; G. R. Parking Lot, lessee.

SUBJECT – Application December 5, 2006 – Extension of Term/waiver of the rules for a previously granted variance of a UG8 Parking lot for more than five motor vehicles which expired on June 3, 2000 in an R8 zoning district.

PREMISES AFFECTED – 53 East 177th Street, northeast corner of Walton Avenue and East 177th Street, Block 2828, Lots 1, 45, 46, Borough of Bronx.

COMMUNITY BOARD #5BX

558-71-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for George Feig, owner.

SUBJECT – Application February 20, 2007 – Amendment to permit the legalization of the change in use from the previously approved greenhouse and nursery establishment with accessory uses (UG6) to an eating and drinking establishment (UG6) located in a R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, north of Rockland Avenue, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPLICANT – Deirdre Carson of Greenberg Traurig, for PPI New York, LLC, owner; Eddie Gyms LLC, lessee.

SUBJECT – Application March 23 2007 – Extension of Term/Amendment/Waiver to request a renewal of the term of a special permit granted pursuant to (Z.R. §73-36) which permits the operation of a Physical Culture Establishment located on the third and fourth stories of a building located in a C2-8/C8-4 zoning district.

PREMISES AFFECTED – 403 East 91st Street, north side of East 91st Street between 1st and York Avenues, Block 1571, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #8M

81-93-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2255 Bedford Development Assoc., LP, owner.

SUBJECT – Application November 30, 2006 – Amendment of a previous resolution to permit conversion of portions of the cellar to artist studio space and portions of the first floor to residential apartments within a building that the Board granted the re-establishment of residential use on the upper floors and the approval of a childcare center on portions of the cellar and the entire ground floor of a building located in a C8-2 zoning district.

PREMISES AFFECTED – 2255 Bedford Avenue, east side of Bedford Avenue 34' north of intersection with Snyder Avenue, Block 5107, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEALS CALENDAR

55-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Karen & Jerry Trollo, owners.

SUBJECT – Application February 27, 2007 – Proposed reconstruction and enlargement of a single family dwelling and the upgrade of an existing private disposal system located within the bed of mapped street (Oceanside Avenue) contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 3 Devon Walk, southeast corner of Devon Walk and Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

145-92-BZ

CALENDAR

56-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Jacqueline & Terence Donohoe, lessees.

SUBJECT – Application February 27, 2007 – Proposed Reconstruction and enlargement of an existing single family home and the upgrade of an existing private disposal system located within the bed of a mapped street (Bayside Drive is contrary to General City Law Section 35 and Buildings Dept. Policy. R4 Zoning District.

PREMISES AFFECTED – 13 Bayside Roxbury, intersection of Mapped Bayside Drive and unmapped Roxbury Avenue, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District.

PREMISES AFFECTED – 41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough of Queens.

COMMUNITY BOARD #4Q

JUNE 19, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 19, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

215-06-BZ

APPLICANT – Vassalotti Associates Architects, LLP., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1955. C1-2/R2 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

319-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 211 Service LLC., owner.

SUBJECT – Application December 8, 2006 – Special Permit pursuant to § 73-49 to allow seventy-five (75) accessory parking spaces for an automotive service establishment (UG 16) on the rooftop of an existing building. M1-1 district.

PREMISES AFFECTED – 211/283 63rd Street, located on the north side of 63rd Street, between 2nd and 3rd Avenues, Block 5798, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

71-07-BZ

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR 11-411 & 73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in anC1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21st Street, south side 21st Street blockfront between Broadway and 33rd Avenue, Block 555, Lot 16, Borough of Queens.

COMMUNITY BOARD #1Q

97-07-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for Atlas Park, LLC, owner; TSI Glendale Inc., dba New York Sports Club, lessee.

SUBJECT – Application April 24, 2007 – Special Permit (§73-36) to legalize the operation of a PCE on the second floor of a two-story commercial building within a commercial mall complex. The proposal is contrary to the use regulations of section 32-00. The Premises is located in a M1-1 zoning district.

PREMISES AFFECTED – 80-16 Cooper Avenue, southerly side of Cooper Avenue and the easterly side of 80th Street, Block 3810, Lot 350, Borough of Queens.

COMMUNITY BOARD #5Q

101-07-BZ

APPLICANT– Harold Weinberg, P.E., for Moshe Blumenkranz, owner.

SUBJECT – Application April 26, 2007 – Special Permit (§73-622) for the enlargement of an existing single family detached residence. This application seeks to vary open space and floor area (23-141) and side yard (23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2306 Avenue M, south side, 40' east of East 23rd Street, between East 23rd and East 24th Streets, Block 7627, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

104-07-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Rochelle Mandel, owner.

SUBJECT – Application April 30, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (23-141(a)); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1243 East 29th Street, south side of Avenue L, Block 7647, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 22, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

258-90-BZ

APPLICANT – Sheldon Lobel, P.C., for John Isikli, owner.
SUBJECT – Application December 13, 2006 – Extension of
Time to obtain a Certificate of Occupancy for the operation
of a restaurant and banquet hall (UG9) in an R5 zoning
district which expired on December 7, 2006.

PREMISES AFFECTED – 2337 Coney Island Avenue, east
side, between Avenue T and Avenue U, Block 7315, Lot 73,
Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and
an extension of the time to obtain a certificate of occupancy
for a restaurant and banquet hall, which expired on April 19,
2006; and

WHEREAS, a public hearing was held on this
application on January 30, 2007, after due notice by
publication in *The City Record*, with a continued hearing on
May 8, 2007, and then to decision on May 22, 2007; and

WHEREAS, the subject premises is located on the east
side of Coney Island Avenue, between Avenue T and Avenue
U, within an R5 zoning district; and

WHEREAS, on December 10, 1991, under the subject
calendar number, the Board granted a variance to permit the
legalization of the conversion of the second floor of a two-
story restaurant and residential building to a restaurant and
banquet hall, and the extension of the non-conforming eating
and drinking use into the rear yard; and

WHEREAS, on March 2, 1999, the grant was amended
to permit interior layout modifications; the grant required that a
new certificate of occupancy be obtained by March 2, 2000;
and

WHEREAS, the applicant did not secure the certificate of
occupancy and on June 7, 2005, the Board granted an
additional 18-month extension of time, to expire on December
7, 2006; and

WHEREAS, the applicant represents that an application
has been submitted to the City Planning Commission to rezone
portions of the subject block, including the subject site, the
result of which would make the subject use as of right and
permit its expansion into adjacent buildings; and

WHEREAS, the Board notes that in the event that the
rezoning is not approved, the site remains under the its
jurisdiction; and

WHEREAS, the applicant now seeks an extension of
time to obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the
Board finds that the requested extension of time to obtain a
certificate of occupancy is appropriate with certain conditions
as set forth below.

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution, December 10,
1991, so that as amended this portion of the resolution shall
read: “to grant an extension time to obtain a certificate of
occupancy for one year from the date of this grant; *on condition*
that the use and operation of the site shall substantially conform
to BSA-approved plans; and *on condition:*

THAT a certificate of occupancy shall be obtained by
May 22, 2008;

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.”

(Alt. Application No. 941/89)

Adopted by the Board of Standards and Appeals, May
22, 2007.

118-95-BZ, Vol. II

APPLICANT – Windels Marx Lane & Mittendorf, LLP, for
White Castle System, Inc., owner.

SUBJECT – Application April 9, 2007 – Extension of Term
of a Special Permit for an accessory drive-through facility,
located in an C1-2/R7B zoning district, in conjunction with
an (UG6) eating and drinking establishment (White Castle)
which expired on July 25, 2006; Extension of Time to obtain
a Certificate of Occupancy which expired on June 11, 2002
and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 89-03 57th Avenue, northeast
corner of Queens Boulevard and 57th Avenue, Block 1845,
Lot 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Courtney M. Merriman.

ACTION OF THE BOARD – Application granted on
condition.

MINUTES

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance for a drive-through facility accessory to an existing eating and drinking establishment, which expired July 25, 2006; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, and then to decision on May 22, 2007; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Queens Boulevard and 57th Avenue, within a C1-2 (R7B) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with an accessory drive-through; and

WHEREAS, the site is operated as a White Castle restaurant; and

WHEREAS, on July 23, 1996, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 23-243, to permit, the construction of a drive-through to be accessory to an existing eating and drinking establishment for a period of five years; and

WHEREAS, the grant was subsequently extended for a second term of five years; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, additionally, the applicant seeks an additional five-year term; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy, and extension of term are appropriate, with the conditions 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 July 23, 1996, so that as amended this portion of the resolution shall read: “to grant a one-year extension of time to obtain a certificate of occupancy, and a five-year extension of term from the expiration of the prior grant to expire on July 25, 2011; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 9, 2007”–(7) sheets; and; and *on further condition*:

THAT this grant shall expire on July 25, 2011;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by May 22, 2008;

THAT there shall be no change in the operator of the

subject eating and drinking establishment without the prior approval of the Board;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB App. No. 402469208)

Adopted by the Board of Standards and Appeals, May 22, 2007.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application April 18, 2007 – Request for a waiver of Practice and Procedure and for an extension of time to complete construction and to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 6778 Hylan Boulevard, southeast corner of Page Avenue, Block 7734, Lots 13 & 19, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction and obtain a certificate of occupancy for the construction of an automotive service station with an accessory convenience store, which expired on January 28, 2007; and

WHEREAS, a public hearing was held on this application on May 8, 2007 after due notice by publication in *The City Record*, and then to decision on May 22, 2007; and

WHEREAS, the subject premises is located on the southeast corner of Hylan Boulevard and Page Avenue, within a C1-1 (R3X) zoning district; and

WHEREAS, on January 28, 2003, under the subject calendar, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of an automotive service station with an accessory convenience store; and

WHEREAS, the instant application seeks an extension of time to complete construction and obtain a certificate of

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occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a four-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 28, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction and obtain a certificate of occupancy for a term of four years from the date of this grant; *on condition*:

THAT substantial construction shall be completed by May 22, 2011;

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. 500496643)

Adopted by the Board of Standards and Appeals, May 22, 2007.

135-67-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Avenue "K" Corp., owner.

SUBJECT – Application April 3, 2007 – Extension of Term of a gasoline service station with minor auto repairs (Exxon) for 10 years which will expire on October 11, 2007 in an R3-2 zoning district.

PREMISES AFFECTED – 2063/91 Ralph Avenue, northwest corner of Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for continue hearing.

177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025 Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for continued hearing.

21-91-BZ

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Kenwyn A. Sandy and Hardath Latchminarain.

For Opposition: Ronald J. Dillion.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

90-95-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for 641 LLC, owner; Bally Total Fitness, lessee.

SUBJECT – Application November 6, 2006 – Extension of Term and waiver of the rules for a Special Permit (ZR §73-36) to allow a Physical Cultural Establishment (Bally's) in a C6-3A/C6-2A zoning district which expired on December 5, 2005.

PREMISES AFFECTED – 641 6th Avenue, southwest corner of intersection of West 20th Street and 6th Avenue, Block 795, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Barbara Hair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 10 A.M., for decision, hearing closed.

189-96-BZ

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D'Angelo-CNandonga, lessee.

SUBJECT – Application March 14, 2007 – Extension of Term for a Special Permit (§73-244) for a UG12 eating and drinking establishment with entertainment and dancing (Flamingos) in an C2-3/R-6 zoning district; and to increase

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the number of occupancy from 190 to 200 which will expire on May 19, 2007.

PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue, 58’ east side of Forley Street, Block 1502, Lot 3, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John Chen.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

199-00-BZ, Vol. III

APPLICANT – John C. Chen, for En Ping, Ltd., owner; Valentin E. Partner Atlantis, lessee.

SUBJECT – Application February 23, 2007 – Extension of Term of a Special Permit (§73-244) for a UG12 eating and drinking establishment (Club Atlantis) in a C2-3/R-6 zoning district which expired March 13, 2007.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Chen.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125’ east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Sanrem Ozdural.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 12, 2007, at 10 A.M., for decision, hearing closed.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Jonathan Gouldner, Larry List and Nick Lecakes.

ACTION OF THE BOARD – Laid over to June 12, 2007, at 10 A.M., for continued hearing.

276-06-A

APPLICANT – Rothkrug Rothkrug and Spector, for Fred Corona, owner.

SUBJECT – Application October 13, 2006 – Appeal challenging the Department of Buildings determination that the subject premises fails to comply with Section §23-711 (Minimum Distance between buildings) and Section 23-88 (Minimum Distance between Lot lines and Building Walls within in LDGMA areas). R3A zoning district.

PREMISES AFFECTED – 8 and 12 Reynolds Street, south side of Reynolds Street, 100’ west of Mary’s Avenue, Block 2989, Lots 30 and 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...3

Negative:.....0

Recused: Commissioner Hinkson.....1

RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Staten Island Borough Commissioner, dated September 21, 2006 (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to a request by the owner of 8 and 12 Reynolds Street

1 Headings are utilized only in the interest of clarity and organization.

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(the “Appellant”), for a reconsideration of a November 2, 2005 denial (the “Denial”) of the proposed building plans; and

WHEREAS, the Final Determination and the Denial both respond to a request by the Appellant asking for clarification of the required side yards and space between buildings at the site and asserting that the requirements, pursuant to ZR §§ 23-711 and 23-88, for a building wholly beyond 50 feet of the street line do not apply; and

WHEREAS, as reflected in the Denial, DOB based its decision on its determination that the provisions of ZR §§ 23-711(f) and 23-88(b) pertaining to zoning lots with multiple buildings and at least one building which is wholly beyond 50 feet of the street line are applicable; and

WHEREAS, the Denial reads in pertinent part:

“Denied. On Sept. 28, 2004 ZR 23-711 & ZR 23-88 were amended (sic) to read ‘ . . . in R1, R2, R3, . . . districts within LDGM areas . . . the provisions of this paragraph . . . shall apply to any zoning lot with two or more buildings were (sic) at least one building is located wholly beyond 50 feet of a street line . . . ’

“The one story snout, projecting from the front of the building toward the street line, serves no other purpose but to evade the applicability of the newly amended text, written as a remedy and intended to prevent the crowding of buildings onto unsuitable lots”; and

WHEREAS, on September 21, 2006, DOB simply denied Appellant’s request for a reconsideration of its November 2, 2005 determination not to permit the construction of the proposed building at the rear of the zoning lot (the “Proposed Building”); and

HEARINGS

WHEREAS, a public hearing was held on this appeal on April 24, 2007, after due notice by publication in *The City Record*, and then to decision on May 22, 2007; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, Appellant and DOB were represented by counsel in this proceeding; and

WHEREAS, both Appellant and DOB made submissions to the Board on the applicable standards for interpretation of the Zoning Resolution; and

WHEREAS, counsel to the Department of City Planning (DCP) also submitted at DOB’s request a letter dated April 17, 2007 (the “DCP Letter”) discussing the legislative intent of the provisions of the Zoning Resolution in question, but did not take a position on the compliance of the proposed plans and building with the Zoning Resolution; and

THE SITE

WHEREAS, the subject site is rectangular, with 50 feet of frontage on Reynolds Street and a depth of approximately 140 feet; it is located within an R3A zoning district within a Lower Density Growth Management Area (LDGMA); and

WHEREAS, the site comprises two tax lots which form one zoning lot; tax lot 30 (12 Reynolds Street) is located at the front of the site and tax lot 28 (8 Reynolds Street) is located at

the rear of the site; and

WHEREAS, tax lot 30 is occupied by a three-story three-family home; and

WHEREAS, on November 9, 2004, under BSA Calendar No. 15-04-A, the Board granted a waiver to Section 36 of the General City law to permit the construction of a two-story two-family home on tax lot 28, which did not provide the required 8.0 percent of the total perimeter of the building fronting directly upon a legally mapped street; and

WHEREAS, the prior grant only addressed the question of the required street frontage and did not address the issues which are the subject of this appeal; and

WHEREAS, the Appellant now proposes to construct a two-story two-family home with a small portion of the building extending to a point less than 50 feet from the street line; and

WHEREAS, the Board notes that this small portion of the building has been described and will be described here as “the snout”; and

WHEREAS, one condition of the prior grant is that DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws; and

WHEREAS, accordingly, as noted above, on November 2, 2005, DOB denied a reconsideration of its denial of Appellant’s plans to construct the Proposed Building to the rear of the existing home; and

WHEREAS, DOB has determined that the Proposed Building includes a “snout projecting toward the street line,” which, although it extends to a point within 50 feet of the street line, “serves no other purpose than to evade the applicability of the newly amended text”; and

ISSUES PRESENTED

WHEREAS, Appellant argues that because the snout is part of the Proposed Building and it is less than 50 feet from the street line, the ZR sections cited by DOB in the Denial, and the associated requirements for yards and space between buildings, do not apply; and

WHEREAS, in support of its position, Appellant cites to the plain language of ZR §§ 23-711(f) and 23-88(b), which would permit the construction of the Proposed Building because it is not wholly beyond 50 feet of the street line; and

WHEREAS, DOB agrees that the plain language of the Zoning Resolution does not prohibit approval of the Proposed Building; and

WHEREAS, however, DOB argues that even though the language of the Zoning Resolution is unambiguous, the result of literally applying that language to the Proposed Building leads to a result contrary to the intentions of the City Planning Commission and the City Council, which enacted the amendments to the relevant sections of the Zoning Resolution; and

WHEREAS, DOB relies on the proposition, set forth in its Letter Brief dated May 8, 2007 (the “DOB Letter Brief”), that “a departure from the literal construction of a statute is appropriate where the literal construction will produce results which the legislature plainly did not intend”;

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and

ZONING RESOLUTION SECTIONS 23-711 AND 23-88

WHEREAS, ZR § 23-711 – Standard Minimum Distance Between Buildings – sets forth the requirements for the distance between two or more buildings on the same zoning lot; and

WHEREAS, ZR § 23-711(f) addresses additional requirements for districts within an LDGMA in situations where there are two buildings on a zoning lot and at least one building is located wholly beyond 50 feet of a street line, it provides that “in . . . R3 . . . Districts within lower density growth management areas, the provisions of this paragraph, (f), shall apply to any zoning lot with two or more buildings where at least one building is located wholly beyond 50 feet of a street line” and includes the requirement that a minimum distance of 45 feet be provided between front and rear buildings in such instances; and

WHEREAS, the 45-ft. requirement under ZR § 23-711(f) exceeds the required distance set forth in ZR § 23-711, which the Appellant contends applies; and

WHEREAS, ZR § 23-88 – Minimum Distance between Lot Lines and Building Walls in Lower Density Growth Management Areas – provides that “[i]n . . . R3 . . . Districts within lower density growth management areas, the provisions of this paragraph, (b), shall apply to any zoning lot with two or more buildings, where at least one building is located wholly beyond 50 feet of a street line and the private road provisions do not apply”; and

WHEREAS, ZR § 23-88(b) states that, when a “rear building” is wholly beyond 50 feet of a street line, a minimum of 15 feet is required between it and the side lot line, and an open area with a minimum width of 30 feet is required between it and a rear lot line; and

WHEREAS, it is undisputed that the Appellant’s Proposed Building would be subject to -- and in noncompliance with -- these provisions for minimum distance and open area except that the “snout” of the rear building is within 50 feet of the street line and the Proposed Building is therefore explicitly exempted by the plain language of the Zoning Resolution from these requirements; and

DOB’S ARGUMENT ON STATUTORY CONSTRUCTION

WHEREAS, in its Denial, DOB disregards the snout because it deems that the snout’s sole purpose is to exempt the Proposed Building from the requirements set forth in ZR §§ 23-711(f) and 23-88(b); and

WHEREAS, therefore, because DOB finds that the Proposed Building’s snout undermines the intent of specific LDGMA requirements, it takes the position that “literal construction of a statute is not appropriate where the literal construction will produce results which the legislature plainly did not intend” (DOB Letter Brief at 1); and

WHEREAS, DOB contends that the Board “should look beyond the plain meaning of the New York City Zoning Resolution to the legislative intent of the creation of the LDGMA text in order to uphold the Department’s denial

of appellant’s proposed construction” (Letter Brief at 1); and

WHEREAS, DOB relies on *City of Schenectady v. Helsby*, 57 Misc. 2d 91, 292 N.Y.S.2d 141 (N.Y. Sup. Ct., 1968) (looking to legislative history to vary procedural, rather than substantive, provision of NY Civil Service Law); *State v. J.S. Garlick Parkside Memorial Chapels, Inc.*, 55 Misc. 2d 797, 287 N.Y.S. 2d 159, affirmed 30 A.D. 2d 829 (1968) (statute enacted following extensive consumer fraud investigation by State Attorney General construed expansively to address specific abuse that was a focus of investigation); and *Kiley v. Kennedy*, 16 Misc. 2d 969, 190 N.Y.S. 2d 53 (N.Y. Sup. Ct. 1958) (interpreting NYC Admin. Code to resolve conflict with Federal Old-Age Law); and

WHEREAS, the Board finds each of the cases relied upon by DOB to be distinguishable from the present matter on their facts; and

WHEREAS, DOB has not addressed the relevance of the threshold determination required by ZR §§ 23-711(f) and 23-88(b) that the rear building on a lot with multiple buildings within a LDGMA be “wholly beyond fifty feet of the street line” in order for the minimum distance and open area requirements to apply; and

WHEREAS, DOB also relies on the DCP Letter; and

WHEREAS, the DCP Letter offers no opinion as to the compliance of the Proposed Building with the Zoning Resolution on what it describes as a “large irregular lot”; and

WHEREAS, the DCP Letter explains that the LDGMA text amendments adopted by DCP and the City Council were intended “in part to assure adequate spacing of multiple residential buildings on deep, irregularly shaped lots”; and

WHEREAS, the DCP Letter further quotes the Commission Report as noting that, at the time the LDGMA amendments were enacted, “the existing zoning regulations fail[ed] to ensure adequate yards and open space on the large and irregular lots that are often found on Staten Island”; and

WHEREAS, the DCP Letter further cites the Commission’s “Consideration” that, “[t]hese changes address a wide range of problems created by large and irregular lots”; and

WHEREAS, thus, the Board notes that the legislative intent expressed by the DCP Letter is to remedy concerns about providing adequate open space and avoiding overcrowding on lots which have the potential to be developed with multiple buildings; and

WHEREAS, the Board also notes that the plain meaning of the Zoning Resolution with respect to the application of Sections 23-711 and 23-88 to the Proposed Building is unambiguous; and

WHEREAS, the Board is also aware that it must presume that the framers of the Zoning Resolution deliberately drafted the relevant zoning text amendments with a specific purpose; and

WHEREAS, for the reasons stated, the Board agrees with Appellant that the legislative history cited by DOB does not conclusively indicate an intent on the part of the

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framers to impose requirements that in any way differ from those imposed by the plain language of ZR §§ 23-711 and 23-88; and

WHEREAS, the Board notes that the plain language of ZR §§ 23-711 and 23-88 – which is the best indication of the intent of the framers - does not apply to the Proposed Building; and

WHEREAS, the Board declines to engage in speculation as to the legislative intent underlying ZR §§ 23-711 and 23-88 in the absence of a clear expression of that intent; and

WHEREAS, the Board takes the position that “where statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used,” *Patrolmen’s Benevolent Assn. v. City of New York*, 41 N.Y. 2d 205, 208, 391 N.Y.S. 2d 544, 359 N.E. 2d 1338 (1976); and

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by Appellant and DOB in light of the entire record; and

WHEREAS, based on the submitted site plan, the Board has determined that the Proposed Building is not wholly beyond 50 feet of the street line; and

WHEREAS, further, the Board notes that DOB does not disagree with Appellant’s argument that the plain meaning of ZR §§ 23-711(f) and 23-88(b) fails to provide a basis for the Final Determination; and

WHEREAS, additionally, the Board does not find that DOB has offered a convincing rationale to read the relevant sections of the Zoning Resolution in a way contrary to the plain meaning of their language; and

WHEREAS, in the absence of ambiguity in the language of the relevant provisions, the Board gives effect to the plain language of ZR §§ 23-711(f) and 23-88(b); and

WHEREAS, thus, the Board concludes that because the Proposed Building is not wholly beyond 50 feet of the street line and because effect is given to the plain language of ZR §§ 23-711(f) and 23-88(b), the requirements therein do not apply; and

WHEREAS, accordingly, the Board disagrees with DOB’s Final Determination; and

WHEREAS, however, the Board notes that its decision is limited to the questions raised in this appeal about whether the snout should be considered to exempt the Proposed Building from the requirements of ZR § 23-711(f) and 23-88(b), and whether effect is given to the plain meaning of these sections; and

WHEREAS, therefore, the plans for the Proposed Building are subject to DOB review to ensure compliance with all other relevant provisions of the Zoning Resolution, the Administrative Code, or any other laws; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Staten Island Borough Office of the Department of Buildings, dated September 21, 2006, is hereby granted.

Adopted by the Board of Standards and Appeals, May

22, 2007.

317-06-A

APPLICANT – John Dydland-NYCDEP, for Department of Environmental Protection, owner.

SUBJECT – Application December 7, 2006 – Proposed construction of a Groundwater Remediation System at a NYCDEP owned site (Station 24) which is located in the bed of mapped street 109th Avenue which is contrary to General City Law Section 35 .R3X Zoning District.

PREMISES AFFECTED – 180th Street and 106th Road, premises is situated at the following intersections – 176th Street and 109th Avenue and Fern Place, 177th Street and Watson, Block 10343, Lots 300, 32, 12, 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Donald K. Cohen.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 6, 2006, acting on Department of Buildings Application No. 402382248, reads in pertinent part:

“Obj. #6 “Proposed structure for the groundwater remediation system is in the bed of mapped street. Secure approval from BSA.”; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in the *City Record*, and then to decision on May 22, 2007; and

WHEREAS, the New York City Department of Environmental Protection (DEP) proposes to construct a Groundwater Remediation System at the DEP-owned site of the former Station 24 water facility located at 180th Street and 106th Road (the northeast corner) and 176th Street and 109th Avenue (the southeast corner) in Jamaica, Queens; and

WHEREAS, by letter dated February 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 20, 2007, the DEP states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 19, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the site in its ten-year capital plan; and

WHEREAS, Community Board 12, Queens, submitted a letter in support to this application; and

WHEREAS, a Negative Declaration has been issued

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under CEQR. No. 07DEP041Q; and

WHEREAS, the Board notes that in addition to seeking waiver of General City Law Section 35 from the Board, the DEP also seeks a Mayoral override to permit the proposed use (water treatment) which is not permitted in an R4 zoning district, and to waive setback requirements in the R4 zoning district; and

WHEREAS, the applicant represents that the majority of the construction is proposed to take place in paved areas at the southern portion of the site, within the bed of 109th Avenue between 176th Street and 178th Street and that the work within the bed of 109th Avenue would include the installation of a new metal enclosure around the existing Recovery Well #1 and the installation of a new Recovery Well #2 with a new enclosure; and

WHEREAS, additionally, the construction and installation of the granular activated carbon water treatment units, a concrete pad, fencing, bollards and a new sump are proposed for within the central portion of the site within the bed of 177th Street between 108th Road and 109th Avenue; and

WHEREAS, the Board notes that this application only addresses the waiver of General City Law Section 35; and

WHEREAS, the applicant represents that the Mayoral override will be obtained shortly after the date of this grant; and

WHEREAS, based upon its review of the record, the Board finds that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 2, 2006, acting on Department of Buildings Application No. 402382248, 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 2, 2007"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a Mayoral override shall be obtained prior to the issuance of any 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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 22, 2007.

81-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Christine & James Pastore, lessee.

SUBJECT – Application April 17, 2007 – Reconstruction and enlargement of an existing single family dwelling and the upgrade of an existing non-conforming private disposal system not fronting on a mapped street which is contrary to Article 3, Section 36 of the General City Law. R4 Zoning district.

PREMISES AFFECTED – 10 Courtney Lane, south side of Courtney Lane, 177.31' east of Beach 203rd Street, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 402531998, reads in pertinent part:

“A1- The street giving access to the existing building to be replaced is not duly placed on the map of the City of New York.

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law;

b) Existing Dwelling to be replaced does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A-2 - The proposed upgrade of the private disposal system is contrary to the Department of Buildings policy.”; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated April 23, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, based upon its review of the record, the Board finds that the applicant has submitted adequate evidence to warrant this approval, approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 402531998, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 17, 2007"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements;

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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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 22, 2007.

83-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Joseph Adinolfi, lessee.

SUBJECT – Application April 17, 2007 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 134 Ocean Avenue, west side of Ocean Avenue, 143.88’ south of mapped 8th Avenue, Block 16350, Lot p/o400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 402546624, reads in pertinent part:

“A1- The street giving access to the existing building to be replaced is not duly placed on the map of the City of New York. And

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law;
- b) Existing Dwelling to be replaced does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.”; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated April 23, 2007, the Fire Department states that it has reviewed the above project and

has no objections; and

WHEREAS, based upon its review of the record, the Board finds that the applicant has submitted adequate evidence to warrant this approval, under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 402546624, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 17, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 22, 2007.

142-06-A thru 148-06-A

APPLICANT – Sheldon Lobel, P.C., for Ideal Development Group, Ltd., lessee.

SUBJECT – Application July 6, 2006 – Proposed construction of four two- family homes and three three-family homes located partially within the bed of an unnamed mapped street which is contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 3209 Tiemann Avenue, t/b/k/a 1651, 1655, 1661, 1665, 1671, 1675 Burke Avenue, 3215 and 3225 Tiemann Avenue, Block 4752, Lots 173, 175, 182, t/b/k/a New Lots 170, 171, 172, 174, 176, 177, 178 & 180, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Zara F. Fernandes.

For Opposition: Fr. Richard Gorman.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

326-06-A

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue

MINUTES

development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10' west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: David L. Businelli and Oleg Amayeu.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for continued hearing.

45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application February 8, 2007 – For a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue “N” and Avenue “O”, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Mark J. Kurzmann.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 12:45 P.M.

REGULAR MEETING

TUESDAY AFTERNOON, MAY 22, 2007

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

87-05-BZ

CEQR #05-BSA-119K

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).

PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, May 22, 2007.

159-05-BZ

CEQR #06-BSA-002R

APPLICANT – Vito J. Fossella, P.E., for Antonio Ciccotto, owner.

SUBJECT – Application July 7, 2006 – Variance under ZR §72-21 to allow a three (3) story mixed-use building containing residential use on the upper floors and retail use (UG 6) on the ground and cellar levels on a site zoned R3X and R3X/C2-1; contrary to ZR §22-00.

PREMISES AFFECTED – 880 Annadale Road, located on the west of the corner formed by the intersection of Annadale Road and South Railroad Avenue, Block 6249, Lot 436T, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh EI Meniawy.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, May 22, 2007.

65-06-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Zhen Xiang, owner.

SUBJECT – Application April 11, 2006 – Zoning variance under §72-21 to allow a proposed residential building containing three (3) dwelling units to violate applicable front yard (§23-45(a)) and side yard requirements (§23-462(a)). R5 zoning district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1357, Lot 46, Borough of

MINUTES

Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 18, 2006, acting on Department of Buildings Application No. 402424827, reads in pertinent part:

- “1. Required two side yard min. 8’-0” in R5 district as per section 23-462(a) Z.R.
2. Required two min. 10’-0” front yard for corner lot building in R5 district per section 23-45(a) Z.R.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story three-family home that does not provide one of the two required front yards and one of the two required side yards, contrary to ZR §§ 23-45(a) and 23-462(a); and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, to continued hearing on May 8, 2007, and then to decision on May 22, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of 74th Street and 43rd Avenue, in an R5 zoning district; and

WHEREAS, the site has a width of approximately 25 feet, a depth of approximately 95.1 feet, and a total lot area of approximately 2,377.5 sq. ft.; and

WHEREAS, the applicant represents that the site has existed in its current configuration since before 1961; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story, three-family home with three off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 2,970 sq. ft. of floor area (1.25 FAR), an open space of 1,387.5 sq. ft., a wall height and total height of 30’-0”, one side yard of 35.6 feet, one front yard of 10’-0”, and three parking spaces; and

WHEREAS, however, the applicant proposes to provide a second front yard of 2.25 feet (two front yards of 10’-0” each are the minimum required) and a second side yard of 5’-0” (two side yards of 8’-0” each are the minimum required); and

WHEREAS, the applicant states that yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject corner lot is narrow; and

WHEREAS, the applicant represents that the subject lot is the only vacant corner lot within a 400-ft. radius; and

WHEREAS, the applicant represents that there are two other vacant lots of comparable size within the radius, but neither of them are corner lots and therefore do not have the same front yard requirements; and

WHEREAS, the applicant has submitted a 400-ft. radius diagram that supports these assertions; and

WHEREAS, the applicant represents that the requested yard waivers are necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing dimensions of the lot - 25 ft. wide and 95.1 ft. deep - cannot feasibly accommodate as of right development; and

WHEREAS, in support of this statement, the applicant submitted plans for a complying building, which would have an exterior width of only 7’-0” and a length of 77’-1 3/16” if yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the yard waivers are necessary to create a home of a reasonable width, while still providing a side yard that would accommodate sufficient distance between the proposed home and the adjacent home on 74th Street; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front and side yard regulations; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that a complying 10’-0” front yard will be provided along 74th Street where there is more of a context for front yards; and

WHEREAS, further, the applicant states that a second front yard of 2.25 feet will be provided along 43rd Avenue, which does not have an established context for front yards on this block; and

WHEREAS, the applicant initially proposed to provide a 2.25-ft. side yard along the northern lot line and a 5’-0” front yard along 43rd Avenue; and

WHEREAS, in the interest of providing more space between the subject home and the adjacent home on 74th Street, the Board directed the applicant to provide a 5’-0” side yard along the northern lot line and a 2.25-ft. front yard along 43rd Avenue; and

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WHEREAS, the Board agrees that the location of the home on the lot and the non-complying front yard are compatible with the context along 43rd Avenue; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R5 zoning district regulations except for one of the required front yards and one of the required side yards; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story three-family home that does not provide one of the two required front yards and one of the two required side yards, contrary to ZR §§ 23-45(a) and 23-462(a); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 10, 2007"—five (5) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 2,970 sq. ft. of floor area (1.25 FAR), an open space of 1,387.5 sq. ft., a wall height and total height of 30'-0", one side yard of 35.6 feet, one side yard of 5'-0", one front yard of 10'-0", one front yard of 2.25 feet, and three parking spaces, as per the BSA-approved plans; and

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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 22, 2007.

253-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for

Jamila Maleh and Asian Azrak, owners.

SUBJECT – Application September 15, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary side yard (§23-461) and rear yard (§23-47) in an R4 zoning district.

PREMISES AFFECTED – 2243 Homecrest Avenue, east side of Homecrest Avenue between Avenue V and Gravesend Neck Road, Block 7373, Lot 70, 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 and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 17, 2006, acting on Department of Buildings Application No. 302213085, reads in pertinent part:

“The proposed enlargement of the existing two family residence to be changed to a one family in an R4 zoning district:

1. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
2. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a two-family home and its conversion into a one-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, with a continued hearing on May 8, 2007, and then to decision on May 22, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Homecrest Avenue, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a 2,356 sq. ft. (0.79 FAR) two-family home; and

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WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,356 sq. ft. (0.79 FAR) to 3,670 sq. ft. (1.22 FAR); the maximum floor area permitted is 4,050 sq. ft. (1.35 FAR), under the predominantly built-up regulations; and

WHEREAS, the proposed enlargement will maintain the existing non-complying front yard of 7'-10" (a front yard with a minimum depth of 18'-0" is required), and one side yard of 3'-6" (side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to provide information in support of the assertion that the site is within an area which meets the predominantly built-up standard; and

WHEREAS, in response, the applicant provided the requested analysis and supporting documentation; and

WHEREAS, additionally, the Board asked the applicant to confirm the compliance of the following conditions: (1) the new front wall; (2) the new roof; and (3) the proposed bay windows and chimney; and

WHEREAS, the applicant received positive preconsiderations from DOB stating the following: (1) that the demolition of the straight pre-existing on-complying front wall and its replacement with a curved wall with the same non-complying front yard in the middle will decrease the degree of non-compliance on the sides where the wall curves; (2) the vertical extension of the front wall, which will provide a pitched roof above the attic, is permitted; and (3) the proposed bay windows and chimney are permitted obstructions into the side yards; and

WHEREAS, the Board also asked the applicant to clearly identify which portions of the existing building would remain; and

WHEREAS, the Board notes that the applicant proposes to maintain the perimeter wall and total heights and to extend the pitched roof, which is more compatible with the streetscape, for the length of the home; 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, 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 R4 zoning district, the proposed enlargement of a two-family home and its conversion into a one-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 28, 2007"-(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 772 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,670 sq. ft., a total FAR of 1.22, a perimeter wall height of 24'-0", total height of 35'-0", a front yard of 7'-10", side yards of 3'-6" and 6'-5", and a rear yard of 20 ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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 22, 2007.

279-06-BZ

APPLICANT– Gerald J. Caliendo, R.A., AIA, for Richard N. Seemungal, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to construct a two story, two family residential building on a corner lot that does not comply with the front yard requirement (§23-45) and is less than the minimum required side yard (§23-461(b)) in an R4 zoning district.

PREMISES AFFECTED – 144-29 South Road, corner formed by the southeast side of South Road and Inwood

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Street, Block 10045, Lot 18, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 18, 2006, acting on Department of Buildings Application No. 402424827, reads, in pertinent part:

“Minimum required front yards do not comply with 23-45 Z.R.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a two-story two-family home that does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in *The City Record*, and then to decision on May 22, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of South Road and Inwood Street, in an R4 zoning district; and

WHEREAS, the site has a width of approximately 25 feet, a depth of approximately 100 feet, and a total lot area of approximately 2,503 sq. ft.; and

WHEREAS, the applicant represents that the site has existed in its current configuration since before 1961; and

WHEREAS, the site is currently vacant; records indicate that a home was demolished sometime between 1973 and 1982; and

WHEREAS, the applicant represents that the prior home at the site had two and one-half stories and yard conditions comparable to those proposed; and

WHEREAS, the applicant proposes to construct a two-story, two-family home with two off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 1,944 sq. ft. of floor area (0.78 FAR), an open space of 1,531 sq. ft., a wall height of 21'-0", a total height of 26'-5", side yards of 5'-0" and 12.96 feet, one front yard of 10'-0", and two parking spaces; and

WHEREAS, however, the applicant proposes to provide a second front yard of 2'-0" (two front yards of 10'-0" each are the minimum required); and

WHEREAS, the applicant states that front yard relief is

necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject corner lot is narrow; and

WHEREAS, the applicant represents that the subject lot is the only vacant corner lot within a 400-ft. radius; and

WHEREAS, the applicant represents that there are other vacant lots of comparable size within the radius, but none of them are corner lots and therefore do not have the same front yard requirements; and

WHEREAS, the applicant has submitted a 400-ft. radius diagram that supports these assertions; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing dimensions of the lot - 25 ft. wide and 100 ft. deep - cannot feasibly accommodate as of right development; and

WHEREAS, in support of this statement, the applicant submitted plans for a complying building, which would have an exterior width of only 10'-0" if front yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width, while still providing a side yard that would accommodate sufficient distance between the proposed home and the neighboring home to the southwest; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that a complying 10'-0" front yard will be provided along South Road where there is an established context for front yards; and

WHEREAS, further, the applicant states that a second front yard of two ft. will be provided along Inwood Street, which does not have an established context for front yards; and

WHEREAS, the applicant initially proposed to provide a two-ft. side yard along the southwestern lot line and a five-ft. front yard along Inwood Street; and

WHEREAS, in the interest of providing more space between the subject home and the adjacent home on South Road, the Board directed the applicant to provide a five-ft. side yard along the southwestern lot line and a two-ft. front yard along Inwood Street; and

WHEREAS, additionally, in the interest of maintaining privacy between the subject home and the adjacent home on

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South Road, the Board directed the applicant to reverse the interior layout so that the bedrooms are located along the Inwood Street side of the building and the corridors are along the shared lot line; and

WHEREAS, the Board agrees that the location of the home on the lot and the non-complying front yard are compatible with the context along Inwood Street; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, the Board notes that by revising the plans, during the hearing process, the applicant was able to eliminate a side yard waiver and only requires a single front yard waiver; and

WHEREAS, as noted above, the applicant complies with all R4 zoning district regulations except for one of the required front yards; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R4 zoning district, the proposed construction of a two-story two-family home that does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 8, 2007”– (2) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,944 sq. ft. of floor area (0.78 FAR), an open space of 1,531 sq. ft., a wall height of 21’-0”., a total height of 26’-5”, side yards of 5’-0” and 12.96 feet, one front yard of 10’-0”, one front yard of 2’-0”, and two parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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 22, 2007.

318-06-BZ

APPLICANT– Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49th Street, Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, August 31, 2006, acting on Department of Buildings Application No. 402437617, reads in pertinent part:

“Proposed extension of term, which expired February 19, 1992, is contrary to BSA Calendar Number 516-56-BZ and therefore must be referred to the Board of Standards and Appeals.”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval to permit an automotive service station, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in the *City Record*, with continued hearings on April 17, 2007 and May 15, 2007, and then to decision on May 22, 2007; and

WHEREAS, Community Board 1, Queens, recommends disapproval of this application, citing concerns about (1) the extended amount of time the site has been operated with an expired variance; (2) the buffer has not been maintained with the adjacent residential use; (3) opposition to the proposed curb cut size and its location; and (4) insufficient screening of the restroom area; and

WHEREAS, the premises is located on the northeast corner of Astoria Boulevard and 49th Street, within an R4 zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 13,234 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,660 sq. ft. automotive service station building with a small convenience

MINUTES

store, and four gasoline pump islands; and

WHEREAS, on February 19, 1957, under BSA Cal. No. 576-56-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant was amended several times to permit site modifications and to extend the term; and

WHEREAS, most recently, on September 8, 1982, the grant was extended for a period of ten years, to expire on February 19, 1992; and

WHEREAS, the applicant states that a new certificate of occupancy has not been obtained since the February 19, 1982 expiration; and

WHEREAS, the applicant represents that the term was not extended due to an oversight when the business was sold; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 576-56-BZ; and

WHEREAS, pursuant to ZR §11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has been no enlargement to the zoning lot; and

WHEREAS, the applicant states that the following site modifications have been made since the last grant: (1) the curb cut on 49th Street has been enlarged from 20 feet to 74 feet; (2) the number of gasoline pump islands has increased from two to four; and (3) the configuration of underground storage tanks has changed pursuant to updated federal regulations; and

WHEREAS, initially, the applicant proposed to legalize all of the noted site modifications; and

WHEREAS, at hearing, the Board expressed concern about the size of the curb cuts and the proximity of the 49th Street curb cut to the intersection; and

WHEREAS, accordingly, the Board directed the applicant to reduce the 74 ft. curb cut on 49th Street to 30 ft. and the 33.8 ft. curb cut on Astoria Boulevard to 30 ft. so that all three curb cuts are limited to widths of 30 ft.; and

WHEREAS, the Board directed the applicant to install and maintain opaque fencing of a height of six feet along the rear property line; and

WHEREAS, the applicant agreed to maintain additional screening of a height of six feet surrounding the restroom area and to adjust the door on the restroom so that it closes automatically; and

WHEREAS, the applicant also agreed to provide fencing along the perimeter of the site; and

WHEREAS, the applicant revised the plans to reflect the reduced curb cuts and the required screening; and

WHEREAS, additionally, the Board directed the applicant to remove all debris and excess vehicles parked at the site; and

WHEREAS, the applicant submitted photographs of the site reflecting that these conditions had been remedied and that a proper buffer was being provided with the adjacent residential use; and

WHEREAS, the Board has determined that evidence in

the record supports the findings required to be made under ZR § 11-411; and

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 under ZR §11-411, for a reinstatement of a prior Board approval of an automotive service station; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received May 1, 2007"-(4) sheets; and *on further condition*:

THAT this grant shall be for a term of 5 years, to expire on May 22, 2012;

THAT landscaping and fencing, including fencing around the perimeter of the site, shall be installed and maintained as per the BSA-approved plans;

THAT a sign instructing that only right turns are permitted be posted at the 49th Street exit;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the site shall be brought into compliance with the BSA-approved plans and all conditions of this grant, and a new certificate of occupancy shall be obtained within six months of the date of this grant, on November 22, 2007;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the property, and location and size of the fence shall be as approved by the Department of Buildings;

THAT all signage shall comply with C1 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 22, 2007.

31-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00. PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

MINUTES

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

103-06-BZ

APPLICANT – Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district. PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Lewis Garfinkel.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

119-06-BZ

APPLICANT – Harold Weinberg, P.E., for Jack Erdos, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (§23-141) and side yard (§23-461) in an R4(OP) zoning district.

PREMISES AFFECTED – 444 Avenue W, south side 70'-0" east of East 4th Street, between Avenue R and S, Block 7180, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

161-06-BZ

APPLICANT– Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.

PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

216-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 and §11-412) for the re-establishment and extension of term for an existing automotive service station, which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

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254-06-BZ

APPLICANT – Eric Palatnik, P.C., for Sarah Weiss, owner.
SUBJECT – Application September 18, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141(a)) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, corner of Avenue L and East 21st Street, Block 7639, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

265-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rev. Heung C. Rha, owner.

SUBJECT – Application September 28, 2006 – Variance (§72-21) to allow accessory use to U.G. 2 (multiple dwellings) on an R2 portion of a zoning lot split by district boundaries (R2 and R6); R6 portion of the lot will be developed with an as-of-right multiple dwelling and house of worship; contrary to use regulations (§ 22-00 and § 22-12).

PREMISES AFFECTED – 141-48 33rd Avenue, south side of 33rd Avenue between Parsons Boulevard and Union Street, Block 4981, Lot 37, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

314-06-BZ

APPLICANT – Eric Palatnik, P.C., for Mikhail Kremerman, owner; Yana's Spa, lessee.

SUBJECT – Application December 6, 2006 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment (a/k/a spa) at the cellar level of the proposed structure.

PREMISES AFFECTED – 2565 East 17th Street, Block 7438, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for decision, hearing closed.

321-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Park Towers South Company LLC, owner; Yelo, LLC, owner.

SUBJECT – Application December 13, 2006 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment in a portion of the first floor of a multi-story mixed use building.

PREMISES AFFECTED – 315 West 57th Street, north side of West 57th Street, 200' west of Eighth Avenue, Block 1048, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Fredrick A. Becker and Michael Hazel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

43-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Covenant House, owner; Hampshire House Hotels & Resorts, lessee.

SUBJECT – Application February 8, 2007 – Zoning variance under § 72-21 to allow a proposed twelve (12) story mixed-use development containing seventy-four (74) apartment hotel rooms (U.G. 2), two-hundred and seventy (270) transient hotel rooms (U.G. 5) and retail use (U.G. 6) and/or a physical culture establishment (PCE) on the ground and cellar levels. Proposed commercial uses (transient hotel, retail and PCE) are contrary to use regulations (§ 22-00). Proposed apartment hotel rooms exceed maximum number of dwelling units (§ 23-22) and are contrary to recreation requirements of the Quality Housing Program (§ 28-32). Proposed development would also violate regulations for floor area (§ 23-145), lot coverage (§ 23-145), rear yard for interior portion of lot (§ 23-47), rear yard equivalent for through lot portion (§ 23-533), height and setback (§ 23-633), and location requirements for outdoor swimming pool (§ 12-10).

PREMISES AFFECTED – 346-360 West 17th Street, a/k/a 351-355 West 16th Street, Block 740, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Paul Selver, Elise Wagner, Melanie LaRocca of Council Speaker Quinn, Frank Fusaro, Jack Freeman, Chi Chan, Lisa Lau and George Fontas.

MINUTES

ACTION OF THE BOARD – Laid over to July 10, 2007 at 1:30 P.M., for continued hearing.

57-07-BZ

APPLICANT – Omnipoint Communications, Inc., for Wagner College, owner.

SUBJECT – Application March 5, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communications facility and will consist of a 70-foot monopole/light-post, together with antennas (and stadium flood-lights).

PREMISES AFFECTED – 636 Howard Avenue, 75' east of Highland Avenue and Howard Avenue, Block 597, Lot 65, Borough of Staten Island.

COMMUNITY BOARD # 1SI

APPEARANCES –

For Applicant: Robert Guardioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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June 14, 2007

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DOCKETS

New Case Filed Up to June 5, 2007

138-07-A

614 West 138th Street, West 138th Street, east of Riverside Drive and west of Broadway., Block 2086, Lot(s) 141, Borough of **Manhattan, Community Board: 7**. Appeal – seeking to revoke Certificate of Occupancy No. 104114487 that allowed the conversion of single room occupancy units (SRO) to Class A apartments without obtaining a Certificate of No Harrassment from NYC Housing Preservation and Development (HPD).

139-07-BZ

328 Jackson Avenue, Easterly side of Jackson Avenue 80' northerly of East 141st Street., Block 2573, Lot(s) 5, Borough of **Bronx, Community Board: 1**. Under §72-21 – To erect two-story two-family dwelling.

140-07-A

607 Bayside Drive, North west intersection of Bayside Drive and zoning street know as Service Lane., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14**. Appeals – seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 Zoning district.

141-07-A

129-48 Hookcreek Boulevard, Premises is situated on the west side of Hookcreek Boulevard., Block 12891, Lot(s) 10, Borough of **Queens, Community Board: 13**. Proposed construction of a one family home in the bed of mapped street contrary to General City Law §35.

142-07-BZ

2216 Avenue R, 56'-0" west of intersection formed by Avenue R and East 23rd Street., Block 6828, Lot(s) 7, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) – Proposed extension for dwelling.

143-07-BZ

6404 Strickland Avenue, South east corner of Strickland Avenue and East 64th Street., Block 8633, Lot(s) 1, Borough of **Brooklyn, Community Board: 18**. Under §72-21 – Proposed extension to one family dwelling.

144-07-BZ

3810 Bedford Avenue, Located approximately 50 feet south of southwest corner of Bedford Avenue and Quentin Road., Block 6807, Lot(s) 11, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) – To allow the enlargement of a one-family residence.

145-07-BZ

1005 46th Street, Northeast corner of 46th Street and 10th Avenue., Block 5614, Lot(s) 1, Borough of **Brooklyn, Community Board: 12**. Under §72-21 – To permit the infill of an interior courtyard for a proposed community facility use (medical).

146-07-BZ

439 East 77th Street, North side of East 77th Street, Between First and York Avenues., Block 1472, Lot(s) 17, Borough of **Manhattan, Community Board: 8**. Special Permit (§11-41, §11-412) – For the structural alteration and enlargement of a pre-existing non-conforming (UG8) garage.

147-07-BZY

144 North 8th Street, South side of North 8th Street, 100' east of Berry Street., Block 2319, Lot(s) 11, Borough of **Brooklyn, Community Board: 1**. Extension of time to complete construction (§11-332) of a minor development commenced under the prior R6(M1-2) district regulations . R6B Zoning Distirct.

148-07-BZ

462 Greenwich Street, 49 feet 8.5 inches south from the corner of Greenwich and Watts Streets., Block 224, Lot(s) 028, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) – To permit, in a mixed use special district, the legalization of a Health and Physical Culture Establishment.

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

JULY 10, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 10, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

297-99-BZII

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Co., LLC, owner; Exxon Mobil Corp., lessee.

SUBJECT – Application May 29, 2007 – Extension of Time to obtain a Certificate of Occupancy/Waiver of the rules for an existing gasoline service station (Mobil Station) which expired on September 19, 2004 in a C2-2/R6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

242-02-BZ

APPLICANT – Joseph Fullam, for Helen Fullam, owner.

SUBJECT – Application June 4, 2007 – Extension of Time to complete construction of a previously granted Variance (§72-21) in July 22, 2003 to construct a two family residence in an R3X/SR zoning district which expires on July 27, 2007.

PREMISES AFFECTED – 1 North Railroad Street, Annadale, west side of North Railroad, between Belfield Avenue and Burchard Court, Block 6274, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

41-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: United Homes (contract vendee).

SUBJECT – Application February 24, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 140 Beach 25th Street, to be known as 120 Beach 25th Street, Block 15815, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEALS CALENDAR

87-06-A & 88-06-A

APPLICANT – Patrick W. Jones, P.C. for Zhen Hu, owner.

SUBJECT – Application May 8, 2006 – Proposal to permit construction of two, four story mixed use building within the bed of the mapped, unimproved Delong Street contrary to General City Law Section 35. Premise is located within a C4-2 Zoning District.

PREMISES AFFECTED – 131-04 & 131-06 40th Road, south side of 40th Road, 430' west of intersection with College Point Boulevard, Block 5060, Lot 70 & 71, Borough of Queens.

COMMUNITY BOARD #7Q

50-07-A

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Yosi Shem-tov, owner.

SUBJECT – Application February 22, 2007 – Construction of a five story three family dwelling (UG2) with ground floor community facility use (UG4) located within the bed of a mapped street (101st Street) contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 100-21 39th Avenue, northside of 39th Avenue, Block 1767, Lot 61, Borough of Queens.

COMMUNITY BOARD #3Q

CALENDAR

JULY 10, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 10, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

48-06-BZ

APPLICANT – Jack A. Adesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under § 72-21 to allow an eight (8) story residential building containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is contrary to use regulations (§ 42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

116-06-BZ

APPLICANT – Harold Weinberg, P.E., for David Nikchemny, owner.

SUBJECT – Application June 8, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage and floor area (23-141); side yards (23-461) and rear yard (34-47) in an R3-1 zoning district.

PREMISES AFFECTED – 172 Norfolk Street, west side, 200' north of Oriental Boulevard and Shore Boulevards, Block 8756, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

333-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Alfred Caligiuri, owner.

SUBJECT – Application December 29, 2006 – Variance (§72-21) to permit the enlargement of an existing two family dwelling in an R2A zoning district which complies with the districts bulk and yard requirements but does not permit two family dwellings.

PREMISES AFFECTED – 29-26 Bell Boulevard, Bell Boulevard and 32nd Avenue, Block 6053, Lot 34, Borough of Queens.

COMMUNITY BOARD #11Q

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Rosebud Associates, LLC, owner.

SUBJECT – Application May 10, 2007 – Special Permit (§73-36) to allow the operation of the proposed PCE on a portion of the first floor and the second floor in vacant space in an existing 21-story mixed-use building. The Premises is located in a C1-9A "TA" zoning district. The proposal is contrary to section 32-00.

PREMISES AFFECTED – 222 East 34th Street, south side of East 34th Street, between Second and Third Avenues, Block 914, Lot 36, Borough of Manhattan.

COMMUNITY BOARD # 6M

120-07-BZ

APPLICANT – Bryan Cave LLP, for Fiam Building Associates, owner.

SUBJECT – Application May 11, 2007 – Zoning variance under § 72-21 to allow the partial conversion to residential use of an existing 12-story mixed-use building; contrary to use regulations (§ 42-00). M1-6 district.

PREMISES AFFECTED – 24 West 30th Street, south side, 350' to the west of Fifth Avenue, Block 831, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #5M

128-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sharon Perlstein and Sheldon Perlstein, owners.

SUBJECT – Application May 18, 2007 – Special Permit (73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (23-141); less than the minimum side yards (23-461 & 23-48) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1382 East 26th Street, west side of East 26th Street, between Avenue M and Avenue N, Block 7661, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

117-07-BZ

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**REGULAR MEETING
TUESDAY MORNING, JUNE 5, 2007
10:00 A.M.**

Present: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

592-71-BZ

APPLICANT – Vito J. Fossella, P.E., for FSD Realty, LLC, owner.

SUBJECT – Application February 2, 2007 – Extension of Term of a previously granted variance for the operation of (UG6) professional office building in an R3-2 & R-2 zoning district which expired on February 15, 2007; and for the extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 1010 Forest Avenue, south side of Forest Avenue, Block 316, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a commercial office building, which expired on February 15, 2007; and

WHEREAS, a public hearing was held on this application on April 24, 2007, after due notice by publication in *The City Record*, with a continued hearing on May 15, 2005, and then to decision on June 5, 2007; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Forest Avenue and Raymond Place, partially within an R3-2 zoning district and partially within an R2 zoning district; and

WHEREAS, the site is occupied by a one-story commercial office building (Use Group 6), with an accessory parking lot; and

WHEREAS, on February 24, 1972, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit, the conversion of an existing building to professional offices, for a term of five years; and

WHEREAS, the grant was subsequently extended for two terms of five years and two terms of ten years; and

WHEREAS, the applicant now seeks an additional ten-year term; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 24, 1972, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of term from the expiration of the prior grant to expire on February 15, 2017; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received March 29, 2007”-(6) sheets and “April 27, 2007”-(1) sheet; and *on further condition*:

THAT this grant shall expire on February 15, 2017;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 500866048)

Adopted by the Board of Standards and Appeals, June 5, 2007.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver -for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for

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an automotive repair facility, which expired December 20, 2003; and

WHEREAS, a public hearing was held on this application on December 5, 2006, after due notice by publication in *The City Record*, with continued hearings on January 23, 2007, February 27, 2007, March 20, 2007, April 17, 2007, and May 15, 2007, and then to decision on June 5, 2007; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application on the condition that there be no noise at the site after 10:00 p.m.; and

WHEREAS, the site is located on the northwest corner of McDonald Avenue and Avenue C, within an R5 zoning district; and

WHEREAS, the site is occupied by an automotive repair facility (Use Group 16) with parking for more than five vehicles; and

WHEREAS, on January 21, 1958, under BSA Cal. No. 262-57-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses and parking and storage of more than five motor vehicles, for a term of 15 years; and

WHEREAS, the grant was subsequently extended for a term of ten years; and

WHEREAS, on December 20, 1983, under the subject calendar number, the Board granted an additional ten-year term and added certain conditions to the grant regarding the maintenance of the site; and

WHEREAS, most recently, the grant was amended and extended for an additional ten-year term; and

WHEREAS, the applicant now seeks an additional ten-year term; and

WHEREAS, at hearing, the Board asked the applicant if the existing signage had the appropriate permits and if it had been approved under the prior grant; and

WHEREAS, the applicant responded that records were searched and a complete history of the signage could not be ascertained, but that there were no open violations on the signage; and

WHEREAS, in response to the Community Board's concern about late night noise, the applicant agreed to close business before 10:00 p.m. every day; and

WHEREAS, additionally, the applicant agreed to provide landscaping along the north, east, and south property lines in order to properly screen the site from adjacent residential uses; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate, with the conditions 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 December 20, 1983, so that as amended this portion of the resolution shall read: "to grant a ten-year extension of term from the expiration of the prior grant to expire on December 20, 2013; on condition that all work shall substantially conform to drawings filed with this application and marked "Received April 25, 2007"--(1) sheet; and on further condition:

THAT this grant shall expire on December 20, 2013;
THAT all noted site modifications be completed by December 5, 2007;

THAT the hours of operation shall be limited to Sunday through Thursday 8:00 a.m. to 6:00 p.m. and Friday from 9:00 a.m. to 4:00 p.m. and will be closed on Saturday;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT new pavement shall be installed and maintained on the entire site;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT a new Certificate of Occupancy be obtained by June 5, 2008;

THAT all signs shall be reviewed and as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Alt. No. 653/83)

Adopted by the Board of Standards and Appeals, June 5, 2007.

90-95-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for 641 LLC, owner; Bally Total Fitness, lessee.

SUBJECT – Application November 6, 2006 – Extension of Term and waiver of the rules for a Special Permit (ZR §73-36) to allow a Physical Cultural Establishment (Bally's) in a C6-3A/C6-2A zoning district which expired on December 5, 2005.

PREMISES AFFECTED – 641 6th Avenue, southwest corner of intersection of West 20th Street and 6th Avenue, Block 795, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on December 5, 2005; and

WHEREAS, a public hearing was held on this application on May 22, 2007 after due notice by publication

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in *The City Record*, and then to decision on June 5, 2007; and
WHEREAS, Community Board 4, Manhattan, recommends approval of the application; and

WHEREAS, the subject premises is located on the southwest corner of West 20th Street and Sixth Avenue; and

WHEREAS, the site is located within a C6-3A/C6-2A zoning district, and is occupied by an eight-story commercial building; and

WHEREAS, the PCE is operated as Bally's Total Fitness; and

WHEREAS, on December 5, 1995, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of the existing PCE for a period of ten years; and

WHEREAS, the instant application seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant proposes no changes to the prior grant other than to extend its term; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 5, 1995, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on December 5, 2015; *on condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on December 5, 2015;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 104524882)

Adopted by the Board of Standards and Appeals, June 5, 2007.

741-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Hillside Auto Center S.S., Inc., owner.

SUBJECT – Application January 8, 2007 – §11-411 and §11-412 – to extend the term of a variance for a gasoline service station with accessory uses for an additional period

of ten years from September 23, 2005 and to amend the resolution to permit a portion of the building to be used as an accessory convenience store and to permit a metal canopy and new fuel pump. The site is located in an R-2 zoning district.

PREMISES AFFECTED – 241-15 Hillside Avenue, northwest corner of 242nd Street, Block 7909, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for decision, hearing closed.

198-66-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners, Corp., owner.

SUBJECT – Application April 17, 2007 – Extension of Time to Complete Construction to permit modification to the size, configuration and design of an existing plaza for a residential high rise building which expired on January 19, 2006; an Extension of Time to obtain a Certificate of Occupancy which expired on October 19, 2006 and a waiver of Rules of Practice and Procedure located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, southeast corner of 2nd Avenue and East 74th Street, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Lily Salm.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

135-67-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Avenue "K" Corp., owner.

SUBJECT – Application April 3, 2007 – Extension of Term of a gasoline service station with minor auto repairs (Exxon) for 10 years which will expire on October 11, 2007 in an R3-2 zoning district.

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PREMISES AFFECTED – 2063/91 Ralph Avenue, northwest corner of Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Adam W. Rothkurg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

215-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for East 72nd Realty, LLC, owner.

SUBJECT – Application May 13, 2007 – Extension of Term/Waiver for an additional ten years the term of a variance previously granted pursuant to Section 60(3) of the Multiple Dwelling Law, allowing surplus parking spaces in an attended accessory garage to be used for transient parking located in an R10, R8B and C2-8/R10A zoning district.

PREMISES AFFECTED –1353-1367 York Avenue, west side of York Avenue between East 72nd and 73rd Streets, Block 1467, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: James P. Power.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53’ east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for continued hearing.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E. and Charles Winter.

For Opposition: Donna Rakitzis and Rhea O’Gorman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

346-98-BZ

APPLICANT – Vito J. Fossella, P.E., for Amboy Service Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an expired amendment granted on October 12, 1999 to permit the proposed conversion of an existing building accessory to a gasoline service station, into a convenience store, by enlarging the existing building and eliminating the use of the lubritorium, car wash, motor adjustments and minor repairs, as well as the relocation and increase in the number of pump islands from two to four, with a metal canopy over the new pump islands; an extension of Time to obtain a Certificate of Occupancy and a waiver of the rules in an R3-2 (South Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

305-01-BZ thru 320-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which

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was granted on March 25, 2003. M1-1/M1-2 zoning district. PREMISES AFFECTED – 65-77, 79, 81, 83 through 87, 89, 91, 93, 95, 97, 99, 101, 103 Terrace Court, Block 3605, Lot 200, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

37-03-BZ thru 39-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district.

PREMISES AFFECTED – 65-78, 80, 82 Terrace Court, Block 3605, Lot 200, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

135-05-BZ

APPLICANT – Judith Gallent, Esq., Bryan Cave, LLP for L&M Equity Participants Ltd. and Harlem Congregations for Community Improvement, Inc, contract vendees

SUBJECT – Application April 18, 2007 – To reopen and amend a previously -approved zoning variance under ZR §72-21 that allowed the residential conversion of an existing non-complying building previously used as a school (former PS 90) located in an R7-2 district; contrary to ZR §23-142, ZR §23-533, & ZR §23-633. The proposed amendment would permit a 5,987 sf. ft. enlargement to the existing sixth floor.

PREMISES AFFECTED – 217 West 147th Street, located on block bounded by West 147th and West 148th streets and Adam Clayton Powell, Jr. and Frederick Douglas Boulevards, Block 2033, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 10 A.M., for deferred decision.

APPEALS CALENDAR

173-06-A

APPLICANT – Adam Rothkrug, Esq., for Hamid Kavian, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of a single family home to be located within the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning District.

PREMISES AFFECTED – 240-28 128th Avenue, southwest corner 128th Avenue and Hook Creek Boulevard, Block 12857, Lot 32, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 17, 2006, acting on Department of Buildings Application No. 402386431, which reads in pertinent part:

“Proposed building is in the bed of Mapped Street.

No permit shall be issued for any building in the bed of any street mapped street, contrary to General City Law Section 35.”; and

WHEREAS, a public hearing was held on this application on June 5, 2007 after due notice by publication in the *City Record*, and then to decision on June 5, 2007; and

WHEREAS, by letter dated November 20, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 26, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated November 13, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that by its November 13, 2006 letter, DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 17, 2006, acting on Department of Buildings Application No. 402386431, 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 October 4, 2006”–(1) sheet; that the proposal shall comply with all applicable zoning district

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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 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, June 5, 2007.

287-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: 32-42 33 Street, LLC, owner.

SUBJECT – Application September 15, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Evie Hantzopoulos, George Mihaltses, Stella Nicolaou, Nancy Friedman, Madeleine Henley and Mary Orisses.

For Administration: Deborah Glikin, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for decision, hearing closed.

170-06-A & 171-06-A

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for continued hearing.

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug and George Berger.

For Opposition: Mark Davis.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 5, 2007
1:30 P.M.**

Present: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

100-06-BZ

APPLICANT– Francis R. Angelino, for Old Gowanus Road, LLC, owner.

SUBJECT – Application May 23, 2006 – Variance (§72-21) to allow a proposed residential building to violate regulations for maximum height (§23-633), minimum dimensions of inner court (§23-851) and permitted obstructions in courts (§23-87). The proposed building will contain five (5) dwelling units and three (3) parking spaces. Site is located in an R6B district.

PREMISES AFFECTED – 638-640 President Street, between 4th and 5th Avenues, Block 958, Lots 35 and 36, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Francis R. Angelino and Shael Shapiro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 8, 2007, acting on Department of Buildings Application No. 302077598, reads in pertinent part:

“Proposed portion of dwelling in rear is not a permitted obstruction in a rear yard per Sec. 23-44 ZR and creates a new non-complying inner court as per Sec. 23-851 ZR and does not comply with Minimum Required Yards Sec. 23-47 ZR.

Proposed building exceeds allowable lot coverage as per Sec. 23-145 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R6B zoning district, a five-story five-family residential building with two accessory parking spaces, which does not comply with the requirements concerning rear yard, inner court, and lot coverage, contrary to ZR §§ 23-44, 23-851, 23-47, and 23-145; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in the *City Record*, with continued hearings on April 10, 2007, and May 15, 2007, and then to decision on June 5, 2007; and

WHEREAS, the premises and surrounding area had a site

and neighborhood examination by a committee of the Board, including Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, recommends disapproval of an earlier version of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the application, citing concerns about height and neighborhood context, in response to the initial proposal described below; and

WHEREAS, certain neighbors provided testimony in support of the application; and

WHEREAS, the subject premises is located on the south side of President Street, between Fourth Avenue and Fifth Avenue, within an R6B zoning district; and

WHEREAS, the site comprises two tax lots; tax lot 35 is rectangular with approximately 23’-9” feet of frontage on President Street and a depth of 100 feet; tax lot 36 is connected to the rear of tax lot 35 at a 90 degree angle and has the shape of a long narrow triangle, which is referred to as the “dog leg”; and

WHEREAS, the 30’-0” wide base of the triangle formed by tax lot 36 is perpendicular to the western side lot line of tax lot 35; tax lot 36 extends approximately 115’-0” to the west along the rear lot line of the seven adjacent properties to a narrow point; and

WHEREAS, together, the tax lots have a lot area of 3,957 sq. ft.; and

WHEREAS, the site is currently improved upon with a one-story garage building on tax lot 35 and an open shed on tax lot 36, which will be demolished; and

WHEREAS, the garage was occupied by a non-conforming contractor’s storage and garage building (Use Group 8 or Use Group 16); and

WHEREAS, the applicant now proposes to construct the main portion of the building with the following parameters: five stories, a height of four stories and 40’-0” before a 15’-0” setback, and a total height of five stories and 50’-0” without bulkhead, a total floor area of 7,908 sq. ft., (2.0 FAR), and a total of five dwelling units; the rear portion of the building, located within the widest part of the triangular dog leg and connected by a corridor to the main portion will be one-story; and

WHEREAS, the applicant proposes to provide a lot coverage of 63.96 percent (60 percent is the maximum permitted); a rear yard of 32’-0” will be provided along the rear of the five-story portion of the building, but portions of the zoning lot will not provide the required rear yard or inner court, as it is described; and

WHEREAS, the applicant proposes to provide one dwelling unit on each of the five floors, with two enclosed parking places on the first floor; and

WHEREAS, the applicant notes that the following is a unique physical condition, which creates an unnecessary hardship in developing the site in compliance with applicable regulations: the irregular shape of the lot; and

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WHEREAS, as noted, the zoning lot has an irregular shape, including a 115'-0" long dog leg, which has a maximum width of approximately 30'-0" and extends to a width of 0'-0" at its point; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram, which reflects that there are not any other lots in the area with a triangular shape; and

WHEREAS, the applicant represents that, although the dog leg portion of the lot has a lot area of 1,557 sq. ft. and generates a significant amount of floor area, no complying building can be accommodated on it; and

WHEREAS, the applicant represents that the floor area generated by the site cannot be accommodated within the contextual zoning envelope while providing the required open space, rear yard, and inner court; and

WHEREAS, the redistribution of the floor area within the permitted building envelope creates an increase in lot coverage; and

WHEREAS, further, the applicant asserts that a building built in strict compliance with zoning regulations would (1) not be able to accommodate all of the available floor area and (2) result in inefficient floor plates, that are unnecessarily deep and a corresponding decrease in the value of the units; and

WHEREAS, the applicant represents that the proposed lot coverage, yards, and inner court dimensions are needed to create units that are marketable given the constraints of the site and to accommodate the floor area without violating the height and setback regulations; and

WHEREAS, the applicant represents that in order to accommodate any floor area generated from the dog leg portion of the lot, the yard encroachments are required; and

WHEREAS, the Board agrees that the unique shape creates practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing a complying scenario, with the following parameters: five stories, a width of 23'-9" and a depth of 70'-0"; and

WHEREAS, the applicant notes that the dwelling units would be unusually deep and would result in some unusable spaces; no construction would be permitted in the dog leg; and

WHEREAS, the applicant represents that the as of right scenario would not provide a sufficient rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is occupied by residential buildings ranging in height from two to six stories, and that the adjacent buildings to the east and

west are both four stories; and

WHEREAS, the applicant initially proposed a six-story building with setbacks above the fourth floor; and

WHEREAS, during the hearing process, the Board directed the applicant to eliminate the sixth floor; and

WHEREAS, in response, the applicant revised the building plans to the proposed five stories with a setback above the fourth floor; and

WHEREAS, the applicant represents that the 40'-0" street wall was designed to match the heights of the adjacent buildings and that the visibility of the fifth floor will be minimal; and

WHEREAS, the Board notes that the current iteration provides for a building, which complies with the contextual zoning envelope; and

WHEREAS, as noted, the existing garage building was formerly occupied by a non-conforming use, and will be replaced with a conforming residential use, which is compatible with the area; and

WHEREAS, as to the rear yard condition, the applicant represents that there has been a one-story shed in the dog leg portion of the site for many years, and that the one-story portion of the building will occupy a comparable footprint and height; and

WHEREAS, additionally, the applicant notes that although the lot coverage, inner court, and rear yard provided on the dog leg portion of the site will be non-complying, the one-story portion of the building will be approximately 40'-0" from any other building within the rear yards of adjacent properties; and

WHEREAS, the required rear yard is being provided along the rectangular portion of the site; and

WHEREAS, as to the parking, the applicant notes that, although curb cuts are not common in this area, there is an existing curb cut at the site, used by the non-conforming use, which will be maintained; and

WHEREAS, the applicant notes that if there were more than five residential dwelling units, there would be a parking requirement, and therefore the provided parking will help meet the demand in the area; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents that the hardship was not created by the owner or a predecessor in title, but that the irregular shape of the lot is a historic condition; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal is the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the Board notes that the applicant initially proposed three parking spaces and it directed the applicant to

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eliminate one of the parking spaces so that the building's frontage would be more compatible with the streetscape; and

WHEREAS, at hearing, the Board also asked the applicant to analyze an alternative without any parking and a lesser degree of encroachment in the dog leg portion of the lot; and

WHEREAS, the applicant analyzed an alternative without parking and a reduced size for the one-story portion of the building and found that it would not be as marketable nor provide a sufficient return, given that the first floor will be at grade, rather than elevated like other buildings in the area, and would be less desirable for residential uses; and

WHEREAS, as noted, the applicant eliminated the sixth floor, which eliminated a height and setback waiver and resulted in a building more compatible with the neighborhood context; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA090K, dated September 25, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a September 25, 2006 Environmental Assessment Statement, (2) a August, 2005 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Restrictive Declaration was executed on June 28, 2007 and submitted for recordation on June 29, 2007 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit, on a site within an R6B zoning district, a five-story five-family residential building with two accessory parking spaces, which does not comply with the requirements concerning rear yard, inner court, and lot coverage, contrary to ZR §§ 23-44, 23-851, 23-47, and 23-145; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 3, 2007" – nine (9) sheets and "Received May 11, 2007" – three (3) sheets; and *on further condition*:

THAT the parameters of the building shall be: five stories, a street wall height of four stories and 40'-0" before a 15'-0" setback, a total height of and 50'-0" without bulkhead, a total floor area of 7,908 sq. ft., (2.0 FAR), a lot coverage of 63.96 percent, a rear yard of 32'-0" along the rear of the five-story portion of the building, and two enclosed parking spaces, as illustrated on the Board-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2007.

119-06-BZ

APPLICANT – Harold Weinberg, P.E., for Jack Erdos, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (§23-141) and side yard (§23-461) in an R4(OP) zoning district.

PREMISES AFFECTED – 444 Avenue W, south side 70'-0" east of East 4th Street, between Avenue R and S, Block 7180, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

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THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 302175848, reads in pertinent part:

“The proposed enlargement of the existing detached residence in an R4 in OP zoning district:

1. Increases the degree of non-compliance with respect to floor area ratio exceeding the allowable floor area ratio and is contrary to sections 23-141 & 54-31 of the Zoning Resolution.
2. Creates a non-compliance with respect to open space and is contrary to section 23-141 ZR.
3. Creates non-compliance with respect to lot coverage and is contrary to section 23-141 ZR.
4. Increases the degree of non-compliance with respect to side yards and is contrary to sections 23-461 and 54-31”; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R4 in the Special Ocean Parkway District (OP), the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space, and side yards, contrary to ZR §§ 23-141, 23-461 and 54-31; and

WHEREAS, as represented by the applicant, the two family dwelling will remain a two-family dwelling after the enlargement; and

WHEREAS, a public hearing was held on this application on April 24, 2007, after due notice by publication in *The City Record*, with a continued hearing on May 22, 2007, and then to decision on June 5, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Avenue W, between East 4th Street and East 5th Street; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a 2,704 sq. ft. (0.9 FAR) two-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,704 sq. ft. (0.9 FAR) to 5,053.59 sq. ft. (1.68 FAR); the maximum floor area permitted is 4,050 sq. ft. (1.35 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 1,648 sq. ft. to 1,240.4 sq. ft. (a minimum open space of 1,650 sq. ft. is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards of 1’-7” and 4’-0”

(side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the applicant notes that because the home is within 100 feet of the corner, no rear yard is required; and

WHEREAS, the Board notes that the enlargement will consist of the addition of a second story and the addition of an enlargement to be located entirely at the rear of the existing home; 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, 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 the City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R4 (OP) zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage and side yards, contrary to ZR §§ 23-141, 54-31, and 23-461; *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 May 31, 2007”–(11) sheets; and *on further condition*:

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 5,045.3 sq. ft., a total FAR of 1.68, a perimeter wall height of 25’-0”, total height of 30’-0”, a front yard of 15’-2”, side yards of 1’-7” and 4’-0”, and open space of 1,240.4 sq. ft., 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; 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

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plan(s)/configuration(s) not related to the relief granted.
Adopted by the Board of Standards and Appeals, June 5, 2007.

216-06-BZ

CEQR #07-BSA-012Q

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum, Inc., owner.

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 and §11-412) for the re-establishment and extension of term for an existing automotive service station, which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35th and 37th Avenues, Block 1737, Lot 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, a decision of the Queens Borough Commissioner, dated August 17, 2006, acting on Department of Buildings Application No. 402430767, reads in pertinent part:

“Continued use of the gasoline service station with accessory uses at the premises is not permitted as-of-right in a C1-4 in R6A zoning district as per section 32-00 of the Zoning Resolution and is contrary to the prior BSA grant 1913-61-BZ”; and

WHEREAS, a second decision of the Queens Borough Commissioner, March 7, 2007, acting on Department of Buildings Application No. 402430767, reads in pertinent part:

“Proposed public parking use (UG8) at the premises is contrary to ZR § 32-10 and BSA Cal. No. 1913-61-BZ”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval to permit an automotive service station, pursuant to ZR § 11-411, for approval of several minor changes to previous approved plans, pursuant to ZR § 11-412, and for legalization of public parking on a portion of the site pursuant to § 11-413; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in the *City Record*, with continued hearings on January 30, 2007, March 6, 2007, April 17, 2007, and May 22, 2007, and then to decision on June 5, 2007; and

WHEREAS, Commissioner Susan Hinkson inspected the premises; and

WHEREAS, Community Board 3, Queens,

recommends disapproval of this application, citing concerns about unlicensed monthly fee parking for an average of 40 to 60 cars, not waiting to be serviced; and

WHEREAS, the premises is located on the east side of Junction Boulevard between 35th and 37th Avenues, within a C1-4/R6A zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 17,260 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,335 sq. ft. one-story building containing two service bays, an office/sales area, restrooms and a storage room; and

WHEREAS, on July 16, 1963, under BSA Cal. No. 1913-61-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubricatorium, non-automatic car wash, office, sale of accessories, minor auto repairs with and tools, safety inspection station and the parking and storage of motor vehicles for a term of 15 years; and

WHEREAS, on July 20, 1965, under BSA Cal. No. 1913-61-BZ, the Board reopened and amended the resolution to extend the time to obtain a Certificate of Occupancy;

WHEREAS, on November 28, 1978, under BSA Cal. No. 1913-61-BZ, the Board reopened and amended the resolution to extend the variance for a term of ten (10) years to expire on November 28, 1988; and

WHEREAS, on June 20, 1989, under BSA Cal. No. 1913-61-BZ, the Board reopened and amended the resolution to extend the variance for a term of ten (10) years to expire on November 28, 1998 and to legalize the installation of one additional gasoline pump; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 1913-61-BZ; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit structural alterations, extensions or enlargements limited to the zoning lot that was granted a variance, exception or permit prior to December 15, 1961; and

WHEREAS, pursuant to ZR § 11-413, the Board may permit a change of the nonconforming use of part of the premises from nonconforming Use Group 16 (service station) to nonconforming Use Group 8 (public parking lot); and

WHEREAS, at hearing, the Board expressed concern about the amount of accessory and public parking provided on the premises; and

WHEREAS, Community Board 3 recommended disapproval based on the use of the premises for parking 40 to 60 cars; and

WHEREAS, the applicant agreed to reduce the number of existing accessory parking spaces from eighteen to fifteen and to consolidate and limit the existing public parking on the premises to eleven marked spaces located on the south side of the premises; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411 and ZR § 11-413; and

WHEREAS, the Board deems the minor changes to previously approved plans, which have been properly

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permitted by DOB and DEC, to be in compliance with the previous grant; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-012Q, dated August 28, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration and makes each and every one of the required findings under ZR §11-411, §11-412 and §11-413, for a reinstatement of a prior Board approval of an automotive service station and for the legalization of part of the south part of the premises for public parking; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received May 8, 2007"--(5) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on June 5, 2017;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the site shall be brought into compliance with the BSA-approved plans and all conditions of this grant, and a new certificate of occupancy shall be obtained within six months of the date of this grant, on December 5, 2007;

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 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, June 5, 2007.

265-06-BZ

CEQR #07-BSA-022Q

APPLICANT – Sheldon Lobel, P.C., for Rev. Heung C. Rha, owner.

SUBJECT – Application September 28, 2006 – Variance (§72-21) to allow accessory use to U.G. 2 (multiple dwellings) on an R2 portion of a zoning lot split by district boundaries (R2 and R6); R6 portion of the lot will be developed with an as-of-right multiple dwelling and house of worship; contrary to use regulations (§ 22-00 and § 22-12).

PREMISES AFFECTED – 141-48 33rd Avenue, south side of 33rd Avenue between Parsons Boulevard and Union Street, Block 4981, Lot 37, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 6, 2007, acting on Department of Buildings Application No. 402395323, reads in pertinent part:

“The proposed accessory use to Use Group (UG) 2 multiple dwellings over the R2 portion of the zoning lot is contrary to Zoning Resolution (ZR) Section 22-06 and 22-12”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R2 zoning district and partially within an R6 zoning district, access to a multi-family residential accessory use located on the R6 portion of the lot over the R2 portion of a zoning lot split by district boundaries, which is contrary to ZR § 22-00; and

WHEREAS, the proposed one-story and mixed-use, house of worship/multi-family residential building will have a residential floor area of 17,773.8 sq. ft. (2.09 FAR); a community facility floor area of 8,485 sq. ft. (1.0 FAR); a total floor area of 26,258 sq. ft. (3.09 FAR); a total height of 82’-4”; a rear yard of 30’- 0” above the first floor; and 14 dwelling units (the “Proposed Building”); and

WHEREAS, a total of 18 parking spaces will be provided below-grade on the R6 portion of the lot, and 9 surface parking spaces will be provided on the R2 portion of the lot; and

WHEREAS, 14 of the parking spaces will be dedicated to residents of the mixed-use building, and 13 to users of the house of worship; and

WHEREAS, a public hearing was held on this application on April 17, 2007 after due notice by publication in the *City Record*, with a continued hearing on May 22, 2007, and then to decision on June 5, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 7, Queens, recommends disapproval of the application, citing concerns about whether the applicant had demonstrated financial hardship, the effect of the proposed building on neighborhood character and whether

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the variance sought is a minimum variance; and

WHEREAS, Borough President Helen Marshall submitted a letter in opposition to the application, stating that the proposed building would be out of character with the neighborhood and that the proposed parking would be inadequate for the 1,000 sq. ft. house of worship; and

WHEREAS, the site is located on the south side of 33rd Avenue, between Union Avenue and Parsons Boulevard; and

WHEREAS, the site is an irregularly shaped “flag” lot, with the narrow 60’ base of the lot extending a depth of 140’ from its frontage on 33rd Avenue, and the “flag” portion of the lot approximately 60 feet deep and 100 feet wide; and

WHEREAS, the portion of the lot zoned R2 extends 100 feet back from 33rd Avenue, with the remainder of the lot located in the R6 district; and

WHEREAS, the lot has a total lot area of 14,498 sq. ft., with 6,012 sq. ft. located in the R2 portion of the lot and 8,486 sq. ft. located in the R6 portion; and

WHEREAS, the site is currently improved with a two-story single-family residence on the R2 portion, which residence will be removed so that the R2 portion of the lot will be occupied by access to the subsurface garage for the residents of the mixed-use building located on the R6 portion of the lot and by 9 at-grade parking spaces for the house of worship, with landscaping; and

WHEREAS, the proposed mixed-use building, to be located on the R6 portion of the lot, and which is in compliance with the R6 zoning, and for which access is sought, will house a house of worship (Use Group 4) and multi-family residential dwellings (Use Group 2); and

WHEREAS, because the Proposed Building will contain 14 Use Group 2 dwelling units, the instant variance application was filed to permit the residents of the multi-family portion of the proposed building to use the R2 portion of the lot to access the building; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lot is divided between R2 and R6 districts; (2) the approximately 60 percent of the lot within the R6 district is landlocked with no access to 33rd Avenue; and (3) the R6 portion of the lot has street access only across the R2 portion, but ZR § 22-10 does not permit multi-family accessory use in the R2 district and therefore prohibits using the R2 portion of the site for access to an as-of-right mixed-use multi-family residential building on the R6 portion of the site; and

WHEREAS, the approximately 60 percent of the lot that is within the R6 district cannot be developed with a conforming multi-family residential use without access across the R2 portion of the lot; and

WHEREAS, the applicant represents that the majority of the zoning lot is undeveloped because it is landlocked with respect to conforming uses within the R6 district; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted that even a development with two single-family homes would not be permitted for the following reasons: (1) such development would violate ZR § 22-10 which limits development on zoning lots in R2 districts to a single one-family residence, and (2) subdividing the zoning lot would create violations of Building Code 27-291 (minimum 8 percent street frontage) and GCL Article 36 (prohibiting development of zoning lots not fronting on mapped streets); and

WHEREAS, the applicant concluded that no scenario would permit any further as-of-right development on the R6 portion of the lot; and

WHEREAS, based upon its review of the applicant’s analysis, which showed that there is no conforming development possible on the R6 portion of the lot, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the proposed building would be permitted as-of-right in the R6 district of this neighborhood; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the R6 district in this area, which includes many other large multi-family residential buildings, including residential and community facility buildings of six to ten stories along Parsons Boulevard, 34th Avenue and Union Street in the immediate vicinity of the site; and

WHEREAS, the applicant represents that the proposed building complies with all of the requirements of the R6 zoning district, except for the access required across the R2 portion of the lot necessary for residents of the proposed building; and

WHEREAS, the character of the residential and community facility buildings adjacent to the site and in the close vicinity in the R6 district is a height of six to ten stories; and

WHEREAS, the applicant initially proposed a total of 19 parking spaces below-grade, with five parking spaces accessory to the house of worship and 14 accessory to the residential portion of the mixed-use building; and

WHEREAS, at hearing, the Board questioned whether, notwithstanding the lack of off-street parking requirements for houses of worship in R6 zoning districts, the proposed parking would be adequate for the house of worship; and

WHEREAS, in response, the applicant represented that if the house of worship were located in an R2 district, 15 accessory off-street parking spaces would be required; and

WHEREAS, subsequently, the applicant increased the proposed off-street parking from 19 spaces (with five allocated

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to the house of worship) to 27 spaces (with 13 allocated to the house of worship) by providing additional surface parking on the R2 portion of the lot, which the Board deems adequate for the proposed house of worship and multi-family residential building; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of multi-family residential use, and finds that the introduction of a 7-story building with 14 dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the Board has reviewed the comments of the Community Board and Borough President Marshall; and

WHEREAS, the Board respectfully deems that the Community Board's and Borough President's objections based on neighborhood character are not accurate based on the land uses in the vicinity of the site; and

WHEREAS, the Board deems that the Borough President's comments on the inadequacy of the proposed off-street parking accessory to the house of worship have been adequately addressed; and

WHEREAS, the Board respectfully disagrees with the other conclusions of the Community Board and Borough President with respect to the application's merit; and

WHEREAS, the 33rd Avenue frontage of the block between Union Avenue and Parsons Boulevard has two other properties with multi-family residential buildings that use the R2 portion of their lots to access "landlocked" R6 buildings; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above that render the R6 portion of the lot effectively "landlocked" with respect to as-of-right development with multi-family housing; and

WHEREAS, the applicant does not seek any bulk waivers; and

WHEREAS, with the exception of the access for residents of the proposed multi-family building across the R2 portion of the lot the proposed building is permitted as-of-right within the R6 district; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA022Q, dated February 23, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance on a site partially within an R2 zoning district and partially within an R6 zoning district, permitting access across the R2 portion of the lot for residents of a seven-story residential building to be constructed on the R6 portion of the lot, which is contrary to ZR § 22-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 11, 2007"--ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: 7 stories, a total floor area of 26,258 sq. ft. (3.09 FAR); a total height of 82'-4"; a rear yard of 30'-0" above the first floor; and containing a house of worship and 14 dwelling units, all as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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, June 5, 2007.

321-06-BZ
CEQR #07-BSA-045M

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APPLICANT – The Law Office of Fredrick A. Becker, for Park Towers South Company LLC, owner; Yelo, LLC, owner.

SUBJECT – Application December 13, 2006 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment in a portion of the first floor of a multi-story mixed use building.

PREMISES AFFECTED – 315 West 57th Street, north side of West 57th Street, 200’ west of Eighth Avenue, Block 1048, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 11, 2006, acting on Department of Buildings Application No. 104598927, reads in pertinent part:

“Proposed use of physical cultural establishment of a relaxation and reflexology therapy in Commercial C6-4/(CL) special Clinton) district at basement floor, is contrary to ZR-32-10 (uses permitted as of right)”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4 zoning district, within the Special Clinton District (CL), the establishment of a physical culture establishment (PCE) in a portion of the cellar of an existing 19-story mixed-use residential/commercial building, contrary to ZR §§ 32-10 and 98-02; and

WHEREAS, a public hearing was held on this application on May 22, 2007 after due notice by publication in *The City Record*, and then to decision on June 5, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, on the condition that the Department of Investigation background check required by § 73-36 of the Zoning Resolution is satisfactorily completed; and

WHEREAS, the subject site is located on the north side of West 57th Street, between Eighth and Ninth Avenues; and

WHEREAS, the site is currently occupied by a 19-story mixed-use residential/commercial building; and

WHEREAS, the PCE will occupy 1,790 sq. ft. of floor space in the “basement” level of the building, which is located at grade; and

WHEREAS, the PCE, will be operated as a “wellness” center, offering “power naps” and reflexology treatments

administered by licensed massage therapists; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 10:00 a.m. to 9:00 p.m. and Saturday 10:00 a.m. to 6:00 p.m.; and

WHEREAS, the Board has reviewed the Community Board’s recommendation; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA045M, dated April 23, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4 (CL) zoning district, the establishment of a physical culture establishment in a portion of the basement level of an existing 19-story mixed-use residential/commercial building, contrary to ZR §§ 32-10 and 98-02; *on condition* that all work shall substantially conform to drawings filed with this application marked

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“Received April 24, 2007”-(3) sheets; and *on further condition:*

THAT the term of this grant shall expire on June 5, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 10:00 a.m. to 9:00 p.m. and Saturday 10:00 a.m. to 6:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2007.

13-07-BZ

CEQR #07-BSA-052K

APPLICANT – Jesse Masyr, Wachtel & Masyr, LLP, for Zahav Enterprises, Inc., owner; Unicorp National Development, Inc., lessee.

SUBJECT – Application January 11, 2007 – pursuant to §11-413 of the Zoning Resolution seeking approval to change the use on the project site from parking and storage of motor vehicles and auto rental (Use Group 8) to accessory off-street parking (Use Group 6). The accessory off-street parking would provide the required parking for an adjacent drug store. The subject application is located in an R6 zoning district.

PREMISES AFFECTED – 1120 East New York Avenue, a/k/a 5 Rockaway Parkway, northeast corner of East New York Avenue and Rockaway Parkway, Block 4600, Lots 1 & 7, Borough of Brooklyn.

COMMUNITY BOARD # 17BK

APPEARANCES –

For Applicant: Jerry Johnson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 22, 2006, acting on Department of Buildings Application No. 302249243, reads in pertinent part:

“The Proposed Accessory Parking (Use Group 6) is contrary to the prior BSA approval under Calendar Number 492-27-BZ.”; and

WHEREAS, this is an application for a change in use from a parking and vehicle storage lot (Use Group 8) to an accessory parking lot (Use Group 6), pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in the *City Record*, and then to decision on June 5, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Commissioner Hinkson; and

WHEREAS, Community Board 17, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Member Darlene Mealy recommends disapproval of this application, citing concerns about a lack of affordable housing in the council district; and

WHEREAS, the site is located on the northeast corner of East New York Avenue and Rockaway Parkway, within an R6 zoning district; and

WHEREAS, the subject zoning lot, Lot 1, has a total lot area of approximately 16,823 sq. ft.; and

WHEREAS, the site is currently occupied by a truck and vehicle rental and storage facility with accessory parking, which has historically been used in conjunction with the use on the adjacent lot, Lot 7; and

WHEREAS, the applicant represents that the two lots, Lot 1 and Lot 7, are separate zoning lots; and

WHEREAS, in 1927, under BSA Cal. No. 492-27-BZ, the Board granted a variance to permit the reconstruction and operation of a gasoline service station on Lot 7; and

WHEREAS, on December 17, 1957, the Board granted an amendment to the variance to incorporate an existing parking lot on Lot 1 into the gasoline service station use and to permit the use of commercial parking within a residential zoning district; and

WHEREAS, subsequently, only Lot 7 was rezoned and is now within a C8-2 zoning district where commercial uses, including the gasoline service station, are permitted as of right; and

WHEREAS, on February 5, 1974, the Board granted an amendment to eliminate the as of right use on Lot 7 from the variance; the Board maintained jurisdiction over Lot 1, which remained within a residential zoning district; and

WHEREAS, the applicant now seeks to construct a pharmacy building, to be operated as a Walgreen’s, on Lot 7 and to provide accessory parking on Lot 1; and

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WHEREAS, because the proposed use on Lot 7 is as of right and it is no longer under the Board's jurisdiction, only Lot 1 is the subject of this application; and

WHEREAS, the applicant proposes to provide a parking lot accessory to the proposed pharmacy, with 35 parking spaces; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the Board notes that the change in use, from the truck and vehicle rental and storage facility with accessory parking, permitted under the original variance, to an accessory parking lot is permitted pursuant to ZR § 11-413; and

WHEREAS, the applicant represents that the site has been used for commercial parking and motor vehicle storage for 45 years and that a barbed wire fence surrounds the parking area; and

WHEREAS, the applicant represents that the proposed use will be more compatible with adjacent uses as landscaping and screening will be provided around the parking lot and on the southeast lot line adjacent to residential uses; and

WHEREAS, the Board agreed, that the proposed site conditions would be more compatible with adjacent residential uses; and

WHEREAS, while the Board notes that the Community Board and City Council Member Mealy support residential use at the site and do not approve of the proposal, the Board finds that the proposed use is compatible with existing land uses in the area and is within the parameters of ZR § 11-413 as it applies to the historic grant; and

WHEREAS, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-413; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.07-BSA-052K, dated January 11, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, on October 5, 2006 Clayton Group Services, Inc. [now known as Bureau Veritas North America, Inc. (Bureau Veritas)] issued a Phase I Environmental Site Assessment for the site and did not observe or discover evidence of potential sources of hazardous substances emanating from lot 1 (confirmed by letter of March 30, 2007) and

WHEREAS, the Board has determined that the accessory parking use will not have a significant adverse impact on the

environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 11-413 to permit a change in use from a parking and vehicle storage lot (Use Group 8) to an accessory parking lot (Use Group 6), pursuant to ZR § 11-413; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received January 11, 2007"–(3) sheets; and *on further condition*:

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT all exterior lighting shall be directed away from adjacent residential uses;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the proposed use and layout of the accessory parking lot shall be as approved by DOB;

THAT all signage shall comply with underlying zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2007.

42-07-BZ

CEQR #07-BSA-059K

APPLICANT – Moshe M. Friedman, P.E., for Cong. & Yeshiva Lev Somejach, owner.

SUBJECT – Application February 6, 2007 – Variance (§72-21) to permit the proposed conversion and extension of an existing synagogue. The Premises is located in an R5 Ocean Parkway Special District. The proposal is requesting waivers of open space and lot coverage (§113-11 and §23-141c) and side yards (§113-11 and §23-462a).

PREMISES AFFECTED – 203 Avenue F, a/k/a 201-203 Avenue F, 717-727 East 2nd Street, Block 5396, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 11, 2007, acting on Department of Buildings Application No. 302052855, reads in pertinent part:

“Proposed extension of synagogue and *interior court* is contrary to:

ZR Sec 113-11 & 23-141(c) Open Space & Lot Coverage

ZR Sec 113-11 & 23-462(a) Side Yards.”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R5 zoning district, within the Special Ocean Parkway District, the enlargement of a synagogue which occupies the first floor and cellar of an existing four-story mixed-use community facility/residential building, and will not comply with the requirements for open space, lot coverage, and side yards, contrary to ZR §§ 23-141(c), 23-462(a), and 113-11; and

WHEREAS, the application is brought on behalf of Congregation and Yeshiva Lev Someiach of Alesk (the “Synagogue”), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in the *City Record* and then to decision on June 5, 2007; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the northeast corner of Avenue F and East 2nd Street; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft.; and

WHEREAS, the site is occupied by a four-story mixed-use community facility/residential building; and

WHEREAS, the Synagogue currently occupies 4,040 sq. ft. of floor area on the first floor (0.81 FAR) and additional floor space in the cellar; and

WHEREAS, the applicant proposes to provide an enlargement to extend completely into the court yard at the eastern side of the building on the first and second floor and to convert a portion of the residential use on the second floor to synagogue use; the result will be that the Synagogue occupies 4,500 sq. ft. of floor area on the first floor and 1,909 sq. ft. of floor area on the second floor for a total of 6,409 sq. ft. (1.28 FAR); and

WHEREAS, due to the creation of double-height space, within the existing and enlarged synagogue space, the total floor area of the building will actually decrease from 16,118 sq. ft. (3.23 FAR) to 15,750 sq. ft. (3.15 FAR); and

WHEREAS, the applicant proposes to reduce the open

space from 960 sq. ft. to 500 sq. ft. (2,250 sq. ft. of open space is the minimum required) and to increase the lot coverage from 80.8 percent to 90 percent (55 percent is the maximum permitted); and

WHEREAS, additionally, the applicant notes that the existing non-complying 0’-0” side yard will be unchanged along the eastern side lot line and that only the small inner courtyard will be eliminated at the first and second floors; and

WHEREAS, the applicant obtained approval from DOB to convert a portion of the second floor to Synagogue use; the remainder of the building will retain its residential use and is not the subject of this application; and

WHEREAS, the proposed enlargement decreases the degree of non-compliance as to floor area and FAR, but creates new non-compliances as to open space, side yards, and lot coverage, as noted above; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Synagogue, which seeks to expand and reconfigure its existing facilities in order to accommodate its current congregation; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Synagogue: (1) a need to better accommodate an increase in the number of congregants; (2) a need to provide a separate worship area for women and girls; and (3) a need to provide more efficient use of the space; and

WHEREAS, as to attendance, the applicant states that the Synagogue now serves approximately 230 members; and

WHEREAS, the applicant represents that the existing Synagogue space cannot accommodate this number of worshipers on a regular basis or accommodate any anticipated growth; and

WHEREAS, the applicant represents that the proposed Synagogue will accommodate approximately 299 congregants; and

WHEREAS, as to the need for a separate worship area for women and girls, the applicant represents that the second-floor mezzanine will provide separate facilities, which is a traditional religious requirement; and

WHEREAS, as to the improved facilities, the applicant represents that the enlargement into the side court yard will allow for additional worship space and more efficient use of the floors; and

WHEREAS, specifically, the applicant represents that it is traditional to keep the Torah scrolls in a portion of the Synagogue facing towards Jerusalem, which in this building is the eastern wall; and

WHEREAS, accordingly the current use of the space is inefficient because a portion of the eastern wall does not extend as deep as the remainder of the wall due to the location of the inner courtyard at that point; and

WHEREAS, the enlargement into the courtyard would permit the squaring off of the room, which would improve the flow of congregants entering and leaving the synagogue; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the

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enlargement of the building is necessary to address the Synagogue's needs, given the limitations of the existing building; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the existing building, when considered in conjunction with the programmatic needs of the Synagogue, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Synagogue is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that the proposed enlargement will be limited to the first two floors and that the court yard will be maintained to provide light and air for the residential uses on the third and fourth floors; and

WHEREAS, the Board notes that the enlargement will not be visible from the street; and

WHEREAS, additionally, the applicant notes that the Synagogue is a permitted use which already exists at the site; and

WHEREAS, further, the applicant asserts that the larger capacity of the Synagogue will accommodate the existing number of congregants and will relieve overcrowding, while permitting incremental increases; and

WHEREAS, additionally, the vast majority of congregants live within a close proximity of the Synagogue and walk to the site, so there is no discernible impact on traffic; and

WHEREAS, the Board agrees that the proposed enlargement, which will relieve overcrowding conditions, is compatible with the surrounding neighborhood; and

WHEREAS, at hearing the Board asked the applicant to describe the potential impact on adjacent residential uses; and

WHEREAS, the applicant responded that the adjacent building has a side yard of 8'-0" and the proposed enlargement would not block any windows; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Synagogue; and

WHEREAS, the applicant states that the proposed total FAR of 3.15 reflects a reduction in the degree of non-compliance and that the perceived bulk of the building will not change; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Synagogue to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA059K, dated November 15, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R5 zoning district, within the Special Ocean Parkway District, the enlargement of a synagogue which occupies the first floor and cellar of an existing four-story mixed-use community facility/residential building, which will not comply with the requirements for open space, lot coverage, and side yards and is contrary to ZR §§ 23-141(c), 23-462(a), and 113-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 6, 2007"–(5) sheets, "Received March 22, 2007"–(6) sheets and "Received May 7, 2007"–(1) sheet and *on further condition*:

THAT the encroachment into the court yard at the eastern

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side of the building shall be limited to two stories and a height of 24'-9", 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 objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2007.

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

39-06-BZ

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§ 72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 zoning district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Moshe M. Friedman

For Opposition: William A. Foster.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing.

98-06-BZ & 284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning

district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for decision, hearing closed.

227-06-BZ

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot 90, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik, Mark Lipton and Charlie Bontempo.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B zoning district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

MINUTES

APPEARANCES –

For Applicant: Chris Wright.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing.

59-07-A

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application March 8, 2007 – Proposed building frontage is contrary to BC 27-291 Article 2. Provide Fire Department Approval. R6B Zoning District.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Borough of 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing.

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: W. J. Pharaon, Jack H. Cooperman and Sol Mermelstein.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (§24-162a), side yards (§24-35), and the number of stories (§24-33).

PREMISES AFFECTED – 1847 60th Street, north side of 60th Street, between 18th Avenue and 19th Avenue, Block

5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

306-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (§72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (§42-00), floor area and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), and front wall (§24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 1:30 P.M., for continued hearing.

15-07-BZ

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application January 11, 2007 – Variance (§72-21) to allow a new nine (9) story hospital building (U.G. 4) that exceeds maximums for floor area ratio (§24-11), lot coverage (§24-11) and height and setback (§24-522). R8 zoning district.

PREMISES AFFECTED – 199 Mt. Eden Parkway, between Selwyn Avenue and Morris Avenue, Block 2824, Lot 19, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Carole Slater and Ben P. Lee.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for decision, hearing closed.

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open

MINUTES

space and floor area (23-141); perimeter wall height (23-361) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lewis Garfinkel and Mark Shasho.

For Opposition: Ed Jaworski.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 1:30 P.M., for continued hearing.

75-07-BZ

APPLICANT – Law Office of Slater & Beckerman LLP for Hudson Alley, Incorporated, owner; Cadence Cycling & Multisport Centers, lessee.

SUBJECT – Application April 3, 2007 – Special Permit (§73-36) to permit a cellar and on the first floor of six-story building, a Physical Culture and Health Establishment. The Premises are located within an M1-5 zoning district within the Special Tribeca Mixed Use District (Area B1), and in the Tribeca North Historic District.

PREMISES AFFECTED – 174 Hudson Street, Southeast corner of Vestry Street and Hudson Street, Block 220, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Stuart Beckerman and Timothy Clay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 19, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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June 19, 2007

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DOCKETS

New Case Filed Up to June 12, 2007

149-07-A

17 Roosevelt Walk, South east corner roosevelt Walk and West end Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to Article 3, §36 of the General City Law and the propped upgrade on an exisiting legal non-conforming private disposal system.

150-07-A

122-02 Liberty Avenue, South side of Liberty Avenue on the corner formed by the intersection of 122nd Street and Liberty Avenue., Block 9576, Lot(s) 1, Borough of **Queens, Community Board: 10**. Appeal – seeking to reverse a Fire Department Order No. 024-07 requiring an automatic sprinkler system to be installed throughout the building. C4-2 Zoning District.

151-07-BZ

1133 83rd Street, North side, 256' east of 11th Avenue between 11th Avenue and 12th Avenue., Block 6301, Lot(s) 65, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-622) – Proposed to erect a two story rear enlargement.

152-07-BZ

8701 Fourth Avenue, Southeast of the corner formed by the intersection of Fourth Avenue and 87th Street., Block 6050, Lot(s) 8, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-36) – To allow the legalization of a Physical Culture Establishment in a commercial zoning district.

153-07-BZY

20 Bayard, Bayard Street between Union Avenue and Lorimer Street., Block 2721, Lot(s) 11, Borough of **Brooklyn, Community Board: 1**. Extension of time (§11-332) – To complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2/R6B and M1-2/R6A.

154-07-A

441 East 57th Street, North side of East 57th Street, between 1st Avenue and Sutton., Block 1369, Lot(s) 15, Borough of **Manhattan, Community Board: 6**. Appeal – seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under §23-692(a) and is not listed as a permitted obstruction in §23-62. R10 Zoning district.

155-07-A

55 Chipperfield Court, 413.88' South of the corner between Chipperfield Court and Ocean Terrace., Block 687, Lot(s) 21, Borough of **Staten Island, Community Board: 2**. Proposed construction of a swimming pool , tennis court and changing room in the bed of a mapped street (Tiber Place) are contrary to General City Law §35. R1-2.

156-07-A

60 Chipperfield Court, 433.95' south of the corner between Chipperfield Court and Ocean Terrace., Block 687, Lot(s) 337, Borough of **Staten Island, Community Board: 2**. Proposed construction of a swimming pool in the bed of mapped street (Tiber Place) is contrary to General City Law §35. R1-2.

157-07-BZY

55 Eckford Street, Located on the western side of Eckford Street between Driggs Avenue and Engert Avenue., Block 2698, Lot(s) 32, Borough of **Brooklyn, Community Board: 1**. Extension of time (§11-332-) to complete construction of a minor development commenced prior to the amendment of the zoning distirct regulations on May 11, 2005. M1-2/R6A, M1-2/R6B and MX-8.

158-07-BZ

184-20 Union Turnpike, 110 feet west of south west corner of the intersection of Union Turnpike and Chevy Chase Street., Block 7248, Lot(s) 39, Borough of **Queens, Community Board: 8**. Under §72-21 –To permit the re-establishment of a one-story commercial building.

DOCKET

159-07-BZ

2402 86th Street, South of the corner formed by the intersection of 86th Street and 24th Avenue., Block 6864, Lot(s) 37, Borough of **Brooklyn, Community Board: 11.** Special Permit (§73-36) – To allow the legalization of a Physical Culture or Health Establishment.

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

JULY 17, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 17, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

671-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 24 Pack LLC, owner; Euclide Enterprises, Inc., lessee.
SUBJECT – Application March 21, 2007 – Amendment to a previously granted Variance (§72-21) to convert the existing service bays to an accessory convenience store, an area previously approved for a new bay to a mechanical room and (§11-412) to legalize a UG6 eating and drinking establishment (Texas Chicken); Extension of Time to complete construction and to obtain a Certificate of Occupancy and a Waiver of the rules in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 1249-1265 Sutter Avenue, blockfront from Euclid Avenue to Doscher Street, Block 4249, Lots 55 & 59, Borough of Brooklyn.

COMMUNITY BOARD #5BK

844-86-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Fred Lynn Associates, owner; Pyramida Billiards, lessee.
SUBJECT – Application February 12, 2007 – Extension of Term of a previously granted Special Permit (§73-50) for the enlargement of a one (1) story building, in a C8-2 zoning district, that encroaches into the open area required along a district boundary which expired on April 28, 1997; an Amendment to legalize the change in use from an auto repair shop (UG16) and custom clothing manufacturer (UG11) to a billiard parlor (UG12) and eating and drinking establishment (UG6) and to permit the addition of a 979. sq. ft. mezzanine in the UG6 portion of the building; an Extension of Time to obtain a Certificate of Occupancy which expired on May 4, 1999 and a Waiver of Rules of Practice & Procedure.

PREMISES AFFECTED – 1828/1836 McDonald Avenue, west side of McDonald Avenue, between Avenue P and Quentin Road, Block 6632, Lots 17 & 20, Borough of Brooklyn.

COMMUNITY BOARD #11BK

391-04-BZ, Vol. III

APPLICANT – Moshe M. Friedman, for Mellech Fastag, owner.

SUBJECT – Application May 29, 2007 – Amendment to a Special Permit (§73-622) for a single family residence for an

enlargement to second floor in an R-2 zoning district.
PREMISES AFFECTED – 2610 Avenue L, south side of Avenue L, 60' east of the intersection of Avenue L and East 26th Street, Block 7644, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEALS CALENDAR

67-07-A

APPLICANT – Kevin Finnegan, Esq., for Benjamin Shaul, Magnum Mgmt., owner.

SUBJECT – Application July 17, 2007 – An appeal seeking to revoke permits and approvals that allow the construction of a penthouse that exceeds the permitted height limitations governed by ZR §23-692 (Sliver Law). R7-2 Zoning District.

PREMISES AFFECTED – 515 East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

70-07-A

APPLICANT – John C. Chen, AIA, for Tae Wook Chang, owner.

SUBJECT – Application March 23, 2007 – Existing warehouse that does not front a legally mapped street contrary to General City Law Section 36. M3- Zoning District.

PREMISES AFFECTED – 49-30 Galasso Place, east side of 49th Street, 274' south of Galasso Place, Block 2575, Lot 292, Borough of Queens.

COMMUNITY BOARD #4Q

137-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Edward Scheibel, lessee.

SUBJECT – Application May 22, 2007 – Reconstruct and enlargement of an existing single family home and the upgrade of an existing non-conforming private disposal system not fronting on a mapped street contrary to General City Law §36. R4 Zoning District.

PREMISES AFFECTED – 19 Janet Lane, north side of Janet Lane, 190.95' east of Beach 203rd Street, Block 15350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57th Apartments, Inc., owner.

SUBJECT – Application June 11, 2007 – Appeal seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under §23-

CALENDAR

692(a) and is not listed as a permitted obstruction in §23-62.

R10 Zoning district.

PREMISES AFFECTED – 441 East 57th Street, north side of east 57th Street, between 1st Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

JULY 17, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 17, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

342-05-BZ& 343-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Kingsbridge Terrace, LLC, owner.

SUBJECT – Application November 29, 2005 – Zoning variance (§72-21) to allow six (6) three-family buildings (18 dwellings) and six (6) accessory parking spaces; contrary to regulations for use (§22-12), FAR (§23-141), lot coverage (§23-141), number of dwelling units (§23-22), building height (§23-631), side yards (§23-461), minimum number of accessory parking spaces (§25-23), and special requirements for developments with private roads (§26-21).

PREMISES AFFECTED – 1, 3 & 5 Maya Drive, southeast corner of Kingsbridge Terrace and Perot Street, Block 3253, Lot 204, Borough of Bronx.

COMMUNITY BOARD #8BX

126-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Hafif, owner.

SUBJECT – Application June 14, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (§23-141); less than the required side yards (§23-461) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1762 East 23rd Street, East 23rd Street, between Quentin Road and Avenue R, Block 6805, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #15BK

291-06-BZ

APPLICANT – Paul Bonfilio, AIA., for 6860 Austin Realty

Corp., owner.

SUBJECT – Application November 2, 2006 – Special Permit (§73-44) to allow the reduction in the number of required parking spaces for an enlargement to an existing community facility building (Ambulatory Diagnostic/Treatment Facility). The Premises is located in a C8-2 zoning district. The proposal is contrary to Section 36-21.

PREMISES AFFECTED – 68-60 Austin Street, Austin Street, between Yellowstone Boulevard and 69th Road, Block 3234, Lot 29, Borough of Queens.

COMMUNITY BOARD #6Q

329-06-BZ

APPLICANT – Wholistic Healthworks, Inc., for Albino J. Testani, owner.

SUBJECT – Application December 21, 2006 – Special Permit (§73-36) to legalize a PCE in C2-2/R2A/R4 zoning districts. The proposal is contrary to Section 32-00.

PREMISES AFFECTED – 34-34 Bell Boulevard, west of Bell Boulevard, 184.07' from 35th Avenue, Block 6112, Lot 39, Borough of Queens.

COMMUNITY BOARD #11Q

10-07-BZ

APPLICANT – Kenneth Philogene, for George Smirnov, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to construct a two story, one family home on an undersized vacant lot with less than the total required side yards (§23-48) in an R3-1 zoning district.

PREMISES AFFECTED – 118 Graham Boulevard, south side of Graham Boulevard, Block 3768, Lot 23, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 12, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

8-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125’ east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an amendment, and an extension of time to complete construction of a single-family home, which expired on December 18, 2005; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in *The City Record*, with continued hearings on April 10, 2007, May 8, 2007, and May 22, 2007, and then to decision on June 12, 2007; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application; and

WHEREAS, City Council Member Michael E. McMahon recommends disapproval of this application citing concerns that the building does not adhere with zoning regulations as to lot width and side and front yards; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Commissioner Hinkson; and

WHEREAS, the subject premises is located on the south side of Clifton Avenue, 125 feet east of Reynolds Street, within an R3-2 zoning district within a Lower Density Growth Management Area (LDGMA); and

WHEREAS, on December 18, 2001, under the subject

calendar, the Board granted a variance, pursuant to ZR §72-21, to permit the construction of a detached single-family home on a lot that did not provide the required 40’-0” of frontage; and

WHEREAS, on August 12, 2004, the LDGMA zoning provisions, which affect the site, were enacted; and

WHEREAS, the previously approved plans do not comply with the LDGMA provisions as to parking; the provisions require two parking spaces and only one is provided per the approved plans; and

WHEREAS, accordingly, the applicant proposes to comply with the new parking requirement by providing two parking spaces in the cellar level garage; and

WHEREAS, the applicant represents that the building footprint has not changed and that there are not any additional non-compliances; and

WHEREAS, however, the Board notes that the side yards do not comply with ZR §23-461 and a waiver should also have been requested at the time of the previous approval; and

WHEREAS, accordingly, this amendment includes a waiver for side yards which was not incorporated into the previous approval; and

WHEREAS, the instant application seeks an extension of time to complete construction; and

WHEREAS, the applicant states that an additional 18 months are required to complete construction; and

WHEREAS, at hearing, the Board noted a discrepancy in the plans and asked the applicant to confirm that the perimeter wall complies with zoning district regulations; and

WHEREAS, in response, the applicant modified the plans and provided a statement from the architect that the perimeter wall height is a complying 23.31 feet; and

WHEREAS, additionally, the Board directed the applicant to confirm that the slope of the driveway complied with Building Code regulations; and

WHEREAS, at hearing, a neighbor, through counsel, objected to the application and asked the Board to defer decision pending negotiations with the owner to purchase the site; and

WHEREAS, additionally, the neighbor represented that an adverse possession claim was being made to acquire the property; and

WHEREAS, the Board notes that, absent an order from the court, it is not barred from making a determination on this application; and

WHEREAS, additionally, the Board notes that the current proposal does not create any new non-compliances but rather resolves one which results from the enactment of the LDGMA provisions; and

WHEREAS, based upon its review of the record, the Board finds that an 18-month extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, dated December

MINUTES

18, 2001, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a period of 18 months from the date of this grant and to permit an amendment to the approved plans; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 15, 2007"-(2) and "June 8, 2007"-(1) sheet and *on further condition*:

THAT substantial construction shall be completed by December 12, 2008;

THAT the slope of the driveway and the required parking shall be as approved by DOB;

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. 500850457)

Adopted by the Board of Standards and Appeals, June 12, 2007.

737-86-BZ

APPLICANT – Rampulla Associates Architects, for Angelo Falato, owner.

SUBJECT – Application February 9, 2007 – Extension of Term of a previously granted Variance (§72-21) for an existing one story retail store (Use Group 6) which will expire on June 2, 2007. R3-1 zoning district.

PREMISES AFFECTED – 3304 Amboy Road, between Buffalo Street and Hopkins Avenue, Block 4964, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

214-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.

SUBJECT – Application October 18, 2006 – Extension of Term/Extension of time to obtain a Certificate of Occupancy and Amendment of a Special Permit granted pursuant to §73-242 to permit within a C3 zoning district an eating and drinking establishment.

PREMISES AFFECTED – 2761 Plumb Second Street,

northeast corner formed by intersection of Plumb Second Street and Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Nick Lecakes, Kath Grove and Betty LaRoe.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for continued hearing.

145-92-BZ

APPLICANT – Deirdre Carson of Greenberg Traurig, for PPI New York, LLC, owner; Eddie Gyms LLC, lessee.

SUBJECT – Application March 23 2007 – Extension of Term/Amendment/Waiver to request a renewal of the term of a special permit granted pursuant to (Z.R. §73-36) which permits the operation of a Physical Culture Establishment located on the third and fourth stories of a building located in a C2-8/C8-4 zoning district.

PREMISES AFFECTED – 403 East 91st Street, north side of East 91st Street between 1st and York Avenues, Block 1571, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Margo Flug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

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102-95-BZ, Vol. IV

APPLICANT – The Law Office of Fredrick A. Becker, for The Argo Corporation as agent for 50 West 17 Realty Company, owner; Renegades Associate d/b/a Splash Bar, lessee.

SUBJECT – Application May 8, 2007 – Extension of Term of a special permit (§73-244) for a previously granted UG12 eating and drinking establishment with dancing (Splash Bar) for a term of three years which expired on March 5, 2007 in a C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for continued hearing.

149-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Brodcom West Development Company, owner; AGT Crunch, lessee.

SUBJECT – Application January 12, 2007 – Extension of term/Amendment for a physical culture establishment in a C4-7 zoning district, including legalization of change in operating entity and amend the hours of operations.

PREMISES AFFECTED – 35/75 West End Avenue, northwest corner of West End Avenue and West 61st Street, Block 1171, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

196-02-BZ, Vol. II

APPLICANT – Peter Hirshman, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application April 24, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy to a previously granted variance (ZR 72-21) for the addition of sleeping accommodations of 16 beds to an existing community facility (Dynamic Youth Community Inc.) in C8-2 zoning district.

PREMISES AFFECTED – 1826-32 Coney Island Avenue, west side of Coney Island Avenue, 46' North of Avenue O, Block 6549, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

238-06-A

APPLICANT – Kevin A. Finnegan, for Elizabeth Langwith, et al.

OWNER: Hudson 12th Development, LLC.

SUBJECT – Application September 12, 2006 – Appeal of the decision of the DOB refusal to revoke permits issued for a proposed dormitory (NYU) on a lot formerly occupied by St Anne's Church that allows the creation of a zoning lot under Section 12-10 (d) utilizing unused developmental rights from the United States Post Office, a government agency that is exempt from zoning regulations. C6-1 zoning district.

PREMISES AFFECTED – 110-124 East 12th Street, between Third and Fourth Avenue, Block 556, Lots 48 and 49, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Acting Manhattan Borough Commissioner, dated August 15, 2006 (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to requests from Elizabeth Langwith and other residents of 111 Fourth Avenue, Manhattan (“Appellants”) dated July 11 and July 12, 2006, asking that the Department of Buildings (“DOB”) withhold or revoke any permit issued in connection with Application No. 104311031 for the construction of a 26-story community facility at 110-124 East 12th Street (Block 556, Lots 48 and 49) (“the Dormitory Lots”) that relies on development rights obtained through a zoning lot merger with Block 556, Lot 36 (“the USPS Lot”) at which the United States Postal Service (“USPS”) operates its Cooper Station facility at 101-111 East 11th Street; and

WHEREAS, in the Final Determination, the Acting Manhattan Borough Commissioner denied this request on the following basis:

Notwithstanding the Department’s jurisdictional

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limitation over the USPS premises, development rights are associated with Lot 36. The ZR does not prohibit a merger of a lot owned by an entity exempt from the Department's jurisdiction. The new building permissibly used available floor area on the merged zoning lot that was derived from Lot 36. Thus, the applicant was entitled to the referenced building permit as of right.

WHEREAS, as reflected in the Final Determination, the Acting Manhattan Borough Commissioner denied this request because the new building on the Dormitory Lots permissibly used available floor area derived from the USPS Lot as a result of a zoning lot merger pursuant to the Zoning Resolution of the City of New York ("ZR") § 12-10(d); and

WHEREAS, the Final Determination acknowledged that the USPS, as a federal entity, is exempt from compliance with New York City zoning regulations; and

WHEREAS, the Final Determination stated that there is no prohibition in the ZR against the merger of lots, such as the USPS Lot, exempt from DOB's jurisdiction with other regulated lot(s) to form a zoning lot under ZR §12-10(d); and

WHEREAS, there is no provision of the ZR that would prohibit the use of development rights derived from the lot(s) exempt from DOB's jurisdiction anywhere within the zoning lot formed by such merger; and

WHEREAS, the use of the available development rights will result in the construction of a 26-story dormitory building for New York University by Hudson 12th Development LLC ("Hudson"), the owner of the Dormitory Lots; and

WHEREAS, a public hearing was held on this appeal on April 17, 2007 after due notice by publication in *The City Record*, and then to decision on June 12, 2007; and

WHEREAS, the Appellants, DOB, Hudson and the USPS have all been represented by counsel in this appeal; and

WHEREAS, various elected officials representing the area in which the Dormitory Site is located, including Councilwoman Mendez, Manhattan Borough President Stringer, U.S. Congressman Nadler, State Senator Duane, and State Assembly Member Glick, testified in support of the Appellants' request to revoke the permit, citing the lack of jurisdiction of the City of New York to prohibit the USPS from further development of the USPS Lot notwithstanding the use by Hudson on the Dormitory Lots of the development rights derived from the USPS Lot; and

WHEREAS, various civic organizations, including the Greenwich Village Society for Historic Preservation, the Village Independent Democrats, the Tribeca Community Association and the Canal West Coalition, and private citizens testified in support of the appeal, citing the same general concern; and

WHEREAS, all parties agree that the City of New York lacks jurisdiction to enforce the terms of the ZR against the USPS pursuant to the Supremacy Clause of the U.S. Constitution; and

WHEREAS, all parties agree that no provision of the

ZR explicitly prohibits the use of development rights derived from properties owned by governmental entities by private parties when there has been a zoning lot merger pursuant to ZR § 12-10 (Appellants' Letter Brief dated May 1, 2007 at 5); and

WHEREAS, Appellants argue that the use of development rights derived from the USPS Lot by Hudson on the Dormitory Lots is illegal (Appellants' Memorandum of Law dated September 12, 2006, at 2); and

WHEREAS, Appellants base their argument on two premises: 1) that because USPS is outside the scope of regulation by the ZR, no development rights generated by the USPS Lot should be deemed to exist, and 2) that because the USPS will remain beyond the jurisdiction of the City after Hudson has erected the building on the Dormitory Lots, the City will have no ability to enforce the ZR with respect to any future development by the USPS within the merged zoning lot; and

WHEREAS, Appellants base their argument on the illegality of the use of the development rights derived from the USPS Lot by Hudson on the Dormitory Lots on the premise that because the USPS, as a governmental entity, is not subject to the ZR, the City will be unable to prohibit the USPS from further development on the USPS Lot even after the development on the Dormitory Lots using the development rights derived from the USPS Lot has been completed (Id.); and

WHEREAS, Appellants argue that, despite the absence of any provision in the ZR that prohibits the use of development rights associated with properties owned by governmental entities exempt from City jurisdiction by private parties when there has been a zoning lot merger pursuant to ZR § 12-10, the Board should find that the ZR should treat the USPS differently from a private party in this instance (Appellants' Letter Brief of May 22, 2007 at 2); and

WHEREAS, Appellants base this argument on ZR § 74-792(e)(3), which provides "that in the case of landmark sites owned by the City, State or Federal Government, transfer of development rights shall be contingent upon provision by the applicant of a major improvement of the public pedestrian circulation or transportation system in the area"; and

WHEREAS, Appellants generalize from ZR § 74-792(e) that "Federal landowners are specifically singled out for special treatment under the law based entirely on the special status and identity of the landowner" (Id. at 3); and

WHEREAS, Appellants conclude that the Board should treat the USPS differently from a private party regulated under the ZR, deem the use of the development rights derived from the USPS Lot by Hudson on the Dormitory Lots to be contrary to law and against public policy, and grant the present appeal; and

WHEREAS, Appellants also argue that because the City lacks jurisdiction to regulate the USPS, permitting the use of the development rights from the USPS Lot on the Dormitory Lots within the merged zoning lot will result in

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a situation in which the USPS could subsequently enlarge its building on the USPS Lot, resulting in development on the merged zoning lot in excess of what would be allowed by the ZR if the entirety of the merged zoning lot were subject to the City's jurisdiction; and

WHEREAS, Appellants argue that the City's inability to enforce the ZR with respect to future development on the USPS Lot could result in a noncompliance with the ZR of both the merged zoning lot and the 26-story dormitory proposed to be constructed on the Dormitory Lots; and

WHEREAS, Appellants further argue that if the USPS does expand its Cooper Station facility located on the USPS Lot in the future, the City's only recourse would be to order Hudson or its successor to tear down all or part of the Dormitory so as to bring the merged zoning lot into compliance with zoning (Appellants' Letter dated May 1, 2007 at 3); and

WHEREAS, the Appellants deem such future action by the City to reduce any overdevelopment of the merged zoning lot, such as revoking the certificate of occupancy for the completed dormitory building or requiring Hudson to tear down the building, to be "implausible" (Id.); and

WHEREAS, Appellants argue that the use of the development rights derived from the USPS Lot by Hudson on the Dormitory Lots could create a situation in which development in excess of what the ZR would allow could exist on the merged zoning lot and create a condition for which the City would have no effective enforcement mechanism; and

WHEREAS, Appellants further argue that any private agreements that may exist between the USPS and Hudson with respect to future development on the USPS Lot are unenforceable by the City and therefore legally insufficient; and

WHEREAS, even assuming that the USPS has entered into an enforceable agreement with Hudson not to develop the USPS Lot further, Appellants argue that the City should not be forced to rely on Hudson or its successor(s) to enforce its agreements with the USPS that would limit development by USPS on the merged zoning lot to that required by the ZR (Appellants' Letter Brief dated May 1, 2007 at 2); and

WHEREAS, DOB notes that Appellants do not dispute that the USPS Lot and the Dormitory Lots were validly merged into a single zoning lot pursuant to ZR § 12-10(d) (DOB Letter Brief dated January 30, 2007 at 1); and

WHEREAS, DOB states that "[t]he ZR attributes floor area to a zoning lot without regard to ownership" (Id.); and

WHEREAS, in the instant case, DOB stated with respect to the merged zoning lot and the legality of the permit it granted:

[T]he merged lot contains 32,858 square feet. A floor area ratio of 6.5 in the C6-1 zoning district

allows a maximum 213,577 square feet of developable floor area on the zoning lot. Since the existing buildings on the zoning lot contained a total of 37,720 square feet of zoning floor area, 175,857 square feet of zoning floor area remained available for use on the zoning lot. The permit was lawful in that the plans for the proposed development provide that it will contain 175,786 square feet, an amount falling within the floor area limitation imposed on the merged zoning lot. Id.; and

WHEREAS, DOB states that Appellants' position that "the USPS parcel does not possess development rights because it is owned by a federal entity must fail because it contradicts the express recognition of federally-owned development rights set forth in ZR § 74-792" (Id. at 2); and

WHEREAS, DOB argues that Appellants do not claim a present harm and only envision a possible future harm (Id.); and

WHEREAS, consequently Appellants' grievance is not with the application of the ZR by DOB, but rather with the operation of the Supremacy Clause of the U.S. Constitution (Id.); and

WHEREAS, with respect to Appellant's argument that the potential for the USPS to develop the USPS Lot in the future so that the merged zoning lot does not comply with the ZR, DOB observes that possible remedies, such as enforcement of private agreements by the owner of the Dormitory Lots, further enlargement of the zoning lot, or reduction of the structure located on Lot 49, exist to address any noncompliance (Id. at 2); and

WHEREAS, DOB states that its determination to issue the permit is not dependent on "an ability to revoke the new building's certificate of occupancy or to enforce a restrictive declaration that obligates the USPS to limit the amount of floor area on its property" as suggested by Appellants (DOB Letter dated May 31, 2007 at 1); and

WHEREAS, Hudson states that "the ZR expressly recognizes that governmental agencies, like the USPS, have development rights that can be transferred," specifically in ZR § 74-79 (Transfer of Development Rights from Landmark Sites) and § 93-34 (Distribution of Floor Area in the Large Scale Plan Subdistrict A [within the Special Hudson Yards District]) (Memorandum in Opposition to Appellants' Appeal dated December 13, 2006 at 4); and

WHEREAS, ZR § 74-79 contains no prohibition against such transfers involving sites owned by entities otherwise exempt from regulation under the ZR; and

WHEREAS, ZR § 74-792(e)(3) specifically acknowledges the legality of such transfers involving "landmark sites owned by the City, State or Federal Government," by making such transfers contingent on "provision by the applicant of a major improvement of the public pedestrian circulation or transportation system in the

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area”; and

WHEREAS, ZR § 93-34 allows the distribution of floor area from the Eastern Railyards under the ownership of the MTA, a governmental entity that, like USPS, is exempt from the requirements of the ZR; and

WHEREAS, furthermore, DOB had previously expressly acknowledged by a letter dated February 29, 2000, that the development rights of government entities exempt from the requirements imposed by the ZR may be used by private parties when a zoning lot merger has been effected pursuant to ZR § 12-10 (Id. at Exhibit F); and

WHEREAS, DOB’s letter of February 29, 2000 specifically addressed a proposed zoning lot merger involving lots owned by the National Railroad Passenger Corporation (“Amtrak”), a federal entity exempt from the provisions of the Zoning Resolution, and the NYU/Mt. Sinai Medical Center Condominium (“Medical Center”) that would allow the Medical Center to use development rights derived from the Amtrak property notwithstanding Amtrak’s exemption from zoning regulation (Id. at 4); and

WHEREAS, DOB has approved the use of development rights derived from government-owned property in other instances, including two, the Orion Condominiums located at 250 W. 42nd Street and an apartment building at the intersection of East 23rd Street and Third Avenue, that involved development rights derived from USPS-owned property, and the Hudson Crossing project at Ninth Avenue and 37th Street involving development rights derived from a property owned by the Port Authority of New York and New Jersey which is similarly exempt from City jurisdiction (Id. at 4); and

WHEREAS, with respect to the Appellants’ argument that the USPS will be able to develop the USPS Lot in the future so that the merged zoning lot does not comply with the ZR, in addition to proposing to use the development rights from the USPS Lot, Hudson also entered into a Zoning Lot Development Agreement (“ZLDA”) and acquired a perpetual and irrevocable easement for light, air and unobstructed views (“Easement Agreement”) over the USPS Lot, both of which are annexed to the Hudson Memorandum in Opposition as Exhibits B and C; and

WHEREAS, the ZLDA and Easement Agreement restrict the USPS from further development of the USPS Lot; and

WHEREAS, the USPS argues, in response to Appellants’ argument that the use of the development rights derived from the USPS Lot by Hudson could result in a noncompliance of the merged zoning lot with the ZR, that it is subject to 39 U.S.C. § 409(f), which imposes the following affirmative duties on the USPS:

- (2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable

environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

- (3) For purposes of meeting the requirements of [the foregoing paragraph (2)] with respect to a building, the Postal Service shall –
 - (A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located; [and]
 - (B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time . . .
- (4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of [the foregoing paragraph 2]. Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendation. (USPS Letter Brief dated April 10, 2007 at 1); and

WHEREAS, 39 CFR 241.4(f) provides that “in carrying out [projects relating to customer service facilities], it is the policy of the Postal Service to comply with local planning and zoning requirements and building codes consistent with prudent business practices and unique postal requirements” (Id. at 2); and

WHEREAS, Appellants do not dispute the applicability of 39 U.S.C. § 409(f) or 39 CFR 241.4(f) to the USPS; and

WHEREAS, Appellants do not dispute the enforceability of the ZLDA or the Easement Agreement; and

WHEREAS, the Board finds that the ZR explicitly acknowledges the legality of the use by private parties of development rights derived from property owned by governmental entities when such rights are exercised in compliance with the ZR; and

WHEREAS, the Board finds DOB’s interpretation of the ZR in refusing to revoke or withhold the permits to be consistent with the plain language of the ZR; and

WHEREAS, the Board finds that nothing contained in the ZR prohibits or restricts the rights of private parties to use development rights derived from property owned by governmental entities not subject to City jurisdiction when there has been a zoning lot merger pursuant to the provisions of ZR § 12-10 between the government-owned

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and the privately owned lots; and

WHEREAS, the Board finds that the USPS Lot possesses development rights pursuant to the ZR and which are equal to the development rights that it would possess if it were owned by a private party subject to City jurisdiction; and

WHEREAS, the Board finds that DOB's actions in granting the permit to Hudson based on the development rights derived from the USPS Lot were consistent with the requirements of the ZR, DOB's policies, and DOB's past practices; and

WHEREAS, although it is in agreement with DOB's assertion that its issuance of the permit was not contingent on its ability to revoke the certificate of occupancy for the new building or to enforce the private agreements between Hudson and the USPS, the Board finds, in light of the obligations imposed on the USPS by 39 U.S.C. § 409(f), 39 CFR 241.4(f), the ZLDA and the Easement Agreement, that Applicant's argument that the Board should invalidate DOB's issuance of the permits to prevent the USPS from future overdevelopment of the merged zoning lot is entirely speculative; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Acting Manhattan Borough Commissioner, dated August 15, 2006, refusing to revoke the permit issued for construction of the dormitory at the Dorm Site, is hereby denied.

Adopted by the Board of Standards and Appeals, June 12, 2007.

70-06-A & 71-06-A

APPLICANT – Eric Palatnik, P.C., for James Pullano, owner.

SUBJECT – Application April 19, 2006 – Proposed construction of a two- story, three family dwelling located within the bed of mapped street (Zev Place) is contrary to General City Law Section 35. Premises is located within an R3-2 Zoning District.

PREMISES AFFECTED – 4 & 8 Rockwell Avenue, west of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lots 1& 3 (tent), Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 10,

2007, at 10 A.M., for continued hearing.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 12, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

86-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Emil Moshkovich,
owner.

SUBJECT – Application May 5, 2006 – Variance (§72-21)
to allow Use Group 7 (tire sales with installation services)
and Use Group 16 (automotive repair) in an R3-2/C1-2
district; contrary to use regulations (§32-10). An as-of-right
eating and drinking establishment (Use Group 6) is also
proposed. Additionally, a Special Permit under §73-44 is
requested to allow the reduction of required off-street
parking requirements.

PREMISES AFFECTED – 145-70 Guy R. Brewer
Boulevard, northwestern corner of the intersection between
Guy Brewer and Farmers Boulevards, Block 13309, Lots 36,
42, 44, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Adopted by the Board of Standards and Appeals, June
12, 2007.

259-06-BZ

CEQR #07-BSA-018K

APPLICANT – Law Office of Fredrick A. Becker, for Ahi
Ezer Congregation, owner.

SUBJECT – Application September 22, 2006 – Variance
(§72-21) to permit the enlargement of an existing synagogue
located in an R5 (OP) zoning district. The proposal is
contrary to open space coverage (§24-11), side yards (§24-
35), front yards (§24-34), height and setback (§24-50 and
§24-521), parking (§25-18 and §25-31), and front yard not
fully landscaped (§113-30).

PREMISES AFFECTED – 1885-1891 Ocean Parkway, a/k/a
601 Avenue S, Block 6682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated April 24, 2007, acting on Department
of Buildings Application No. 302146997, 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/coverage, which is
contrary to ZR Section 23-141(b)
- (3) Proposed enlargement increases the degree of
non-compliance of an existing building with
respect to side yards, which is contrary to ZR
Section 23-464 & 23-662
- (4) Proposed enlargement increases the degree of
non-compliance of an existing building with
respect to front yards, which is contrary to ZR
Section 113-12 & 23-45
- (5) Proposed enlargement increases the degree of
non-compliance of an existing building with
respect to wall height, setback and sky
exposure plane, which is contrary to ZR
Section 23-631
- (6) Proposed plans are contrary to ZR Section 25-
18 and ZR Section 25-31, in that the proposed
number of parking spaces is less than the
minimum required number of parking spaces
- (7) Proposed plans are contrary to ZR Section
113-30 in that the front yard is not fully
landscaped.”; and

WHEREAS, this is an application under ZR § 72-21 to
permit, within an R5 zoning district, within the Special Ocean
Parkway District (OP), the enlargement of an existing one-
and two-story synagogue, which will not comply with the
requirements for floor area ratio, open space, lot coverage,
side yards, front yards, wall height, setback, sky exposure
plane, parking, and landscaping, contrary to ZR §§ 23-
141(b), 23-464, 23-662, 113-12, 23-45, 23-631, 25-18, 25-
31, and 113-30; and

WHEREAS, the application is brought on behalf of Ahi
Ezer Congregation (the “Synagogue”), a nonprofit religious
institution; and

WHEREAS, a public hearing was held on this
application on April 17, 2007, after due notice by publication
in the *City Record*, with a continued hearing on May 15,
2007, and then to decision on June 12, 2007; and

WHEREAS, Community Board 15, Brooklyn,
recommends approval of this application; and

WHEREAS, the site and surrounding area had a site and
neighborhood examination by a committee of the Board,

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including Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located on the northeast corner of Ocean Parkway and Avenue S; and

WHEREAS, because the site is within an R5 zoning district within the Special Ocean Parkway District, the residential bulk regulations, not the community facility bulk regulations, apply; and

WHEREAS, the subject site has a total lot area of 8,241.3 sq. ft.; and

WHEREAS, the site is occupied by a one- and two-story synagogue building; and

WHEREAS, the Synagogue currently occupies 6,245.59 sq. ft. of floor area on the first floor and 3,172.32 sq. ft. of floor area on the second floor for a total floor area of 9,417.91 sq. ft. (1.14 FAR) (the maximum permitted floor area and FAR are 10,301.62 sq. ft. and 1.25, respectively); and

WHEREAS, the applicant proposes to build a two-story enlargement above the one-story portion of the building; the envelope of the existing two-story portion of the building at the corner of Ocean Parkway and Avenue S will not change (the existing building with the enlargement is hereinafter the "New Building"); and

WHEREAS, the New Building will provide for a total floor area of 6,327.7 sq. ft. on the first floor, 4,560.68 sq. ft. on the second floor, and 2,292.17 sq. ft. on the third floor for a total of 13,180.55 sq. ft. (1.60 FAR); and

WHEREAS, the applicant proposes to increase the lot coverage from 75.7 percent to 76.7 percent (55 percent is the maximum permitted) and reduce the open space from 1,995.71 sq. ft. to 1,913.60 sq. ft. (3,708.58 sq. ft. is the minimum required); and

WHEREAS, the enlargement of the first floor and the increased lot coverage are due to filling in a small notch of open space at the inside rear corner of the site; and

WHEREAS, the enlargement also increases the degree of non-compliance as to the two side yards and the front yard on Avenue S, in order to maintain a continuous streetwall; and

WHEREAS, the applicant proposes to maintain the wall and total height of the existing two-story portion of the building at 35'-11"; the wall and total height of the new three-story portion will be 36'-6" and will line up with the existing parapet (the maximum permitted wall height is 32'-0" before a 15'-0" setback); and

WHEREAS, the applicant represents that the required landscaping cannot be provided due to the existing site conditions; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Synagogue, which seeks to expand and reconfigure its existing facilities in order to accommodate its current congregation; and

WHEREAS, the proposed uses include: (1) maintaining the current uses in the cellar; (2) enlarging the

existing conference/classroom area and adding a men's restroom on the first floor; (3) adding of a new passenger elevator; (4) increasing facilities for women on the second floor; (5) adding a new conference/classroom area, rabbi's office, and restrooms on the new second floor; and (6) adding a new conference/classroom area, restrooms, and a kitchen on the new third floor; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Synagogue: (1) a need to better accommodate an increase in the number of congregants; (2) a need to provide additional worship space and facilities for women and girls; (3) a need to expand the conference/classroom space to accommodate educational programs; (4) a need to provide additional restrooms; (5) a need to provide private meeting space for congregants to meet with the rabbi; and (6) a need to provide handicapped accessibility to all portions of the building; and

WHEREAS, as to attendance, the applicant states that the Synagogue has occupied the existing building since 1970 and now serves approximately 500 families, which cannot be efficiently accommodated in the existing building; and

WHEREAS, the applicant represents that the existing Synagogue space cannot accommodate this number of worshipers on a regular basis or accommodate any anticipated growth; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the enlargement of the building is necessary to address the Synagogue's needs, given the limitations of the existing building; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the existing building, when considered in conjunction with the programmatic needs of the Synagogue, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Synagogue is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant represents that the context of the immediate neighborhood includes two- and three-story dwellings, a two-story synagogue, a four-story school, a four-story place of assembly, and two-, three-, and four-story multiple dwellings; and

WHEREAS, the applicant notes that the height of the new portion of the building will closely match that of the existing building; and

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WHEREAS, additionally, the applicant notes that the Synagogue is a permitted use which already exists at the site; and

WHEREAS, further, the applicant asserts that the larger capacity of the Synagogue will accommodate the existing number of congregants and will relieve overcrowding, while permitting incremental increases in attendance; and

WHEREAS, additionally, the vast majority of congregants live within a close proximity of the Synagogue and walk to the site, so there is no discernible impact on traffic; and

WHEREAS, the Board agrees that the proposed enlargement, which will relieve overcrowding conditions, is compatible with the surrounding neighborhood; and

WHEREAS, at hearing, the Board directed the applicant to ensure that the proposed roof railing complies with Building Code requirements; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Synagogue; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Synagogue to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-018K, dated February 9, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and

Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R5 zoning district, within the Special Ocean Parkway District, the enlargement of an existing one- and two-story synagogue, which will not comply with the requirements for floor area ratio, open space, lot coverage, side yards, front yards, wall height, setback, sky exposure plane, parking, and landscaping, contrary to ZR §§ 23-141(b), 23-464, 23-662, 113-12, 23-45, 23-631, 25-18, 25-31 and 113-30, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 22, 2006"-(5) sheets, "February 9, 2007"-(4) sheets and "May 29, 2007"-(1) sheet; and *on further condition*:

THAT the new building will have the following parameters: a total floor area of 13,180.55 sq. ft. (1.60 FAR); lot coverage of 76.7 percent; open space of 1,913.60 sq. ft.; and a wall and total height of 36'-6", 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 objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 12, 2007.

302-06-BZ
CEQR #07-BSA-038K

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Institute, owner.

SUBJECT – Application November 15, 2006 – Variance (§72-21) to permit the construction of a mezzanine and a two-story enlargement over the existing two-story

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community facility building. The premise is located in a R6 zoning district and the Ocean Parkway Special Zoning District Sub-District. The proposal is contrary to §24-11. PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner Avenue R, north side Avenue R between Ocean Parkway and East 77th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Betty Carr.

ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 21, 2006, acting on Department of Buildings Application No. 301275046, reads in pertinent part:

“The Proposed enlargement of a synagogue in Use Group 4 and a yeshiva school in Use Group 3 in an R6A zoning district in the Ocean Parkway Special Zoning District:

- (1) Increases the Floor Area Ratio above the permitted and is contrary to Sections 54-31 and 113-51 ZR.
- (2) Increases the degree of non-compliance with respect to front yards and is contrary to Section 113-542.
- (3) Increases the degree of non-compliance with respect to setback and sky exposure plane and is contrary to Section 23-631 ZR.
- (4) Creates non-compliance with respect to FAR for community facility use in Use Groups 3 & 4 and is contrary to Section 24-11 ZR.
- (5) Extends the degree of non-compliance with respect to perimeter wall height and total height and is contrary to Sections 23-631 and 54-31.”; and

WHEREAS, this is an application under ZR §72-21 to permit, within an R6A zoning district, within the Special Ocean Parkway District (OP), the enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which will not comply with the requirements for floor area ratio, front yards, setback, sky exposure plane, and perimeter wall and total height, contrary to ZR §§54-31, 113-51, 113-542, 23-631, and 24-11; and

WHEREAS, the application is brought on behalf of Mirrer Yeshiva Central Institute (the “Yeshiva”), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in the *City Record*, and then to decision on June 12, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Simcha Felder

provided testimony in support of the application; and

WHEREAS, the applicant submitted 24 letters in support of the application; and

WHEREAS, the site and surrounding area had a visit and examination by a committee of the Board, including Chair Srinivasan; and

WHEREAS, the through-block site is located on the north side of Avenue R, with frontage on Ocean Parkway and East 77th Street, within an R6A (OP) zoning district; and

WHEREAS, the subject site has a total lot area of 24,807.7 sq. ft.; and

WHEREAS, for zoning purposes, the site is divided into the following four components: (1) the westernmost portion of the site at the corner of Ocean Parkway and Avenue R is identified as a corner lot within the Special Ocean Parkway District; (2) the middle portion of the site, which is located on Avenue R, 100 feet from Ocean Parkway and 100 feet from East 77th Street, is identified as an interior lot; the western half is within only the Special Ocean Parkway District and the eastern half is also within the Ocean Parkway Sub-district; and (3) the easternmost portion of the site at the corner of East 77th Street and Avenue R is identified as a corner lot within both the Special Ocean Parkway District and the Ocean Parkway Sub-district; and

WHEREAS, accordingly, community facility zoning regulations apply to the two western portions of the site, which are within the Special Ocean Parkway District and residential zoning regulations apply to the two eastern portions of the site, which are also within the Ocean Parkway Sub-district; thus, not all the noted DOB objections apply across the entire site; and

WHEREAS, specifically, (1) the westernmost portion of the site does not require any waivers, (2) the second portion of the site requires waivers for front yards, and (3) the remainder of the site requires waivers for FAR, height, setback, and encroachment into the sky exposure plane since it is subject to residential zoning district regulations; and

WHEREAS, the site is occupied by a yeshiva and synagogue building with portions of heights of one, two, and four stories; the yeshiva provides facilities for nursery, elementary, and high school levels, a rabbinical seminary, a post graduate division, and a dormitory; and

WHEREAS, the Yeshiva currently occupies 56,544.43 sq. ft. of total floor area (2.28 FAR); note that the FAR is based on an average across the site; and

WHEREAS, the maximum permitted FAR within the western half of the site, which is within only the Special Ocean Parkway District is 3.0 and the maximum permitted FAR within the eastern half of the site, which is also within the Ocean Parkway Sub-district is 1.5; and

WHEREAS, the easternmost portion of the site has pre-existing non-complying conditions from when it was built in approximately 1950; and

WHEREAS, the applicant proposes to build a two-story and mezzanine enlargement above the two-story portion of the building, which will fill in the middle of the building and result in a four-story building across the site; and

WHEREAS, the height of the middle portion of the

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building is designed to match the height of the western portion of the building and provides a slight increase in height from the existing eastern portion of the building; and

WHEREAS, the building is currently under construction, at the westernmost portion, pursuant to as of right building plans approved by DOB; and

WHEREAS, the applicant represents that the Yeshiva's needs have changed since the first enlargement was contemplated; and

WHEREAS, therefore, the applicant now proposes to modify the plans to remove a small portion of the approved building and add the components which are the subject of this application (the existing building with the enlargement is hereinafter the "New Building"); and

WHEREAS, the New Building will provide for a total floor area of 66,148.04 sq. ft. (2.67 FAR); this includes an additional 3,552.49 sq. ft. on the third floor, a new 3,025.56 sq. ft. third-floor mezzanine, and an additional 3,025.56 sq. ft. on the fourth floor; and

WHEREAS, the enlargement increases the degree of non-compliance as to yards; and

WHEREAS, the applicant proposes to maintain the wall and total height of the existing and approved four-story portions of the building at 56'-2" and 58'-0", respectively; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Yeshiva, which seeks to expand and reconfigure its existing facilities in order to accommodate its current enrollment; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Synagogue: (1) a need to better accommodate the current student enrollment and relieve overcrowding; (2) a need to provide additional classroom space; (3) a need to reduce class size; (4) a need to provide additional dormitory space; (5) a need to permit students to traverse from the eastern and western ends of the building without having to exit and re-enter the building; and (6) the establishment of a Holocaust memorial; and

WHEREAS, as to enrollment, the applicant states that the Yeshiva now serves approximately 1200 students and has a waiting list; and

WHEREAS, the applicant represents that this enrollment cannot be accommodated in the existing classrooms and that portions of the gym and library are being used as classrooms; and

WHEREAS, the applicant represents that the proposed enlargement would permit classes to be held in classrooms and to resume the intended use of the gym and library; and

WHEREAS, as to class size, the applicant represents that a goal of the school is to alleviate overcrowding of classes by reducing class size from 27 to 25 students; and

WHEREAS, as to the dormitory space, the applicant represents that the current facilities, including two off-site dormitories, cannot accommodate the demand for beds; and

WHEREAS, the proposal provides for 14 additional dorm rooms, which would alleviate overcrowding of the existing dorm rooms and provide additional space for those

on the waiting list; and

WHEREAS, the applicant represents that there is a waiting list of approximately 40 students for the dormitory; and

WHEREAS, as to student circulation within the building, because the eastern and western portions of the building, as approved, are both four stories and the middle portion is only two stories, students must exit the building on the Avenue R frontage and re-enter across the site; and

WHEREAS, the proposal which would match the height of the two end portions of the building would permit smooth circulation within the building and eliminate the need to exit to get across the site; and

WHEREAS, the applicant represents that the Yeshiva will provide a Holocaust memorial within the New Building; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the enlargement of the building is necessary to address the Yeshiva's needs, given the limitations of the existing building; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the existing building, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Yeshiva is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR §72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant represents that the context of the immediate neighborhood includes two- and three-story dwellings, and five- and six-story multiple dwellings, and several community facilities and schools of comparable heights; and

WHEREAS, the applicant notes that the height of the new portion of the building will closely match that of the existing building; and

WHEREAS, additionally, the applicant notes that the Yeshiva is a permitted use which already exists at the site; and

WHEREAS, further, the applicant asserts that the larger capacity of the Yeshiva will accommodate the existing enrollment and will relieve overcrowding, while permitting incremental enrollment increases; and

WHEREAS, additionally, the vast majority of students and congregants live within a close proximity of the Yeshiva and walk to the site, so there is no discernible impact on traffic; and

WHEREAS, the Board agrees that the proposed

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enlargement, which will relieve overcrowding conditions, is compatible with the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Yeshiva; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Yeshiva; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-038K, dated February 1, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance to permit, within an R6A zoning district, within the Special Ocean Parkway District, the enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which will not comply

with the requirements for floor area ratio, front yards, setback, sky exposure plane, and perimeter wall and total height, contrary to ZR §§54-31, 113-51, 113-542, 23-631, and 24-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 28, 2007"-(4) sheets and "May 29, 2007"-(4) sheets; and *on further condition*:

THAT the new building will have the following parameters: a total floor area of 66,148.04 sq. ft. (2.67 FAR); and a wall and total height of 58'-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 objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 12, 2007.

378-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for deferred decision.

43-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Emmanuel Charismatic Church, owner.

SUBJECT – Application March 13, 2006 – Zoning variance under §72-21 to allow a proposed house of worship to violate requirements for lot coverage (§24-11), front wall height (§24-521), front yard (§24-34), side yards (§24-35(a)), and accessory parking (§25-31). R5 district.

PREMISES AFFECTED – 31-09 35th Avenue, north side of 35th Avenue, 80' 10" east of 31st Street, Block 608, Lots 3 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker and Melguisedee

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Quintero.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10,
2007, at 1:30 P.M., for decision, hearing closed.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda,
owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit
(\$73-36) to allow the legalization of a PCE in a portion of
the cellar and a portion of the first floor in a three-story
building in a C2-3/R6 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest
corner of Union Street and Columbia Street, Block 335, Lot
7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Off Calendar.

75-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer
Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance
pursuant to §72-21 to allow a proposed twenty-one (21)
story residential building with ground floor retail and
community facility uses to violate applicable FAR (§23-142
and §35-22), open space ratio (§23-142, §35-22 and §35-33)
and sky exposure plane (§23-632) regulations. The proposed
building would include 136 dwelling units and 146 parking
spaces. The project site is located within an R7-1/C1-2
zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast
corner of Queens Boulevard and 71st Avenue, Block 2224,
Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

For Opposition: C. Louis Putallaz, Judith Roga, Margot
Lauchheimer, Obert, Walter Lauchheimer, Lane Steinberg,
Allen Steinberg and Abe Kregger.

ACTION OF THE BOARD – Laid over to July 17,
2007, at 1:30 P.M., for continued hearing.

108-06-BZ

APPLICANT– Eric Palatnik, P.C., for S & L-G Realty
Corp., owner.

SUBJECT – Application May 30, 2006 – Zoning variance
under §72-21 to allow a proposed 15-story residential

building (U.G. 2) containing twenty-six (26) dwelling units
and ground floor retail use (U.G. 6) to locate in an M1-6
district; contrary to §42-00 (use regulations).

PREMISES AFFECTED – 143 West 30th Street, between 6th
and 7th Avenues, Block 806, Lot 4, Borough of Manhattan
COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 17,
2007, at 1:30 P.M., for continued hearing.

114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr
Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit
(\$73-622) to allow the legalization of an enlargement to a
single family home in an R3-1 zoning district, which
exceeds the allowable floor area ratio, open space and lot
coverage (§23-141); provides less than the minimum
required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of
Norfolk Street between Shore Boulevard and Oriental
Boulevard, Block 8756, Lot 10, Borough of Brooklyn

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 24,
2007, at 1:30 P.M., for continued hearing.

131-06-BZ

APPLICANT – Papa Architects, for Beach-Land Realty,
owner.

SUBJECT – Application June 23, 2006 – Special Permit
pursuant to Z.R. §73-36 to permit the legalization of an
existing Physical Culture Establishment in a one-story
portion of the existing building. The Premise is located in a
C4-2 zoning district. The proposal is contrary to Z.R. §32-
10.

PREMISES AFFECTED – 146 New Dorp Lane, a/k/a 146-
154 New Dorp Lane, Block 4209, Lot 1, Borough of Staten
Island.

COMMUNITY BOARD #2 SI

APPEARANCES –

For Applicant: Papa Architects and Philip Pennacchia.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10,
2007, at 1:30 P.M., for decision, hearing closed.

152-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for

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Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Thomas J. Carbone and William Tanzosh FDNY.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing.

261-06-BZ

APPLICANT – Sheldon Lobel, P.C, for Congregation Mazah, owner.

SUBJECT – Application September 25, 2006 – Variance (§72-21) to permit the construction and operation of a Yehsiva (Use Group 3A) and accessory synagogue (Use Group 4A) in a M1-2 zoning district. The proposal is contrary to section 42-10.

PREMISES AFFECTED – 87-99 Union Avenue, west side of Union Avenue at the intersection of Harrison Avenue, Union Avenue and Lorimer Street, Block 2241, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for decision, hearing closed.

301-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111' north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for an adjourned hearing

322-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Hamid Kavian, owner.

SUBJECT – Application December 13, 2006 – Variance (§72-21) to permit the construction of a two family dwelling on a vacant lot with less than the required side yards contrary to ZR §23-48 in an R3-2 zoning district.

PREMISES AFFECTED – 117-57 142nd Place, east side of 142nd Place, between 119th Road and Foch Boulevard, Block 12015, Lot 317, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for decision, hearing closed.

32-07-BZ

APPLICANT– Omnipoint Communications Inc., for E.C. Hassell Inc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application January 24, 2007 – Special Permit §73-30 and §22-21 – In an R3-2 zoning district, for a non-accessory radio tower for a public utility wireless communications facility and consist of a 62-ft. stealth flagpole (gold ball on top), together with antennas mounted and equipment cabinets on roof of nearby commercial building.

PREMISES AFFECTED – 146-10/16 Guy R. Brewer Boulevard, 240' south of the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, Block 13310, Lots 69 & 70, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Bandioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 1:30 P.M., for decision, hearing closed.

46-07-BZ

APPLICANT– Sheldon Lobel, P.C., for Moishe Bergman, owner.

MINUTES

SUBJECT – Application February 15, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1328 East 23rd Street, located on the west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing.

54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss, owner.

SUBJECT – Application February 23, 200 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1776 East 26th Street, west side of 26th Street, between Avenue R and Quentin Road, 200' north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Katherine A. Levine and Edward Jaworski.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for an adjourned hearing.

72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado, owner.

SUBJECT – Application March 28, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1941 East 26th Street, eastern side of 26th Street between Avenue S and Avenue T, Block 7305, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Ed Jacorski.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing

99-07-BZ

APPLICANT – Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper for MBCG

Judith Baron, Dr. Leonard F.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 1:30 P.M., for a continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 4:30 P.M.

BULLETIN

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June 28, 2007

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Tuesday, June 19, 2007**

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520-89-BZ	65 Audobon Avenue, Manhattan
346-98-BZ	3701 Amboy Road, Staten Island
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104-07-BZ 1243 East 29th Street, Brooklyn

CORRECTION501

513-82-BZ 155 Hope Street, Brooklyn

DOCKETS

New Case Filed Up to June 19, 2007

160-07-BZ

3880 Cannon Tower LLC, South side of Cannon Place at the intersection of Cannon Place and Orloff Avenue., Block 3263, Lot(s) 357, Borough of **Bronx, Community Board: 8**. Under 72-21-To permit the complete development of three attached residential dwellings.

161-07-BZ

3882 Cannon Tower LLC, South side of Cannon Place at the intersection of Cannon Place and Orloff Avenue., Block 3263, Lot(s) 358, Borough of **Bronx, Community Board: 8**. Under 72-21-To permit the complete development of three attached residential dwellings.

162-07-BZ

3884 Cannon Tower LLC, South side of Cannon Place at the intersection of Cannon Place and Orloff Avenue., Block 3263, Lot(s) 258, Borough of **Bronx, Community Board: 8**. Under 72-21-To permit the complete development of three attached residential dwellings.

163-07-A

11 Cliff Street, Northeast corner of Cliff Street and Cliff Court., Block 2833, Lot(s) (tent. 65), Borough of **Staten Island, Community Board: 1**. General City Law Section 35-To permit the proposed development of a accessory parking lot.

164-07-BZ

280 Marsh Avenue, North of Platinum Avenue, west of Marsh Avenue, east of Staten Island Mall Drive., Block 2400, Lot(s) 300, Borough of **Staten Island, Community Board: 2**. (SPECIAL PERMIT)-73-36-For a proposed Physical Culture Establishment.

165-07-BZ

144 East 44th Street, On the south side of 44th Street, Block 1298, Lot(s) 45, Borough of **Manhattan, Community Board: 6**. Variance-32-655- To install an exterior sign on the west façade of the building. An obstruction by an existing adjacent building makes it impossible to comply with height restriction outlined in ZR 32-655.

166-07-BZ

213 Court Street, Between Wyckoff and Warren Streets, Block 390, Lot(s) 5, Borough of **Brooklyn, Community Board: 2**. (SPECIAL PERMIT)-73-36-To legalize a Physical Culture Establishment.

167-07-BZ

220 Amherst Street, West side 140'-0" south of Oriental Boulevard between Oriental Boulevard and the Esplanade., Block 8738, Lot(s) 62, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT) -73-622-Proposed to build a two story front and two story rear enlargement.

168-07-A

1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway., Block 3895, Lot(s) 58, Borough of **Bronx, Community Board: 9**. Appeals-Seeks a determination that the owner of the premises acquired a common-law vested right to continue the development of an eight (8) family residential building.

169-07-BZ

626 West 254th Street, Southerly line of 254th Street, east of intersection of West 254th Street and Independence Avenue., Block 5942, Lot(s) 192, Borough of **Bronx, Community Board: 8**. Under 72-21-To permit a more narrow lot than what is legally permitted.

170-07-BZ

630 West 254th Street, Southerly line of 254th Street, east of intersection of West 254th Street and Independence Avenue., Block 5942, Lot(s) 308, Borough of **Bronx, Community Board: 8**. Under 72-21-To permit a more narrow lot than what is legally permitted.

171-07-BZ

167 Norfolk Street, Located on the east of Norfolk Street between Shore Boulevard and Oriental Boulevard., Block 8757, Lot(s) 30, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT)-73-622-To allow the legalization of the enlargement of a one family residence.

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

JULY 24, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 24, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1328-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC., owner.
SUBJECT – Application June 5, 2007 – Extension of Term for a variance, originally granted under §60(3) of the Multiple Dwelling Law.
PREMISES AFFECTED – 165 West End Avenue, 100' northwest corner of West 66th Street and End Avenue, Block 1179, Lot 17, Borough of Manhattan.
COMMUNITY BOARD #7M

1330-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.
SUBJECT – Application June 5, 2007 – Extension of Time to request a variance, originally granted under §60(3) of the Multiple Dwelling Law.
PREMISES AFFECTED – 205 West End Avenue, West 70th Street, between West End and Freedom Place, Block 1179, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #7M

1332-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.
SUBJECT – Application June 5, 2007 – Extension of Term – To request a variance, originally granted under Section 60(3) of the Multiple Dwelling Law.
PREMISES AFFECTED – 185 West End Avenue, northwest corner of West 66th Street and West End Avenue, Block 1179, Lot 50, Borough of Manhattan.
COMMUNITY BOARD #7M

247-85-BZ

APPLICANT – Francis R. Angelino, Esq., for Herald Towers, LLC, owner; TSI Herald, Inc., lessee.
SUBJECT – Application January 8, 2007 – Extension of Term/Waiver – Reopening of a special permit for a Physical Culture Establishment located in an C5-3, C6-6(MID) zoning district.

PREMISES AFFECTED – 40/60 West 34th Street, a/k/a 1282/130 Broadway, southeast corner of West 34th Street and Broadway, Block 835, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #5M

84-07-A & 85-07-A

APPLICANT – Law Office of Anthony J. Tucci, for Brook Property Management, LLC, owner.
SUBJECT – Application April 18, 2007 - Proposal to build two, semi- attached, one family homes which does not front on a mapped street contrary to Article 3, §36 of the General City Law and NYC Building Code §27-291 . R3-1 Zoning District.
PREMISES AFFECTED – 12 & 14 Brook Avenue, near Hylan Boulevard, Block 4721, Lots 45 & 46, Borough of Staten Island.
COMMUNITY BOARD #2SI

149-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Edward Joyce, lessee.
SUBJECT – Application June 7, 2007 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law and the proposed upgrade on an existing legal non-conforming private disposal system partially in the bed of the Service Road is contrary to Building Department Policy. R4 Zoning District.
PREMISES AFFECTED – 17 Roosevelt Walk, southeast corner of Roosevelt Walk and West End Avenue, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

JULY 24, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday afternoon*, July 24, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

325-06-BZ

APPLICANT – Eric Palatnik, P.C., for Escava Brothers, owners; Ludlow Fitness, lessee.
SUBJECT – Application December 15, 2006 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment to be located on the second floor of the building under construction. The proposal is contrary to §32-00. C6-1 district.
PREMISES AFFECTED – 100 Delancey Street, between

CALENDAR

Ludlow Street and Essex Street, Block 410, Lot 71,
Borough of Manhattan.
COMMUNITY BOARD #1M

Lot 38, Borough of Brooklyn.
COMMUNITY BOARD #15BK

327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 58th and Lex Associates, owner; Manhattan Sports Performance, LLC, lessee.

SUBJECT – Application December 20, 2006 – Special Permit (§73-36) to legalize the existing PCE located at the sixth floor in a fourteen-story plus penthouse commercial building. The proposal is contrary to §32-10. C5-2 district.

PREMISES AFFECTED – 133 East 58th Street, between Lexington and Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

53-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19th Street, Block 888, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

66-07-BZ

APPLICANT – Eric Palatnik, P.C., for High Definition Fitness, Inc., owner.

SUBJECT – Application – Special Permit (§73-36) to allow a PCE on the third floor of a three-story building. The proposal is contrary to §42-31. M1-1 district.

PREMISES AFFECTED – 3038 Atlantic Avenue, between Essex and Sheperd Avenues, Block 3972, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #5BK

98-07-BZ

APPLICANT – Eric Palatnik, P.C., for Yuri Gokhberg, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); rear yard (§23-47) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 67 Amherst Street, north of Hampton Avenue, south of Shore Boulevard, Block 8727,

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 19, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

198-66-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners, Corp., owner.

SUBJECT – Application April 17, 2007 – Extension of Time to Complete Construction to permit modification to the size, configuration and design of an existing plaza for a residential high rise building which expired on January 19, 2006; an Extension of Time to obtain a Certificate of Occupancy which expired on October 19, 2006 and a waiver of Rules of Practice and Procedure located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, southeast corner of 2nd Avenue and East 74th Street, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the modification of an existing plaza for a residential building, which expired on January 19, 2006; and

WHEREAS, a public hearing was held on this application on June 5, 2007, after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject premises is located on the southeast corner of Second Avenue and 74th Street, within a C1-9 zoning district; and

WHEREAS, on May 3, 1966, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a 36-story mixed-use commercial/residential building at the site; and

WHEREAS, the grant was subsequently amended and the time to complete construction extended at various times; and

WHEREAS, most recently, on April 19, 2005, the grant

was amended to permit a reduction in the size (which did not affect the required amount of space associated with the building's floor area increase) and a reconfiguration of the plaza for the 36-story building; and

WHEREAS, a condition of the grant was that work be completed within nine months of the date of the grant and a new certificate of occupancy be obtained within 18 months of the date of the grant; and

WHEREAS, the applicant represents that due, in part, to discussions with the MTA about the potential to use the plaza as a staging area for its construction work and, in part, to financial concerns, the plaza has not been completed; and

WHEREAS, this application seeks an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, a neighbor provided testimony that the plaza was not being secured and maintained free of debris during the construction delay; and

WHEREAS, in response, the applicant provided an affidavit from the assistant vice president of the building's owners' corporation stating that garbage and recycling will be collected and stored outside of the plaza area; and

WHEREAS, at hearing, the applicant stated that MTA would not need to use the space as a staging area and, therefore, were no longer delayed; and

WHEREAS, at hearing, the applicant stated that construction could resume in six months and would take another six months to complete; and

WHEREAS, based upon its review of the record, the Board finds that a one-year extension of term to complete construction and an additional one year to obtain a certificate of occupancy are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 3, 1966, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a period of one year from the date of this grant and to permit a period of two years from the date of this grant to obtain a certificate of occupancy; *on condition* that any and all work shall substantially conform to the approved drawings and *on further condition*:

THAT construction shall begin by December 19, 2007 and be substantially completed by June 19, 2008;

THAT a certificate of occupancy shall be obtained by June 19, 2009;

THAT the plaza shall be secured and maintained free of debris prior to and during construction;

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."

MINUTES

(DOB Application No. 103595012)

Adopted by the Board of Standards and Appeals, June 19, 2007.

135-67-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Avenue “K” Corp., owner.

SUBJECT – Application April 3, 2007 – Extension of Term of a gasoline service station with minor auto repairs (Exxon) for 10 years which will expire on October 11, 2007 in an R3-2 zoning district.

PREMISES AFFECTED – 2063/91 Ralph Avenue, northwest corner of Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, and an extension of term for a previously granted variance for a gasoline service station, which will expire on October 11, 2007; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2007, and then to decision on June 19, 2007; and

WHEREAS, Community Board 18, Brooklyn, has made no recommendation with respect to the approval of this application; and

WHEREAS, the site is located on the northeast corner of Ralph Avenue and Avenue K; and

WHEREAS, the site is located in an R3-2 zoning district and is improved with a gasoline service station with two gasoline pump islands with two multiple pump dispensers on each island, an accessory automobile repair building, and on-site accessory parking spaces for cars awaiting service; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 26, 1960 when, under BSA Cal. No. 546-59-BZ, the Board granted a variance for the construction of a gasoline service station with accessory uses; and

WHEREAS, on July 11, 1967, under the subject calendar number, the Board amended the grant to permit the reconstruction of the service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board three times; and

WHEREAS, on December 22, 1998, the grant was amended to permit an extension of the term of the variance for an additional ten years until October 11, 2007; and

WHEREAS, most recently, on November 26, 2002, the Board extended the time to obtain a new certificate of occupancy until November 26, 2004; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy 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 July 11, 1967, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 11, 2007, to expire on October 11, 2017, and to permit a six-month extension of time to obtain a certificate of occupancy, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received April 3, 2007’–(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 11, 2017;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by December 19, 2007;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 302292070)

Adopted by the Board of Standards and Appeals, June 19, 2007.

215-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for East 72nd Realty, LLC, owner.

SUBJECT – Application May 13, 2007 – Extension of Term/Waiver for an additional ten years the term of a variance previously granted pursuant to Section 60(3) of the Multiple Dwelling Law, allowing surplus parking spaces in an attended accessory garage to be used for transient parking located in an R10, R8B and C2-8/R10A zoning district.

PREMISES AFFECTED –1353-1367 York Avenue, west side of York Avenue between East 72nd and 73rd Streets, Block 1467, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

MINUTES

APPEARANCES –

For Applicant: Elizabeth Laise.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

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 the term for a previously granted variance for a transient parking garage, which expired on October 24, 2003; and

WHEREAS, a public hearing was held on this application on June 5, 2007, after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of York Avenue between East 72nd Street and East 73rd Street; and

WHEREAS, the site is occupied by a 37-story mixed-use building with medical offices on the ground floor and residential use above; and

WHEREAS, the site is located partially within an R10 zoning district, partially within an R8B zoning district, and partially within a C2-8 (R10A) zoning district; and

WHEREAS, the cellar, subcellar, and a portion of the ground floor level are occupied by a 225-space accessory garage, with 23 spaces on the ground floor, 119 spaces on the cellar level, and 83 spaces on the subcellar level; and

WHEREAS, on October 28, 1978, the Board granted a variance, under the subject calendar number, to permit a maximum of 57 surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, on August 2, 1994, under the subject calendar number, the Board granted a ten-year extension of term, to expire on October 24, 2003; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions 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 having been adopted on October 28, 1978, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from October 24, 2003, to expire on October 24, 2013; *on condition* that that all work shall substantially conform to drawings filed with this application and marked 'Received February 8, 2007'-(3) sheets; and *on further condition*:

THAT this term shall expire on October 24, 2013;

THAT all residential leases shall indicate that the spaces

devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 104637065)

Adopted by the Board of Standards and Appeals, June 19, 2007.

520-89-BZ

APPLICANT – Law Office of Fredrick A. Becker, for SJF Audubon Realty, LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Term for a previously granted variance to permit in an R7-2 zoning district (Use Group 8) parking lot for more than 5 vehicles which expired on April 18, 2005; a waiver of rules of practice and procedure and an Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996.

PREMISES AFFECTED – 65 Audubon Avenue, easterly side of Audubon Avenue, 30' southerly of West 169th Street, Block 2125, Lots 30 & 31, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted variance for a parking lot, which expired on April 18, 2005; and

WHEREAS, a public hearing was held on this application on May 15, 2007 after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject premises is located on the east side of Audubon Avenue, thirty feet south of West 169th Street; and

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WHEREAS, the site is located within an R7-2 zoning district and is occupied by a 4,731 sq. ft. parking lot; and

WHEREAS, in 1960, under BSA Cal. No. 385-60-BZ, the Board granted a variance to allow parking and storage of more than five motor vehicles at the site; this grant was extended four times, but lapsed in 1986; and

WHEREAS, on April 18, 1990, under the subject calendar number, the Board reinstated the variance for a term of five years; and

WHEREAS, most recently, on November 21, 1995, the grant was extended for a term of ten years; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant represents that there are approximately 21 spaces for motor vehicle parking and storage at the site and that this condition will be maintained; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 18, 1990, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the prior grant on April 18, 2005; *on condition* that the use and operation of the parking lot shall substantially conform to previously approved BSA plans; and *on condition*:

THAT this grant shall be limited to a term of ten years from April 18, 2005, expiring April 18, 2015;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(Alt. 1657/65)

Adopted by the Board of Standards and Appeals, June 19, 2007.

346-98-BZ

APPLICANT – Vito J. Fossella, P.E., for Amboy Service Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an expired amendment granted on October 12, 1999 to permit the proposed conversion of an existing building accessory to a gasoline service station, into a convenience store, by

enlarging the existing building and eliminating the use of the lubritorium, car wash, motor adjustments and minor repairs, as well as the relocation and increase in the number of pump islands from two to four, with a metal canopy over the new pump islands; an extension of Time to obtain a Certificate of Occupancy and a waiver of the rules in an R3-2 (South Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reinstatement of an amendment to permit the conversion of an existing accessory gasoline service station building into a convenience store with other site modifications, which expired on October 12, 2003; and

WHEREAS, a public hearing was held on this application on March 13, 2007, after due notice by publication in *The City Record*, with continued hearings on April 24, 2007 and June 5, 2007, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 3, Staten Island, originally recommended disapproval but ultimately recommended approval of this application; and

WHEREAS, the premises is located on the north side of Amboy Road, between the intersections formed with Fieldway Avenue and Keegans Lane, within an R3-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the subject zoning lot has a total lot area of approximately 15,440 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,490 sq. ft. accessory building and two gasoline pump islands; and

WHEREAS, on February 25, 1959, under BSA Cal. No. 959-57-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses; and

WHEREAS, the application was subsequently amended at various times; and

WHEREAS, on October 27, 1987, under BSA Cal. No. 587-87-A, the Board permitted the conversion of the gasoline pumps to self-service pumps for a period of five years; and

WHEREAS, on October 12, 1999, under the subject calendar number, the Board granted a variance to permit the conversion of the existing accessory building into a convenience store by enlarging the existing building and eliminating the use of the lubritorium, car wash, and minor repair facilities as well as the relocation and increase in the number of pump islands from two to four, for a period of ten

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years; and

WHEREAS, the grant required that construction was to be completed within four years of the date of the application; and

WHEREAS, the applicant represents that construction was not completed due to financial hardship; and

WHEREAS, the applicant now requests reinstatement of the expired amendment to allow for several modifications to the approved plans; and

WHEREAS, the applicant represents that the owner will be able to complete the work within one year of the date of this grant; and

WHEREAS, at hearing, the Board expressed concern that the site could not accommodate all of the proposed modifications; and

WHEREAS, specifically, the Board directed the applicant to eliminate one of the proposed new pump islands so that there would only be three, rather than four; and

WHEREAS, additionally, the Board directed the applicant to eliminate one of the curb cuts to improve the traffic flow and minimize the impact on Amboy Road; and

WHEREAS, the Board also directed the applicant to reduce the size of the proposed enlargement to the accessory building and to provide the required 20'-0" setback from the railroad; and

WHEREAS, accordingly, the applicant revised the proposal, which included additional screening along the northern and western property lines, to the Board's satisfaction; and

WHEREAS, based upon its review of the record, the Board finds that the proposed reinstatement and amendments, with the noted revisions are appropriate.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on October 12, 1999, so that as amended this portion of the resolution shall read: "to permit the reinstatement of the prior amendment to allow a one-year extension of time to complete construction, and to permit the noted modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received May 22, 2007'-(6) sheets; and *on further condition*:

THAT the construction shall be substantially complete by June 19, 2008;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within 18 months of the date of this grant, on December 19, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the property, and location and size of the fence shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 500868732)

Adopted by the Board of Standards and Appeals, June 19, 2007.

305-01-BZ thru 320-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district. PREMISES AFFECTED – 65-77, 79, 81, 83 through 87, 89, 91, 93, 95, 97, 99, 101, 103 Terrace Court, Block 3605, Lot 200, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a residential development, which expired on March 25, 2007; and

WHEREAS, a public hearing was held on this application on June 5, 2007 after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, the subject premises is located on the eastern end of Admiral Avenue, partially within an M1-1 zoning district and partially within an M1-2 zoning district; and

WHEREAS, on March 25, 2003, under the subject calendar numbers, the Board granted variances pursuant to ZR § 72-21 to permit the construction of 16 three-story, three-family homes to be part of a 19-home development; and

WHEREAS, each home was the subject of a separate variance application, but, in the interest of convenience, these 16 applications for an extension of time to complete construction were heard together; and

WHEREAS, the applicant has also brought a separate application, under BSA Cal. Nos. 37-03-BZ through 39-03-BZ, for three additional homes to be constructed at the site; and

WHEREAS, the applicant represents that due, in part, to delays associated with sewer and drainage plan approval, the owner has been unable to substantially complete construction

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within the initial four-year period; and

WHEREAS, the instant application seeks a three-year extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that a three-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 25, 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 three years from the date of this grant; *on condition*:

THAT substantial construction shall be completed by June 19, 2010;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application Nos. 401245498, 401248185, 401278194, 401278201, 401278210, 401278229, 401278238, 401278247, 401245782, 401278176, 401278167, 401278158, 401278149, 401278130, 401278121, and 401278112)

Adopted by the Board of Standards and Appeals, June 19, 2007.

37-03-BZ thru 39-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district.

PREMISES AFFECTED – 65-78, 80, 82 Terrace Court, Block 3605, Lot 200, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction of a residential development, which expired on March 25, 2007; and

WHEREAS, a public hearing was held on this application on June 5, 2007 after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, the subject premises is located on the eastern end of Admiral Avenue, partially within an M1-1 zoning district and partially within an M1-2 zoning district; and

WHEREAS, on March 25, 2003, under the subject calendar numbers, the Board granted variances, pursuant to ZR § 72-21, to permit the construction of three three-story, three-family homes to be part of a 19-home development; and

WHEREAS, each home was the subject of a separate variance application, but, in the interest of convenience, these three applications for an extension of time to complete construction were heard together; and

WHEREAS, the applicant has also brought a separate application, under BSA Cal. Nos. 305-01-BZ through 320-01-BZ, for 16 additional homes to be constructed at the site; and

WHEREAS, the applicant represents that due, in part, to delays associated with sewer and drainage plan approval, the owner has been unable to substantially complete construction within the initial four-year period; and

WHEREAS, the instant application seeks a three-year extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that a three-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 25, 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 three years from the date of this grant *on condition*:

THAT substantial construction shall be completed by June 19, 2010;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application Nos. 401598605, 401598614, and 401598623)

Adopted by the Board of Standards and Appeals, June 19, 2007.

135-05-BZ

APPLICANT – Judith Gallent, Esq., Bryan Cave, LLP for L&M Equity Participants Ltd. and Harlem Congregations for Community Improvement, Inc, contract vendees.

SUBJECT – Application April 18, 2007 – To reopen and amend a previously -approved zoning variance under ZR §72-21 that allowed the residential conversion of an existing non-complying building previously used as a school (former PS 90) located in an R7-2 district; contrary to ZR §23-142, ZR §23-533, & ZR §23-633. The proposed amendment would permit a 5,987 sf. ft. enlargement to the existing sixth

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floor.

PREMISES AFFECTED – 217 West 147th Street, located on block bounded by West 147th and West 148th streets and Adam Clayton Powell, Jr. and Frederick Douglas Boulevards, Block 2033, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Judith Gallent.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow for the conversion of an existing non-complying former school building to residential use; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2007, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot with frontage on West 148th Street and West 147th Street, between Frederick Douglas Boulevard and Clayton Powell, Jr. Boulevard within an R7-2 zoning district; and

WHEREAS, the subject site is occupied by a vacant six-story 103,764 sq. ft. former public school building with an FAR of 3.44; and

WHEREAS, on January 24, 2006, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the conversion of a vacant six-story public school building to a 75-unit residential building, which did not comply with applicable requirements for open space ratio, FAR, setback, base and building height, and rear yard; and

WHEREAS, the applicant requests to make the following amendments to the prior grant and associated plans: (1) to add 5,987 sq. ft. of floor area to the existing sixth floor, (2) to revise the noted FAR from 3.43 to 3.44, (3) to revise the noted open space ratio from 10.77 to 10.49, and (4) to note the correct height and setback section being waived; and

WHEREAS, as to the floor area, the applicant represents that at the time of the original application, due to the deteriorated condition of the building, the architect was unable to access the entire building to take measurements of the floor area and relied on incomplete original building plans to estimate the floor area of the sixth floor; this measurement was estimated to be 11,223 sq. ft. and the total building floor area was calculated to be 103,764 sq. ft.; and

WHEREAS, the applicant represents that, subsequent to the grant, when the building was properly shored and access to

the sixth floor was deemed safe, the correct floor area calculation for the sixth floor was determined to be 5,236 sq. ft., 5,987 sq. ft. smaller than what was anticipated; and

WHEREAS, the applicant now asks to be permitted to enlarge the sixth floor, which is severely deteriorated and must be re-built, to the 11,223 sq. ft. that was originally calculated; and

WHEREAS, the applicant notes that this does not reflect an increase in the floor area from what was approved, but rather reflects a correction of an error so that the amount of floor area that was originally approved may be provided; and

WHEREAS, in support of this request, the applicant submitted photographs reflecting the severe deterioration of the sixth floor; and

WHEREAS, as to the FAR, the applicant notes that the approved FAR calculation of 3.43 is based on the approved floor area figure, which has not changed; the exact FAR is 3.438, which was previously rounded down to 3.43, but which should have been rounded up to 3.44; and

WHEREAS, as to the open space ratio, the applicant represents that two light wells were erroneously included in the prior open space ratio calculation; again, there is no change to the approved plans, but the correct open space ratio should be 10.49 rather than 10.77; and

WHEREAS, as to the height and setback waiver, the applicant notes that the original DOB objections and waiver request erroneously cited to ZR § 23-633, which governs base and maximum building heights for buildings built pursuant to the Quality Housing provisions, rather than ZR § 23-632, which governs height factor buildings like the subject building; and

WHEREAS, accordingly, the applicant requests that the Board waive ZR § 23-632 because the subject building violates the maximum street wall height and penetrates the sky exposure plane, and to permit a small portion of the proposed sixth floor to violate the sky exposure plane; and

WHEREAS, in support of this request, the applicant submitted a revised notice of objections from DOB reflecting the appropriate ZR section; and

WHEREAS, the applicant also requests approval of a minor amendment to the approved plans, which reflects a revised ground floor lobby entrance; and

WHEREAS, the Board notes that the proposed building envelope will not change and that none of the requested corrections reflects a change in what was originally contemplated and understood to be the proposal; and

WHEREAS, the Board also notes that the applicant provided revised financials, reflecting the new conditions and that the requested amendment does not have a significant impact on the minimum return; additionally, the conversion and small enlargement still constitutes the minimum variance; and

WHEREAS, accordingly, the Board agrees that all of the requested changes are within the scope of the original grant and has determined that none of the requested changes affects the required findings; and

WHEREAS, based upon its review of the record, the Board finds that the proposed amendments are appropriate.

Therefore it is Resolved that the Board of Standards and

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Appeals reopens and amends the resolution, said resolution having been adopted on January 24, 2006, so that as amended this portion of the resolution shall read: "to permit a correction to the FAR, open space ratio, and sixth-floor floor area calculation; to permit the waiver of ZR § 23-632, rather than ZR § 23-633, as originally noted; and to permit the enlargement of the existing sixth floor and the noted modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked "Received April 16, 2007"- five (5) sheets and "Received June 14, 2007 - one (1) sheet; and *on further condition*:

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 104110392)

Adopted by the Board of Standards and Appeals, June 19, 2007.

1236-27-BZII

APPLICANT - Eric Palatnik, P.C., for Spartan Petroleum Corporation, owner; BP Products, lessee.

SUBJECT - Application February 22, 2007 - Extension of Term for a previously granted special permit of a UG 16 Automotive Service Station (BP Products North America) which expired on February 22, 2007 in a C2-2/R3-1 zoning district.

PREMISES AFFECTED - 163-01 Cross Bay Boulevard, southeast corner of 163rd Street, Block 14201, Lot 63, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES -

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD - Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

52-55-BZ

APPLICANT - Carl A. Sulfaro, Esq., for Bouck Oil Corp., owner.

SUBJECT - Application November 28, 2006 - Amendment, filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.

PREMISES AFFECTED - 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES -

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD - Laid over to July 17, 2007, at 10 A.M., for decision, hearing closed.

704-59-BZ

APPLICANT - Peter Hirshman, for S & B Bronx Realty Associates, owner; G. R. Parking Lot, lessee.

SUBJECT - Application December 5, 2006 - Extension of Term/waiver of the rules for a previously granted variance of a UG8 Parking lot for more than five motor vehicles which expired on June 3, 2000 in an R8 zoning district.

PREMISES AFFECTED - 53 East 177th Street, northeast corner of Walton Avenue and East 177th Street, Block 2828, Lots 1, 45, 46, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES -

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD - Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

142-70-BZ

APPLICANT - Barbara Hair, Esq., for Target Realty LLC, owner.

SUBJECT - Application December 12, 2006 - Amendment to a variance previously approved pursuant to section 72-21 of the zoning resolution which allowed commercial office space (Use Group 6) on the cellar level of a residential building located in a R7-2 zoning district. The application seeks a change of use in the existing commercial space on the cellar level from Use Group 6 office to Use Group 6 store.

PREMISES AFFECTED - 8 St. Marks Place, south side, 126' east of 3rd Avenue, Block 463, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES -

For Applicant: Barbara Hair.

For Opposition: Susanne Schrepp.

ACTION OF THE BOARD - Laid over to July 17, 2007, at 10 A.M., for continued hearing.

558-71-BZ, Vol. II

APPLICANT - Eric Palatnik, P.C., for George Feig, owner.

SUBJECT - Application February 20, 2007 - Amendment to permit the legalization of the change in use from the

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previously approved greenhouse and nursery establishment with accessory uses (UG6) to an eating and drinking establishment (UG6) located in a R3-1 zoning district.
PREMISES AFFECTED – 1949 Richmond Avenue, north of Rockland Avenue, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

21-91-BZ

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Ronald J. Dillion.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

81-93-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2255 Bedford Development Assoc., LP, owner.

SUBJECT – Application November 30, 2006 – Amendment of a previous resolution to permit conversion of portions of the cellar to artist studio space and portions of the first floor to residential apartments within a building that the Board granted the re-establishment of residential use on the upper floors and the approval of a childcare center on portions of the cellar and the entire ground floor of a building located in a C8-2 zoning district.

PREMISES AFFECTED – 2255 Bedford Avenue, east side of Bedford Avenue 34' north of intersection with Snyder Avenue, Block 5107, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Adam Rothkrug and Tom Anderson.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for continued hearing.

189-96-BZ

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D'Angelo-CNandongga, lessee.

SUBJECT – Application March 14, 2007 – Extension of Term for a Special Permit (§73-244) for a UG12 eating and drinking establishment with entertainment and dancing (Flamingos) in an C2-3/R-6 zoning district; and to increase the number of occupancy from 190 to 200 which will expire on May 19, 2007.

PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue, 58' east side of Forley Street, Block 1502, Lot 3, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John Chen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for decision, hearing closed.

199-00-BZ, Vol. III

APPLICANT – John C. Chen, for En Ping, Ltd., owner; Valentin E. Partner Atlantis, lessee.

SUBJECT – Application February 23, 2007 – Extension of Term of a Special Permit (§73-244) for a UG12 eating and drinking establishment (Club Atlantis) in a C2-3/R-6 zoning district which expired March 13, 2007.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Chen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2007, at 10 A.M., for decision, hearing closed.

200-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Blans Development Corp., owner.

SUBJECT – Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37th Avenue, a/k/a 37-16 108th Street, southwest corner of 108th Street and 37th

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Avenue, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

28-05-A

APPLICANT – Alex Ng

OWNER OF PREMISES: Bill Petit

SUBJECT – Application February 17, 2005 – Appeal seeking to challenge the Department of Building's determination that a fenced refuse area in any yard or open space does not violate any Building Code or Zoning Resolution.

PREMISES AFFECTED – 72-02 Ridge Boulevard, a/k/a Flagg Court, Block 5906, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Opposition: Mark Davis.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown.....3

Recused: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Brooklyn Borough Commissioner of the NYC Department of Buildings (“DOB”), dated December 21, 2006 (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to a request dated January 11, 2005 from appellant Alex Ng (“Appellant”) for a final determination with respect to three issues: 1) the legality of the storage of garbage by Flagg Court (the “Premises”) in an “open fenced-in area” on 73rd Street, 2) mislabeling of this area as a “temporary garbage storage site,” and 3) an order for the restoration of a “boundary fence” to its pre-2002 condition at the Premises; and

WHEREAS, the Final Determination states:

I am in receipt of your July 24, 2005 letter concerning a fenced refuse area at 7202 Ridge Boulevard in Brooklyn (the “subject premises”).

Contrary to the first assertion in our letter, the owners of the subject premises need not store garbage in their cellar; there is simply no such requirement either in the building code or zoning resolution requiring such storage. The mere fact that the subject premises has a certificate of occupancy that authorizes storage in the cellar does not impose a requirement upon the owners to store their refuse there. Furthermore, a fenced refuse area in any yard or open space is not in violation of any zoning requirements, either under ZR 23-44, or otherwise.

Your second assertion, that the owners of the subject premises must eliminate a “concave [fence] area in the private property,” is also mistaken. There is no legal requirement that property owners extend their fence(s) to the property’s lot line. Accordingly, the concave area at issue does not constitute any violation.

Since the fence areas at issue are not over six feet tall, and because they constitute no zoning or building code violations (as explained above), they are not illegal.

WHEREAS, the Appellant challenges DOB’s determination that it lacks jurisdiction over any of the alleged violations at the Premises that Appellant cites; and

WHEREAS, a public hearing was held on this appeal on May 8, 2007, after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, Commissioner Hinkson recused herself from the instant Appeal; and

WHEREAS, DOB has been represented by counsel in this appeal and the Appellant has represented himself; and

THE APPELLANT

WHEREAS, the Appellant is a resident of 166 73rd Street, Brooklyn, whose residence faces 7202 Ridge Boulevard where the alleged violations exist; and

WHEREAS, Appellant states that his (as well as his neighbors’) enjoyment of his home has been impacted by the storage of garbage at the Premises; and

PROCEDURAL HISTORY

WHEREAS, on January 29, 2003, DOB issued a violation to Flagg Court Owners Corp. (“Flagg Court”), the owners of the Premises, for erecting a four-sided, approximately eight-foot high, roofed chain link fence structure (the “fenced refuse area” at the Premises without the required DOB permit; and

WHEREAS, on June 26, 2003, DOB issued violations to Flagg Court for failure to comply with DOB permit requirements and illegal occupancy (both for the fenced refuse area); and

WHEREAS, on August 1, 2003 Flagg Court received DOB permit no. 301573991 (the “Permit”) to relocate the fenced refuse area inside the Premises’ property line; and

WHEREAS, on November 13, 2003, DOB revoked the Permit for failure to address zoning objections DOB had issued against the permit in September 2003; and

WHEREAS, on December 11, 2003, DOB issued a violation to Flagg Court for failing to have a permit for the fenced refuse area; and

WHEREAS, on January 14, 2004, DOB rescinded the revocation of the Permit after Flagg Court amended the Permit to remove the roof of the fenced refuse area; and

WHEREAS, on February 23, 2004, DOB signed off on the job authorized by the Permit; and

WHEREAS, on December 2, 2004 DOB revoked the Permit because the 8-foot high fence violated the Building Code and Zoning Resolution; and

WHEREAS, in or about December 2004 the fenced refuse area was lowered to a height of six feet; and

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WHEREAS, on or about January 11, 2005, Appellant wrote to DOB for a final determination as to: 1) the legality of the fenced refuse area; and 2) whether the boundary fence at the Premises must be restored to prevent “illegal roadside drop-offs”; and

WHEREAS, on January 21, 2005, DOB Brooklyn Commissioner Susan Hinkson issued a final determination letter (the “Hinkson Letter”) in response to Appellant’s January 11 letter. The Hinkson Letter stated that the six-foot high fenced refuse area was not illegal and that Appellant’s complaints about garbage on the sidewalk were properly addressed to the NYC Department of Transportation or the NYC Department of Sanitation; and

WHEREAS, on February 16, 2005 Appellant filed the instant Appeal with the Board; and

WHEREAS, at the suggestion of the Board, on July 24, 2005 Appellant wrote to DOB asking for a second final determination with respect to compliance with Flagg Court’s Certificate of Occupancy, restoration of the lot-line fence and the legality of Flagg Court’s storage of garbage in the refuse storage area; and

WHEREAS, on December 21, 2006 DOB Brooklyn Borough Commissioner Magdi Mossad wrote a letter (the “Final Determination”) in response to Appellant’s July 24 letter in which he explained that 1) the refuse area is neither a zoning nor a building code violation; 2) there is no legal requirement for Flagg Court to store garbage in its cellar; and 3) there is no legal requirement that the lot line fence be restored; and

DISCUSSION

A. Legality of the fenced refuse area

WHEREAS, Appellant argues that the fenced refuse area is in violation of both the Building Code and the Zoning Resolution; and

WHEREAS, Appellant cites no specific provision of the Building Code that would prohibit the fenced refuse area; and

WHEREAS, in the absence of any citation to any Building Code requirement by Appellant that would prohibit the fence, the Board finds that there is no Building Code prohibition against the existing fence; and

WHEREAS, Appellant initially argued that Flagg Court is required to reconstruct the fence at the lot line, which had the effect of helping to confine the garbage stored within the refuse storage area; and

WHEREAS, as noted by DOB, Appellant cites no legal prohibition against the prior removal of the lot-line fence or any requirement that Flagg Court restore the previously existing lot-line fence; and

WHEREAS, in the absence of any evidence that there is a DOB-enforced requirement that removal of the lot-line fence was contrary to law or that the lot-line fence be reconstructed, the Board finds that Flagg Court’s removal of the lot-line fence was not contrary to law and that there is no requirement that it be reconstructed; and

WHEREAS, Appellant argues that the refuse storage area is not permitted in the required yards; and

WHEREAS, DOB cites ZR § 23-44(a) in support of the position that the 6-foot fence is permitted in “any [required] yard or rear yard equivalent”; and

WHEREAS, the Board finds that there is no prohibition against the fence forming the refuse area in the required yards; and

WHEREAS, Appellant argues that the refuse storage area is prohibited under the provisions of the Special Bay Ridge Zoning District regulations; and

WHEREAS, in support of this argument Appellant cites ZR §114-262(c); and

WHEREAS, as DOB observes, ZR § 114-262(c) was repealed in 2005; and

WHEREAS, even if ZR § 114-262(c) had not been repealed, it would not apply to the Premises since the Premises are not within a “major street block front within the Avenue Preservation Area – 1 (Area B); and

WHEREAS, Appellant also argues that the “General Purposes” section of the Special Bay Ridge Zoning District, which states that “the ‘Special Bay Ridge Zoning District’ established in this Resolution is designed to promote and protect the public health, safety and general welfare” therefore requires Flagg Court to take some action with respect to the storage of garbage in the refuse storage area; and

WHEREAS, the Board finds that, like other “General Purposes” sections in the ZR, this provision explains the goals of the following operative sections, and the language cited by Appellant is merely aspirational and establishes no enforceable requirements with the Special Bay Ridge Zoning District; and

WHEREAS, the Board finds this argument by Appellant to be unpersuasive and misplaced; and

B. Compliance with Certificate of Occupancy

WHEREAS, Appellant argues that Flagg Court’s Certificate of Occupancy, which authorizes storage of garbage in the cellar, in fact requires Flagg Court to store its garbage in the cellar and that therefore storage of garbage in the refuse area constitutes a violation; and

WHEREAS, DOB states that the Certificate of Occupancy is permissive rather than restrictive; and

WHEREAS, the Board agrees that the authorization to store garbage in the cellar provided by Flagg Court’s Certificate of Occupancy does not impose any requirement on Flagg Court to do so; and

C. Appellant’s Other Arguments

WHEREAS, Appellant claims that it is a violation for the refuse storage area to be labeled as “temporary”; and

WHEREAS, Appellant cites no authority for this proposition; and

WHEREAS, Appellant alleges violations of various New York City laws and regulations, including the NYC Administrative Code §§ 17-142, 24-102, 27-2018 to 19, 27-2021 and 16-120 and the Multiple Dwelling Law §§ 80-81, 305, 309(d) and 300(1); and

WHEREAS, DOB states that it has no jurisdiction with respect to these provisions, but rather that they are within the jurisdiction of other City agencies; and

WHEREAS, without ruling on whether the refuse storage area constitutes a violation of any of the provisions cited by Appellant, the Board agrees that DOB is not authorized to enforce them; and

WHEREAS Appellant cites various cases that have

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come before the Board in which conditions have been imposed with respect to indoor rooms for the storage of refuse or garbage; and

WHEREAS, Appellant argues that the Board should therefore impose a similar requirement on Flagg Court to store its garbage indoors in the instant matter; and

WHEREAS, the cases cited by Appellant were ones in which parties came before the Board seeking grants in connection with which the Board is authorized to impose such conditions; and

WHEREAS, the Board is not so authorized in the instant Appeal; and

WHEREAS, Flagg Court is not a party to any case before the Board; and

WHEREAS, the Board lacks jurisdiction to impose any requirements on Flagg Court; and

WHEREAS, Appellant argues without citing any applicable provision of law that DOB should regulate the height of the garbage piled in the refuse storage area and not merely the height of the fence; and

WHEREAS, DOB states that nothing in its regulations authorizes it to regulate garbage; and

CONCLUSION

WHEREAS, the Board acknowledges that the Appellant's use and enjoyment of his home may have been adversely affected by the outside storage of garbage by Flagg Court; and

WHEREAS, the Board has advised Appellant it the relief it seeks may be within the jurisdiction of other City agencies; and

WHEREAS, Appellant indicated at the hearing on the instant Appeal that he has not sought relief from other City agencies; and

WHEREAS, the Board finds that Appellant does not offer any basis for DOB to take any action with respect to the refuse area or the garbage stored therein; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Brooklyn Borough Commissioner, dated January 21, 2006, determining that there is no violation over which DOB has jurisdiction in connection with the storage of garbage at the Premises and encouraging Appellant to seek relief through other City agencies, is hereby denied.

Adopted by the Board of Standards and Appeals, June 19, 2007.

142-06-A thru 148-06-A

APPLICANT – Sheldon Lobel, P.C., for Ideal Development Group, Ltd., lessee.

SUBJECT – Application July 6, 2006 – Proposed construction of four two- family homes and three three-family homes located partially within the bed of an unnamed mapped street which is contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 3209 Tiemann Avenue, t/b/k/a 1651, 1655, 1661, 1665, 1671, 1675 Burke Avenue, 3215 and 3225 Tiemann Avenue, Block 4752, Lots 173, 175, 182,

t/b/k/a New Lots 170, 171, 172, 174, 176, 177, 178 & 180, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 19, 2006 and on February 7, 2007, acting on Department of Buildings Application Nos. 201051468, 201051477, 201052163, 201052172, 201052181, 201052190, and 201052145 which reads in pertinent part:

“Proposed dwelling is in the bed of mapped street.

Comply with Section 35 of the General City Law, refer to the Board of Standards and Appeals for an Administrative Appeal”; and

WHEREAS, a public hearing was held on this application on May 22, 2007 after due notice by publication in the *City Record*, and then to decision on June 19, 2007 and;

WHEREAS, this application requests permission to build four two-story, two- family homes and three three-story, three-family homes partially in the bed of an unnamed mapped street; and

WHEREAS, by letter dated January 5, 2007, the Fire Department states that it has reviewed the application and has no objections provided the buildings will not be occupied until Burke Avenue is built and open to traffic from Tiemann Avenue to Kingsland Avenue; Burke Avenue will have a minimum curb to curb width of 30'-0””; and

WHEREAS, by letter dated March 21, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 18, 2007, the Department of Transportation (DOT) states that it has reviewed the application and advised the Board that the proposed site plan does not reflect any provisions for a cul-de-sac/turnaround, at the dead end of Tiemann Avenue and that a clearly-defined curbline and a sidewalk with a minimum width of ten feet must be provided for the entire length of the proposed development adjacent to Tiemann Avenue at the intersection due to the angle of the intersection and the curvature of the street; and

WHEREAS, additionally, DOT requests that the owner construct half the width of the mapped street (Burke Avenue) with an additional five feet for the entire length of the unopened Burke Avenue between Tiemann Avenue and Kingsland Avenue for a distance of approximately 220 feet including the construction of roadways, curbs, and sidewalks as well as drainage; and

WHEREAS, by letter dated May 8, 2007 the applicant has submitted a revised site plan incorporating additional information about the proposed curbs and sidewalks; the plan also provides that Burke Avenue will be paved for 50 percent

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plus five feet; and

WHEREAS, the Board notes that the April 18, 2007 letter from DOT did not indicate that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated June 18, 2007, DOT states that it has reviewed the applicant's revised submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Bronx Borough Commissioner, dated June 19, 2006 and February 7, 2007, acting on Department of Buildings Application Nos. 201051468, 201051477, 201052163, 201052172, 201052181, 201052190, and 201052145, 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 June 15, 2007"-(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 the lot subdivision is to be as approved by DOB;

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, June 19, 2007.

300-06-A

APPLICANT – Eric Palatnik, P.C., for Tony Wan Yiu Cheng, owner.

SUBJECT – Application November 14, 2006 – Proposed construction of a 4 story mixed use building which extends into the mapped street (44th Avenue) which is contrary to Section 35 of the General City Law. C2-5/R6-B zoning district.

PREMISES AFFECTED – 43-17 104th Street, north side of the corner formed by the intersection of 44th Street and 104th Avenue, Block 1987, Lot 67, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 26, 2006, acting on Department of Buildings Application No. 402458979 which reads in pertinent part:

"Proposed building in the bed of mapped street is contrary to GCL Section 35"; and

WHEREAS, a public hearing was held on this application on April 10 2007 after due notice by publication in the *City Record*, and then to continued hearing on May 8, 2007, and to decision on June 19, 2007; and

WHEREAS, by letter dated February 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 9, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 19, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has advised the Board that it requires that the sidewalk and curb adjacent to the proposed development should be maintained with its current width and alignment on the north side of 44th Avenue; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated April 24, 2007, the applicant agrees to DOT's conditions that the sidewalk and curb adjacent to the proposed development will be maintained with its current width and alignment on the north side of 44th Avenue; and

WHEREAS, by letter dated June 18, 2007, DOT states that it has reviewed the applicant's submission and has no further objection or comments; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 26, 2006, acting on Department of Buildings Application No. 402458979, 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 June 5, 2007"-(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 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, June 19, 2007.

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307-06-A

APPLICANT – Alec Shtromandel-FHSRI, for 58th Avenue Management, LLC, owner; Forest Hills Student Residences, lessee.

SUBJECT – Application November 22, 2006 – An appeal challenging Department of Buildings determination that the subject premises does not qualify as a Community Facility under Section 22-13 of the Zoning Resolution. R5 Zoning District.

PREMISES AFFECTED – 86-18 58th Avenue, east side of 58th Avenue, 160’ north of the corner formed by the intersection of Van Horn Street and 58th Avenue, Block 2872, Lot 15, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Opposition: Mark Davis.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown.....3

Recused: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Acting Queens Borough Commissioner of the NYC Department of Buildings (“DOB”), on or about October 23, 2006 (the “Final Determination”); and

WHEREAS, the Final Determination, which is handwritten and signed by the Acting Queens Borough Commissioner on a copy of a letter from counsel for Appellant Forest Hills Student Residence, Inc. (“Appellant”) dated August 10, 2006 requesting a reconsideration of the prior denial in this matter, states:

Unanimously denied per BCTM [Borough Commissioners’ Technical Meeting] #332, on 8/23/06.

Note: Proposed layout does not support accessory sleeping accommodations to a non-profit institution, as in examples shown.

WHEREAS, the Appellant challenges DOB’s determination that the Appellant’s proposed use of 86-18 58th Avenue, Queens (“the Premises”) is a transient hotel rather than a “philanthropic or non-profit institution with sleeping accommodations” classified as a Community Facility (Use Group 3) under § 22-13 of the Zoning Resolution of the City of New York (“ZR”); and

WHEREAS, a public hearing was held on this appeal on April 24, 2007, after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, DOB has been represented by counsel throughout this Appeal, and Appellant has been represented by counsel at various times, although Appellant was represented by one of its directors, Mr. Alec Shtromandel, at the hearing on the Appeal; and

THE APPELLANT

WHEREAS, Appellant represents that it is a New York not-for-profit corporation whose activities, as described on its web site, include, in addition to the provision of sleeping accommodations at the Premises, immigration counseling, English as a second language instruction and educational film screenings, among other things; and

WHEREAS, Appellant’s Certificate of Incorporation lists as its purposes:

To enable students, interns, externs and trainees from around the world to live in a supportive residential community that provides comfortable and secure living accommodations at affordable rates; to promote exposure to the cultural, educational and professional opportunities available in the New York City metropolitan area; to enable students, interns, externs and trainees from around the world to experience American culture and society; to facilitate respect and understanding among residents with diverse backgrounds; to encourage independence among its residents so they may meet the challenges of an ever changing world. Nothing in the foregoing shall be construed as authorizing the corporation to operate or maintain a charter school, nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum or historical society or to maintain an historic site, nor to operate a business school or a private school pursuant to the provisions of section 5001 of the Education Law, nor an employment agency pursuant to section 172 of the General Business Law”; and

WHEREAS, Appellant indicates in its Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (the “Application”) that “[r]esidence is available to anyone between the ages of 18 and 35 who is matriculated in an accredited educational institution or enrolled in an internship or externship sponsored by or recognized by an educational institution”; and

PROCEDURAL HISTORY

WHEREAS, on April 22, 2006 DOB issued a Peremptory Vacate Order for the Premises to Appellant, which states:

This order is issued because there is imminent danger to the life and safety of the occupants, in that

A legal convent, 3 story brick building has been converted into a J-1 transient hotel with no fire alarm system throughout. No sprinkler system and no smoke detectors. No C of O or permits for this conversion; and

WHEREAS, on April 22, 2006 DOB issued Appellant seven Notices of Violation for the following conditions at the Premises:

No smoke detectors on 1st, 2nd and 3rd floors. J-1 transient hotel created without proper amount of smoke detectors.

No sprinkler system: on 1st, 2nd and 3rd floor. A J-1 transient hotel created without sprinkler system.

Occupancy contrary to that allowed by Bldg. Dept.

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Records. DOB records C of O # 196258 indicates residence is a legal 25 room convent; converted to J-1 transient hotel. Illegal occupancy noted. At 1st, 2nd and 3rd floors rooms are rented as per day; with residents sharing bath and kitchen. Rooms have bunk beds, linen, table, chair and wash basin. Each room has cooking device.

No fire alarm: a J-1 transient hotel created without fire alarms. No smoke detectors, strobe lights and horns.

Failure to provide 2nd means of egress at 2nd and 3rd floor of J-1 transient hotel. Does not have 2nd means of egress.

No natural light throughout 1st, 2nd and 3rd floor. J-1 transient hotel created without proper natural light.

No ventilation at 1st, 2nd and 3rd floor. Transient hotel created without proper ventilation; and

WHEREAS, on or about June 2, 2006 Appellant submitted an application to DOB for the Premises, which proposed a youth hostel in an R5 zone, and included architectural plans indicating that the proposed use was “J-1 (not for profit sleeping accommodations)” and “use group 3”; and

WHEREAS, on June 5, 2006, a DOB plan examiner issued a Notice of Objections for the application, which noted that the proposed use was a “transient hotel,” which is UG 5 and not permitted in an R5 zone; and

WHEREAS, Appellant subsequent to a meeting on June 8, 2006 requested reconsideration of the Notice of Objections issued on June 5, 2006; and

WHEREAS, on June 16, 2006, DOB denied a reconsideration of the June 5, 2006 Notice of Objections; and

WHEREAS, on July 10, 2006 DOB’s Technical Affairs Unit denied a reconsideration of the Application, and noted that “the proposed facility is a residential use or a hotel”; and

WHEREAS, by a letter dated August 10, 2006, Appellant requested that DOB at its Borough Commissioners’ Technical Meeting reconsider the Final Determination and lift a vacate order that had been issued for the Premises on May 17, 2006; and

WHEREAS, at the Borough Commissioners’ Technical Meeting on August 23, 2006 the attendees unanimously supported the Borough Commissioner’s decision, concluding that:

[T]he main use of the building remains living/sleeping accommodations for foreign students.

Such rooming units are classified as Zoning Use Group 2 and are not permitted in Zoning District R-5 as per ZR 23-22”; and

WHEREAS, as stated above, on August 10, 2006 Appellant’s counsel requested a reconsideration of the prior denial; and

WHEREAS, on or about October 23, 2006 the Acting Queens Borough Commissioner of DOB issued the a final determination that forms the basis of this appeal; and

THE PREMISES

WHEREAS, the Premises is a former convent that has been converted for use as a youth hostel; and

WHEREAS, Appellant represents that it also conducts cultural and educational activities at the Premises; and

WHEREAS, at the Premises, Appellant states that its “facility has dedicated over 1/3 of its space as offices, meeting rooms, study halls, and screening rooms to its core not-for-profit activities”; and

WHEREAS, the remainder of the space is devoted to sleeping accommodations for students matriculated in local schools; and

WHEREAS, the Application further states that “[t]he residence and all activities will be supported through boarding fees paid by the residents”; and

WHEREAS, the Premises is located in an R5 district; and

WHEREAS, the parties agree that a use properly categorized as a “philanthropic or not-for-profit institution with sleeping accommodations” in Use Group 3 under ZR § 22-13 would be as-of-right in an R5 district; and

DISCUSSION

A. DOB’s Authority to Interpret the Zoning Resolution

WHEREAS, Appellant contends that the plain language of ZR § 22-13 requires that because it is a New York not-for-profit corporation and because its facility contains sleeping accommodations, it should be deemed to be a “non-profit institution with sleeping accommodations” under ZR § 22-13, falling within Use Group 3 and therefore permitted as-of-right in an R5 district; and

WHEREAS, Appellant has provided no evidence that residents are required to participate in the cultural and educational activities at the Premises; and

WHEREAS, Appellant claims that ZR § 22-13 does not support DOB’s requirement to show that the sleeping accommodations at the Premises are “a needed support for a program administered for the occupants on the Premises”; and

WHEREAS, DOB argues that it is authorized to ask Appellant to substantiate the proposed Use Group 3 classification for the Premises and not merely to accept that because Appellant is a New York not-for-profit corporation and because the Premises contain sleeping accommodations that it should be deemed to fall within Use Group 3; and

WHEREAS, DOB argues that Appellant’s asserted non-profit status is not dispositive of whether the Premises is operating as a Use Group 3 community facility and that an “expanded analysis” is required to determine that the proposed use of the Premises is as a “philanthropic or non-profit institution” for the purposes of compliance with the ZR (DOB Letter Brief dated April 17, 2006 [“DOB Letter Brief”] at 2); and

WHEREAS, Appellant relies on Manton v. New York City Board of Standards and Appeals, 117 Misc.2d 255, 457 N.Y.S.2d 675 (Sup. Ct. Queens 1982) for the proposition that “[a]ny use which properly falls under this Use Group 3 listing is permitted in an RR5 District as a matter of right, and neither the Buildings Department nor the Board has discretionary authority to refuse this permission”; and

WHEREAS, DOB distinguishes the instant appeal from the facts in Manton v. New York City Board of Standards and Appeals, 117 Misc.2d 255 (N.Y. Sup. Ct.

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1982), which is relied upon by Appellant, in which there was a clear and necessary relationship between the sleeping accommodations and the philanthropic purpose of drug rehabilitation; and

WHEREAS, DOB further observes that the use of a the majority of the space at the Premises for sleeping accommodations provides further evidence that the primary purpose of the Premises is for providing sleeping accommodations and not for philanthropic purposes; and

WHEREAS, Appellant further relies on Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 667 N.Y.S.2d 327 (1997) for the proposition that an agency should follow the plain language of the ZR when “the language is unambiguous and the result not absurd”; and

WHEREAS, the Board finds that Raritan Development Corp. v. Silva, relied upon by Appellant for the proposition that an agency’s interpretation of the ZR should not be followed when its interpretation is contrary to the plain language of the ZR, is distinguishable from the instant appeal because 1) unlike Applebaum v. Deutsch, cited by DOB, a different provision of the ZR was at issue in Raritan, 2) BSA’s interpretation of the language at issue in Raritan had been inconsistent, and 3) because the legislative history of the ZR provision at issue in Raritan provided clarity to the language at issue and the policy behind it; and

WHEREAS, the court in Applebaum v. Deutsch, 66 N.Y.2d 975, 976-77, 489 N.E.2d 1275 (1985), cited by DOB, held that the ZR’s “characterization of nonprofit institutions is not dependent on State or Federal law defining nonprofit institutions,” and held that “[i]t was reasonable for BSA to construe that term in light of both its own experience and the stated purposes of the [ZR] to protect residential areas from traffic and noise associated with commercial uses”; and

WHEREAS, in Applebaum v. Deutsch the Court of Appeals approved DOB’s and the Board’s authority to interpret the term “non-profit institution,” and stated that their interpretation must be “given great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute” (citing Matter of Trump-Equitable Fifth Ave. Co. v. Gliedman, 62 N.Y.2d 539, 545); and

WHEREAS, DCP’s interpretation of ZR § 22-33, set forth in its letter to the Board dated April 16, 2006 (the “DCP Letter”), which is also to be given great weight under the reasoning of the Court of Appeals in Applebaum v. Deutsch, is consistent with that of DOB in the instant appeal; and

WHEREAS, the Board agrees with DOB that Manton v. New York City Board of Standards and Appeals is distinguishable from the instant appeal because in the drug rehabilitation facility at issue in Manton there was a clear nexus between the provision of sleeping accommodations and the philanthropic or non-profit purpose (the rehabilitation of drug users) as noted in the DCP Letter; and

WHEREAS, the Board finds that even were Appellant’s interpretation of Manton correct, the Manton court found that the petitioners therein lacked standing and therefore the language relied upon by Appellant is mere dicta; and

WHEREAS, the Board finds that it is within DOB’s, DCP’s and its own authority to interpret ZR § 22-13 so as to require a reasonable nexus between the non-profit purpose and its provision of sleeping accommodations; and

WHEREAS, the Board therefore finds that the language of ZR § 22-13 does not unambiguously require any philanthropic or non-profit institution that also offers sleeping accommodations to be classified as a Community Facility within Use Group 3; and

WHEREAS, the Board further agrees that the primary purpose of a “philanthropic or non-profit institution with sleeping accommodations” properly classified within Use Group 3 cannot be the provision of sleeping accommodations; and

B. The Policy Underlying the Zoning Resolution

WHEREAS, DOB states that to accept Appellant’s “permissive” interpretation of ZR § 22-13 would create an exception to the policy of the ZR by allowing hotels and rooming unit providers, merely because of non-profit status, to impermissibly locate their facilities in districts where such uses would otherwise be prohibited (DOB Letter Brief at 3); and

WHEREAS, DOB also argues that adopting Appellant’s interpretation could lead to “transient hotels (under the guise of community facilities) in residential neighborhoods as long as they have State or Federal non-profit status and de minimis, unrelated philanthropic or non-profit programs” (DOB Letter Brief at 3); and

WHEREAS, DOB also argues that “[t]he presence of rooming units and transient hotels in residential neighborhoods where otherwise prohibited, and the allowance of other types of oversized residences merely because of the form of ownership, would seriously degrade the quality of life of such neighborhoods through increased traffic, noise, pollution, etc.” (DOB Letter Brief at 3); and

WHEREAS, the DCP Letter, further supporting DOB’s interpretation of ZR § 22-13, states that “the term ‘philanthropic or not-for-profit institutions with sleeping accommodations’ does not encompass uses having the provision of sleeping accommodations as their mission or purpose” (DCP Letter at 1); and

WHEREAS, the DCP Letter further states:

We understand the provision as intended to apply to institutions for which the provision of sleeping accommodations is necessary to the accomplishment of a community facility purpose of providing “. . . essential services for the residents [ZR § 22-13(1)] . . .” of the area in which the facility is located, such as shelter for the homeless, supportive housing, or drug rehabilitation. This is reflected in the language of the Zoning Resolution, which does not treat “non-profit transient accommodations” as a Use Group 3 community facility, but instead refers to non-profit institutions “with sleeping accommodations”. This formulation indicates that the sleeping accommodations must be related to a philanthropic or non-profit purpose distinct from simply

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providing sleeping accommodations, and that providing sleeping accommodations does not, in and of itself, qualify as a community facility use under this rubric” (DCP Letter at 1); and

WHEREAS, DCP also observes in agreement with DOB that “[a] contrary result could allow for ‘non-profit’ transient hotels in residential districts, as well as student dormitories operated by ‘non-profits’ lacking the necessary relationship to a college or university required by DOB” (DCP Letter at 2); and

WHEREAS, DOB observes that Appellant’s own description of its operations in its certificate of incorporation “provides evidence that the proposed use is primarily rental of rooms and that not a philanthropic or non-profit purpose that is dependent upon such rental” (DOB Letter Brief at 3); and

WHEREAS, the Board finds DOB’s and DCP’s interpretation of ZR § 22-13 as requiring a nexus between the purpose of the not-for-profit and the provision of sleeping accommodations to be consistent with the policies behind the ZR; and

C. Prior City Approval of Youth Hostel

WHEREAS, Appellant points to the Association for World Travel Exchange, Inc., which operates the International Student Center, a “youth hostel offer[ing] 50 beds in dormitory style accommodations” and the International Counselor Exchange Program at its facility at 38 W. 88th Street (the “88th Street Hostel”), “mak[ing] possible the placement of several hundred students and young people from all regions of the world, ages 18-30, to serve as counselors in American Summer Camps” as a similar facility that has been treated as a “philanthropic or non-profit institution with sleeping accommodations” by the Board; and

WHEREAS, DOB distinguishes the case involving the 88th Street Hostel decided by the Board of Standards and Appeals (No. 724-70-A), which involved an appeal of DOB’s objection that the application for the 88th Street Hostel violated provisions of the Multiple Dwelling Law, and notes that questions involving the Use Group were not before the Board; and

WHEREAS, the case of the 88th Street Hostel also differs from the present appeal in that the 88th Street Hostel had much less space devoted to residential purposes and more space devoted to its programmatic purposes than does the Premises; and

WHEREAS, on January 31, 2007, a DOB inspector found that the 88th Street Hostel had no requirement that any potential resident be enrolled in any program, whether offered at the 88th Street Hostel or elsewhere, and issued the 88th Street Hostel a violation for operating a Use Group 5 transient hotel with a Use Group 3 Certificate of Occupancy; and

D. Appellant’s Alleged Reliance of DOB Assurances

WHEREAS, Appellant contends, in its “Statement of Facts,” that “[i]n order to lift the vacate order, [Appellant was] granted approvals by the NYC DOB plan examiners in the Borough of Queens for J-1 Occupancy based on the Use of the

Building under Use Group 3 of the NYC Zoning Resolution”; and

WHEREAS, Appellant further argues that, “[a]cting on those approvals, Forest Hills Student Residence installed a Fire Alarm System and a Sprinkler system, incurring \$100,000 in expenses,” but neither the vacate order nor the Final Determination was subsequently rescinded; and

WHEREAS, DOB denies that it approved the proposed Use Group 3 classification of the Premises in its discussions with Appellant over lifting the vacate order issued for illegal conversion of the existing convent into a J1 transient hotel without a proper fire alarm system; and

WHEREAS, Appellant produces no documentary evidence in support of its contention that Queens DOB plan examiners made any representations that Appellant’s operations would be deemed to fall within Use Group 3 after installation of the fire alarm and sprinkler system, nor does it identify the persons alleged to have given such assurances; and

WHEREAS, although not relevant to the Board’s decision, in the absence of any documentary evidence to the contrary, the Board finds credible DOB’s denial that it gave Appellant any assurances that it would deem Appellant’s operations at the Premises to fall within Use Group 3 after Appellant installed the fire alarm and sprinkler system; and

CONCLUSION

WHEREAS, the Board finds that ZR § 22-13 does not unambiguously require that any “philanthropic or non-profit institution” that provides “sleeping accommodations” is necessarily a Community Facility falling within Use Group 3 and therefore permitted in an R5 district; and

WHEREAS, the Board finds that DOB has the authority to interpret the requirements of the ZR and that it properly required Appellant to demonstrate a necessary connection between its provision of sleeping accommodations and its educational and cultural mission as properly required by DOB; and

WHEREAS, the Board finds DOB’s interpretation of the ZR in refusing to deem Appellant’s operations at the Premises to be a “philanthropic or non-profit institution with sleeping accommodations” and therefore a Community Facility within Use Group 3 to be consistent with the language of the ZR and the policy underlying it; and

WHEREAS, the Board further agrees that the primary purpose of a “philanthropic or non-profit institution with sleeping accommodations” properly classified within Use Group 3 cannot be the provision of sleeping accommodations; and

WHEREAS, the Board finds that the sleeping accommodations provided by Appellant are either its primary purpose or, if its primary purpose is educational or cultural, that they have no necessary relationship to such purpose(s); and

WHEREAS, the Board finds that Appellant has failed to demonstrate the required nexus between its philanthropic purpose and the provision of sleeping accommodations; and

WHEREAS, Board finds that DOB’s and DCP’s interpretation of ZR § 22-13 is consistent with the policy of the ZR to keep transient hotels and like uses such as

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dormitories lacking a connection with a college or university out of residential neighborhoods; and

WHEREAS, the Board finds Appellant's reliance on New York case law and on the prior approval of a youth hostel on 88th Street to be misplaced; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated June 16, 2006, determining that the proposed use of the Premises was a transient hotel rather than a "philanthropic or non-profit institution with sleeping accommodations" and therefore a Community Facility within Use Group 3, is hereby denied.

Adopted by the Board of Standards and Appeals, June 19, 2007.

55-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Karen & Jerry Trollo, owners.
SUBJECT – Application February 27, 2007 – Proposed reconstruction and enlargement of a single family dwelling and the upgrade of an existing private disposal system located within the bed of mapped street (Oceanside Avenue) contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 3 Devon Walk, southeast corner of Devon Walk and Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 12, 2007, acting on Department of Buildings Application No. 40253220, which reads in pertinent part:

“The existing building to be reconstructed and altered lies within the bed of a mapped contrary to General City Law Article 3, Section 35; and

The proposed upgraded private disposal system is in the bed of a mapped contrary to General City Law Article 3, Section 35 and Department of Buildings Policy”; and

WHEREAS, a public hearing was held on this application on June 19, 2007 after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated March 6, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 30, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated May 9, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 12, 2007, acting on Department of Buildings Application No. 402523220, 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 February 27, 2007 ”-(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 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, June 19, 2007.

56-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Jacqueline & Terence Donohoe, lessees.

SUBJECT – Application February 27, 2007 – Proposed Reconstruction and enlargement of an existing single family home and the upgrade of an existing private disposal system located within the bed of a mapped street (Bayside Drive is contrary to General City Law Section 35 and Buildings Dept. Policy. R4 Zoning District.

PREMISES AFFECTED – 13 Bayside Roxbury, intersection of Mapped Bayside Drive and unmapped Roxbury Avenue, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 5, 2007, acting on Department of Buildings Application No. 402508256 which reads in pertinent part:

“The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and
The proposed upgraded private disposal system is in the bed of a mapped contrary to General City Law Article 3, Section 35 and Department of Buildings Policy”; and

WHEREAS, a public hearing was held on this application on June 19, 2007 after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated March 6, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 30, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated May 9, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 12, 2007, acting on Department of Buildings Application No. 402508256, 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 February 27, 2007”-(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 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, June 19, 2007.

232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard, Block 3122, Lot 213, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

37-07-A

APPLICANT – Cozen O’Connor Attorneys, for 56-50 Main Street Realty, LLC, owner.

SUBJECT – Application June 19, 2007 – Proposed construction of a Commerce Bank located within the bed of Booth Memorial Avenue contrary to General City Law Section 35. C1-3/R5B.

PREMISES AFFECTED – 56-50 through 56-56 Main Street, northwest corner of Main Street and Booth Memorial Avenue, Block 5133, Lots 10 & 25, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 10, 2007, at 10 A.M., for decision, hearing closed.

96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District.

PREMISES AFFECTED – 41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Janina Gaylard.

ACTION OF THE BOARD – Laid over to July 24,

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2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 19, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

183-05-BZ

CEQR #06-BSA-010Q

APPLICANT – Joseph Morsellino, Esq., for Dimitrios Spanos.

SUBJECT – Application August 5, 2005 – Variance (§72-21) to allow the residential redevelopment and enlargement of an existing two-story commercial building. The proposed multiple dwelling building will be six (6) floors and will contain ground floor commercial space. Twenty (20) dwelling units and ten (10) accessory parking spaces are proposed. The proposal is contrary to use regulations (§42-00). M1-3D district.

PREMISES AFFECTED – 25-09 38th Avenue, north east corner of the intersection of Crescent Street and 38th Avenue, Block 368, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Adopted by the Board of Standards and Appeals, June 19, 2007.

141-06-BZ

CEQR #07-BSA-002K

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo Ledovid, owner.

SUBJECT – Application July 6, 2006 – Variance pursuant to §72-21 to permit the proposed three-story synagogue. The

Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (§24-11); front yards (§24-34); side yard (§24-35); wall height and sky exposure plane (§24-521); and parking (§25-31). PREMISES AFFECTED – 2084 60th Street, southwest corner of 21st Avenue and 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2007, acting on Department of Buildings Application No. 302159751, reads, in pertinent part: “Proposed new building is contrary to the following zoning sections:

- (1) ZR 24-11 FAR & Lot Coverage
- (2) ZR 24-34 Front Yards
- (3) ZR 24-35 Side Yards
- (4) ZR 25-31 No. of Parking Spaces.”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district within the Special Borough Park District, a proposed three-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yards, side yards, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, and 24-31; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in *The City Record*, with continued hearings on January 9, 2007 and March 13, 2007, and April 17, 2007, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application with the condition that the third floor (of the originally-proposed building) be set back ten feet; and

WHEREAS, Neighbors for the Preservation of 60th Street (the “Opposition”), individually and through counsel, appeared in opposition to the proposal, citing concerns about: (1) whether or not the applicant had met the requirement of § 72-21(a); (2) impact on neighborhood character; (3) illegal and unsafe demolition including improper asbestos disposal; and (4) traffic/parking impact; and

WHEREAS, certain other neighbors provided testimony in opposition to the proposal, citing the same concerns; and

WHEREAS, the applicant submitted approximately 60 consent forms submitted by community members in support of

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the proposal; and

WHEREAS, this application is being brought on behalf of Congregation Tehilo Ledovid, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the southwest corner of 21st Avenue and 60th Street, and is currently vacant except for remnants of a foundation; and

WHEREAS, during the hearing process, the proposal was revised several times; the current proposal provides for a three-story and cellar synagogue with the following parameters: a street wall of 33'-6", a building height at the top of the parapet wall of 36'-11", and a total height with bulkhead of 41'-7", with 7,008 sq. ft. of floor area (5,400 sq. ft. is the maximum permitted); and an FAR of 2.59 (2.0 FAR is the maximum permitted for a community facility), with Use Group 4 synagogue use space on the cellar level through third floor; and

WHEREAS, additionally, the applicant proposes 86.5 percent lot coverage (a maximum of 60 percent is permitted); one side yard of 8'-0" at the rear of the site along the southwest lot line (two side yards of 11.35 feet each are the minimum required) and one front yard of 5'-6" along 60th Street (two front yards of 10'-0" each are the minimum required); and

WHEREAS, the proposed building will have the following program: (1) a dining area and separate mikvah for men and women in the cellar; (2) synagogue space on the first and second floors; (3) a study, rabbi's office, and library on the third floor; and (4) a terrace to be used for Succoth on the roof; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to accommodate the congregation of approximately 100 adults; (2) to provide separate space for men and women during prayer and mikvah; (3) to provide space for small meetings and gatherings; and (4) to accommodate a rabbi's office, library, and study hall; and

WHEREAS, the applicant states that the proposed amount of space would accommodate the congregation of 100 adults, which currently meets in the cellar of a nearby home with a capacity of only 35 people; the as-of-right scenario would only accommodate 55 adults in the proposed synagogue; and

WHEREAS, the applicant states that it is religious tradition to provide separate space for men and women during prayer and in the mikvah; and

WHEREAS, the applicant represents that meeting space is required for educational programs accessory to the Synagogue and for groups to meet outside of the worship space; and

WHEREAS, the applicant represents that the rabbi requires space to lecture and counsel congregants in groups of two to twenty; he also requires facilities to store religious texts and provide instruction; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, however, the applicant also presents the following site conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations, as to lot coverage and yards: the corner site has a width of 27'-0" and if both the required 10'-0" front yard were provided along 21st Avenue and the required 11.35 ft. side yard were provided along the shared lot line where the party wall existed, the complying building would have a width of only 5.65 feet; even if the party wall condition remained and only the front yard along 21st Avenue were provided, the building would still only have a width of approximately 17'-0"; and

WHEREAS, the applicant notes that this second scenario, maintaining the present lot line condition, would result in a complying building which would be too narrow to accommodate the congregation; the resultant floor plates would be small and inefficient with a significant portion of both space and floor area allocated toward circulation space, egress, and exits; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard waivers would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the Board notes that the immediate area is characterized by two- and two-and-a-half-story semi-detached

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homes; and

WHEREAS, the applicant initially proposed a 8,100 sq. ft. three-story with attic building (3.0 FAR) with a street wall height of 44'-0" (35'-0" is the maximum permitted), 100 percent lot coverage (60 percent is the maximum permitted), no front or side yards, and no parking spaces (nine were required in that scenario); and

WHEREAS, at hearing, the Board directed the applicant to decrease the floor to floor heights, eliminate the attic, and reduce the rooftop mechanicals in an effort to reduce the street wall and total building height and to be more compatible with the neighborhood context; and

WHEREAS, in response, and as noted above, the applicant reduced the street wall height to a complying 33'-6" and the total height, with bulkhead, to 41'-7"; and

WHEREAS, the Board also directed the applicant to provide a front yard along 60th Street where there is a context for front yards, and a 8'-0" side yard at the rear thereby reducing the amount of lot coverage and impact on adjacent neighbors; and

WHEREAS, the applicant provided a land use map with details about front yards along 21st Avenue, which reflects that four out of the five other buildings on the subject site's side of 21st Avenue within the 400 sq. ft. radius are built to the lot line on 21st Avenue; and

WHEREAS, the Board notes that both 60th Street and 21st Avenue are wide streets with widths of 80'-0"; and

WHEREAS, as to traffic impact and parking, the applicant noted that the traffic impact would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, the applicant provided a traffic and parking study which showed that there were approximately 100 available parking spaces within 400 sq. ft. of the site within each one-hour period that the study was performed; and

WHEREAS, the applicant represents that this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted, through the hearing process, the applicant revised the proposal to eliminate the height waiver

and reduce the floor area, FAR, lot coverage, and parking waiver (from nine to eight) while increasing the size of the yards; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has reviewed the Opposition's concerns and notes the following: (1) the requirements of ZR § 72-21(a) are met by the demonstration of legitimate programmatic needs and the limitations of the site in meeting those goals; (2) the applicant has modified the proposal to provide for a building with a bulk and yards that are compatible with neighborhood context; (3) the applicant has provided proof of a DEP asbestos inspection, which shows proper removal, and proof of DOB demolition permits; and (4) the applicant has provided a satisfactory traffic/parking analysis; and

WHEREAS, as to the demolition and asbestos removal, the Board notes that the site has now been cleaned and cleared and the applicant is curing any outstanding ECB and DOB violations; and

WHEREAS, this grant is conditioned on the complete resolution of any outstanding issues; and

WHEREAS, additionally, the applicant agreed to include the following changes to the proposal, some of which are noted in the conditions below: (1) the addition of an interior garbage storage area at the cellar and first floor level; (2) the addition of opaque privacy windows; (3) relocation of the mechanicals to minimize impact on neighbors and the addition of an acoustic baffle enclosure; and (4) the limitation of the kitchen as a warming kitchen, to preclude commercial catering; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.07BSA002K, dated June 30, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed

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action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district within the Special Borough Park District, a proposed three-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yards, side yards, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, and 24-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 6, 2007" – nine (9) sheets; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: a floor area of 7,008 sq. ft. (2.59 FAR), three stories, a street wall height of 33'-6", a lot coverage of 86.5 percent, one front yard of 5'-6" on 60th Street, and one side yard of 8'-0" on the rear/southwest lot line;

THAT the use shall be limited to a house of worship (Use Group 4) and any classes shall be accessory to this use;

THAT the use of the cellar kitchen shall be limited to warming;

THAT no commercial catering shall take place onsite;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT the use of the rooftop shall be limited to the Jewish holiday of Succoth and then only between the hours of 7:00 a.m. and 8:00 p.m.;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT an acoustic baffle enclosure shall be constructed around the rooftop mechanicals;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT no building permit shall be issued until all ECB and DOB violations have been cured;

THAT rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2007.

314-06-BZ

CEQR #07-BSA-041K

APPLICANT – Eric Palatnik, P.C., for Mikhail Kremerman, owner; Yana's Spa, lessee.

SUBJECT – Application December 6, 2006 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment (a/k/a spa) at the cellar level of the proposed structure.

PREMISES AFFECTED – 2565 East 17th Street, Block 7438, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 14, 2006, acting on Department of Buildings Application No. 302093909, reads in pertinent part:

"Proposed change of cellar occupancy from commercial office to a physical culture or health establishment is permitted only with a special permit from the Board of Standards and Appeals and is hereby referred to them for review"; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-1 zoning district, the establishment of a physical culture establishment (PCE) in a portion of the cellar level of a new two-story mixed-use ambulatory care facility/office building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on May 22, 2007 after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of East 17th Street, between Avenue Y and Avenue Z; and WHEREAS, the PCE will occupy approximately 2,511 sq. ft. of floor space in the cellar; and

WHEREAS, the applicant represents that the PCE will offer spa treatments including massages, manicures, facials, hydrotherapy, and laser treatments; and

WHEREAS, the proposed hours of operation are: daily, 10:00 a.m. to 8:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding

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neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA041K, dated April 17, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-1 zoning district, the establishment of a physical culture establishment in a portion of the cellar level of a new two-story mixed-use ambulatory care facility/office building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 24, 2007"-(1) sheet and "Received June 13, 2007"-(1) sheet and *on further condition*:

THAT the term of this grant shall expire on June 19, 2017;

THAT there shall be no change in ownership or

operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2007.

15-07-BZ CEQR #07-BSA-054X

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application January 11, 2007 – Variance (§ 72-21) to allow a new nine (9) story hospital building (U.G. 4) that exceeds maximums for floor area ratio (§ 24-11), lot coverage (§ 24-11) and height and setback (§ 24-522). R8 zoning district.

PREMISES AFFECTED – 199 Mt. Eden Parkway, between Selwyn Avenue and Morris Avenue, Block 2824, Lot 19, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Slater and Beckerman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 11, 2007, acting on Department of Buildings Application No. 201095215, reads in pertinent part:

“This project, a proposed Ambulatory Care Center to be developed by the Bronx Lebanon Hospital Center, requires a variance under ZR 72-21, due to the non-compliance in floor area under ZR 24-11, lot coverage under ZR 24-11, for sky exposure plane under ZR 24-522, and wall height under ZR 24-522”;

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and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the proposed construction of a nine-story Use Group 4 hospital building, (the "Proposed Building"), which does not comply with applicable zoning requirements concerning floor area, lot coverage, sky exposure plane, and wall height, contrary to ZR §§ 24-11 and 24-522; and

WHEREAS, this application was brought on behalf of the Bronx Lebanon Hospital (the "Hospital"), a not for profit institution; and

WHEREAS, a public hearing was held on this application on June 5, 2007, after due notice by publication in the *City Record*, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, City Council Member Maria Baez provided testimony in support of this application; and

WHEREAS, the site is located on the northwest corner of Mt. Eden Parkway and Morris Avenue, within an R8 zoning district; and

WHEREAS, the site has a total lot area of 6,700 sq. ft.; and

WHEREAS, the site is currently occupied by a Hospital parking lot; and

WHEREAS, the Proposed Building is nine stories with a mechanical penthouse and has a wall height of 126'-0" and a total height of 148'-0"; it will occupy a floor area of 55,175 sq. ft. (8.24 FAR); and

WHEREAS, the non-complying parameters are as follows: (1) a lot coverage of 92 percent (75 percent is the maximum permitted); (2) a floor area of 55,175 sq. ft. (8.24 FAR) (a maximum floor area of 43,550 sq. ft. (6.5 FAR) is the maximum permitted); (3) a street wall height of 126'-0" (a street wall height of 85'-0" is the maximum permitted); and (4) an encroachment into the sky exposure plane on portions of the seventh, eighth, and ninth floors and penthouse level; and

WHEREAS, the adjacent building to the west along Mt. Eden Parkway is a 20-story Hospital staff facility, and another 15-story Hospital building is on the next block to the west on Mt. Eden Parkway; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Hospital, which seeks to expand and reconfigure its existing facilities and enhance its quality of services to better meet the need of increasing community demand for clinical services; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Hospital: (1) to accommodate the increased demand for outpatient facilities; (2) to consolidate existing facilities located at different Hospital buildings in the vicinity; and (3) to relieve overcrowding and free up space in other Hospital buildings; and

WHEREAS, as to the demand for outpatient facilities, the applicant states that its goal is to promote outreach and to better

serve the affected community's social and health needs; and

WHEREAS, the applicant submitted information about the specific medical needs of the community, which encompasses the South Bronx neighborhoods of Highbridge-Morrisania, Hunts Point-Mott Haven, and the Central Bronx neighborhood of Crotona-Tremont, all with significant low income and minority populations; and

WHEREAS, specifically, these communities are among the poorest in the nation and are federally designated as Medically Underserved Areas and Health Professional Shortage Areas; and

WHEREAS, the Hospital is the largest voluntary, not-for-profit health care system serving this community; and

WHEREAS, as to the space needs, the outpatient facilities are currently located in five different Hospital buildings; and

WHEREAS, the applicant states that the program, including radiology and adult medicine, will be consolidated into the Proposed Building to allow for improved operational efficiency; and

WHEREAS, this reorganization will also free up space in other Hospital buildings to relieve overcrowding and allow for expansion of those services; and

WHEREAS, additionally, the applicant represents that the proposed amount of floor area is required to accommodate the program and that a complying building would not be able to provide the necessary space for the surgical and cardiology outpatient care units; and

WHEREAS, the applicant represents that a complying building would only be able to accommodate 48 examination rooms as opposed to the proposed 88 examination rooms and six radiology diagnostic rooms; and

WHEREAS, the applicant notes that the lot coverage and height and setback waivers are required in order to provide efficient floor plates and sufficient space to adequately address the demand for care and outreach; and

WHEREAS, the applicant represents that due to the amount of floor area required for the core and egress, smaller floor plates would be considerably less efficient; and

WHEREAS, the applicant further states that the sky exposure plane encroachment on the seventh, eighth, and ninth floors will allow for uniform floor plates for all floors except the mechanical penthouse and this promotes more efficient use of the Hospital space, more efficient use of Hospital staff, greater patient comfort and substantially reduced construction and operating costs; and

WHEREAS, at hearing, the Board asked the applicant to explain why an entire mechanical penthouse was required; and

WHEREAS, the applicant responded that a large amount of mechanical space was required, in part, to support the necessary radiology equipment and that providing it all within the mechanical penthouse helped maximize efficiency; and

WHEREAS, the Board notes that the mechanical penthouse will be set back 20 feet on the Mt. Eden Avenue frontage and 15 feet on the Morris Avenue frontage and only minimally encroaches into the sky exposure plane on the

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Morris Avenue side, but not at all on the Mt. Eden Parkway side; and

WHEREAS, the Board credits the applicant's statements as to the Hospital's programmatic needs and the limitations of a complying development; and

WHEREAS, the Board also notes that the Proposed Building must be constructed at a location within close proximity to the site such that it can integrate with the other Hospital buildings, which makes this the most efficient and logical location; and

WHEREAS, based upon the above, the Board finds that the close proximity of the existing Hospital buildings to the site, when considered in conjunction with the programmatic need of the Hospital to construct the Proposed Building, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its mission; and

WHEREAS, the applicant represents that the Proposed Building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes the immediate surrounding neighborhood is developed with a mix of medium to high density institutional and residential buildings, including the Hospital buildings noted above, additional nearby Hospital buildings, and several residential buildings with heights of two to nine stories; and

WHEREAS, the applicant notes that Mt. Eden Parkway has a width of 165 feet and Morris Avenue has a width of 80 feet which are compatible with the proposed building bulk; and

WHEREAS, further, the applicant represents that the proposed sky exposure encroachment will only be minimally visible; and

WHEREAS, the Board also notes that because the Proposed Building will be located on the corner of two wide streets, the height and setback non-compliances will have minimal impact; and

WHEREAS, the applicant represents that since 1951, the subject zoning lot has been occupied with Hospital-related uses; the prior Hospital building at the site was demolished and replaced with an accessory parking lot; and

WHEREAS, at hearing, the Board asked the applicant if it would be possible to provide fenestration on the first floor; and

WHEREAS, the applicant responded that, due to patient privacy and safety concerns, the fenestration on the first floor on Mt. Eden Parkway must be limited, but that some could be provided on Morris Avenue; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the programmatic needs of the Hospital; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Proposed Building is designed to address the Hospital's programmatic needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA054X, dated January 11, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the proposed construction of a nine-story Use Group 4 hospital building, which does not comply with applicable zoning requirements concerning floor area, lot coverage, sky exposure plane, and wall height, contrary to ZR §§ 24-11 and 24-522, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 5, 2007"—nine (9) sheets and "Received May 4, 2007"—one (1) sheet and *on further condition*:

THAT the new building will have the following parameters: a total floor area of 55,175 sq. ft. (8.24 FAR); a street wall height of 126 feet, and a total height of 148 feet, 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 objection(s) only;

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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, June 19, 2007.

57-07-BZ

CEQR #07-BSA-065R

APPLICANT – Omnipoint Communications, Inc., for Wagner College, owner.

SUBJECT – Application March 5, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communications facility and will consist of a 70-foot monopole/light-post, together with antennas (and stadium flood-lights).

PREMISES AFFECTED – 636 Howard Avenue, 75’ east of Highland Avenue and Howard Avenue, Block 597, Lot 65, Borough of Staten Island.

COMMUNITY BOARD # 1SI

APPEARANCES –

For Applicant: Robert Guardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 22, 2007, acting on Department of Buildings Application No. 500869367, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to NYC Department of Buildings Technical Policy and Procedure Notice 5/98 and therefore not allowable within R3-1 district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-1 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on May 22, 2007 after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Staten Island Community Board No. 1 recommends approval of this application; and

WHEREAS, the applicant represents that the proposed facility will remedy a significant gap in wireless service in Staten Island; and

WHEREAS, the proposed monopole will be located on the grounds of the Wagner College campus property; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a monopole with a maximum height of 80 feet; and

WHEREAS, the proposed monopole has been designed to resemble and will replace an existing light-post at the Wagner College athletic field and will support lights for the athletic field in addition to the proposed antennas and cables; and

WHEREAS, the related equipment cabinets will be located below the existing stadium bleachers and will not be visible to the general public; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be concealed beneath the Wagner College athletic field bleachers; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will neither alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the Board has conducted an environmental

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review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-065R dated March 5, 2007; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and *grants* a special permit under ZR §73-03 and §73-30, to permit, within an R3-1 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR §22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received May 3, 2007”-(4) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2007.

75-07-BZ

CEQR #07-BSA-072M

APPLICANT – Law Office of Slater & Beckerman LLP for Hudson Alley, Incorporated, owner; Cadence Cycling & Multisport Centers, lessee.

SUBJECT – Application April 3, 2007 – Special Permit §73-36 – To permit a cellar and on the first floor of six-story building, a Physical Culture and Health Establishment. The Premises are located within an M1-5 zoning district within the Special Tribeca Mixed Use District (Area B1), and in the Tribeca North Historic District.

PREMISES AFFECTED – 174 Hudson Street, Southeast corner of Vestry Street and Hudson Street, Block 220, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Stuart Beckerman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 104697856, reads in pertinent part:

“Physical Culture Establishment (Bicycle Training) is not permitted as of right at M1-5 and is contrary to ZR 42-31.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district within the Special Tribeca Mixed Use District (TMU) and the Tribeca North Historic District, the establishment of a physical culture establishment (PCE) in the cellar and on the first floor of an existing six-story commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on June 5, 2007 after due notice by publication in *The City Record*, and then to decision on June 19, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, City Council Member Alan Jay Gerson provided testimony in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Vestry Street and Hudson Street; and

WHEREAS, the site is occupied by a six-story commercial building; and

WHEREAS, the PCE will occupy approximately 6,815 sq. ft. of floor area on the first floor and approximately 2,917 sq. ft. of floor space in the cellar; and

WHEREAS, the applicant represents that the PCE will offer facilities to provide athletic coaching, including a cycling training studio, a physiological testing lab, and a strength and conditioning studio with free weights and weight machines; and

WHEREAS, the PCE will be operated as Cadence Cycling and Multisport Center; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 6:00 a.m. to 8:00 p.m. and Saturday and Sunday, 9:00 a.m. to 6:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant if there were any residential uses in the subject building; and

WHEREAS, the applicant confirmed that there is no residential use in the building; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, issued March 6, 2007; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be

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satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA072M, dated March 22, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district within the Special Tribeca Mixed Use District and the Tribeca North Historic District, the establishment of a physical culture establishment in the cellar and on the first floor of an existing six-story commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 3, 2007"–(1) sheet, "Received April 27, 2007"–(2) sheets and "Received June 7, 2007"–(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 19, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as

reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2007.

154-05-BZ

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to §42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, §42-13 (There are no residential bulk regulations in a M1-5B zoning district), and §13-12 (The proposed public parking garage is not permitted in a residential development.)

PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ken Lowenstein, Jack Freeman, Steven Jacobs, David Ford and Issac Astradran.

For Opposition: Grey Elam, Speaker Quinn's Office, Doris Diether of CB#2, Andrew Berman GRSH, Mark Faxon, Gregg Levine, Jack Lestur and Stuart A. Klein.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

25-06-BZ

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 and §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-

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551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 1:30 P.M., for continued hearing.

29-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Iliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district. PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for deferred decision, hearing closed.

83-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application May 2, 2006 – Variance (§72-21) to allow the conversion and two (2) story enlargement of an existing four story industrial building. The proposed multi-family building will contain six (6) floors, ground floor retail use, and fourteen (14) dwelling units. No parking spaces are proposed. The proposal would exceed the maximum floor area ratio (§123-64 (a)) and applicable height and setback requirements (§123-662). The project site is located within the Hunters Point Subdistrict of the Special Long Island City Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lot 26, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for adjourned hearing.

163-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3)

story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (§23-141c), front yard (§23-45), side yards (§23-462), and off-street parking (§25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43rd Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Irving Minkin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for decision, hearing closed.

215-06-BZ

APPLICANT – Vassalotti Associates Architects, LLP., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1955. C1-2/R2 zoning district. PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for decision, hearing closed.

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (§24-162a), side yards (§24-35), and the number of stories (§24-33).

PREMISES AFFECTED – 1847 60th Street, north side of 60th Street, between 18th Avenue and 19th Avenue, Block 5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

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308-06-BZ

APPLICANT – Eric Palatnik, P.C., for David Levitan, owner.

SUBJECT – Application November 22, 2006 – Special Permit (§73-622) for the enlargement of two semi-attached single family homes to be converted to a detached single family home. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district.

PREMISES AFFECTED – 1458-1460 East 26th Street, between Avenue “N” and Avenue “O”, Block 7679, Lots 77 & 79, Borough Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Abstain: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for decision, hearing closed.

315-06-BZ

APPLICANT– Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35, 24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

319-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 211 Service LLC., owner.

SUBJECT – Application December 8, 2006 – Special Permit pursuant to §73-49 to allow seventy-five (75) accessory parking spaces for an automotive service establishment (UG 16) on the rooftop of an existing building. M1-1 district.

PREMISES AFFECTED – 211/283 63rd Street, located on the north side of 63rd Street, between 2nd and 3rd Avenues, Block 5798, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel and Peter Barletta.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 1:30 P.M., for continued hearing.

71-07-BZ

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR §11-411 and §73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in anC1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21st Street, south side 21st Street blockfront between Broadway and 33rd Avenue, Block 555, Lot 16, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 1:30 P.M., for continued hearing.

97-07-BZ

APPLICANT– The Law Office of Fredrick A. Becker, for Atlas Park, LLC, owner; TSI Glendale Inc., dba New York Sports Club, lessee.

SUBJECT – Application April 24, 2007 – Special Permit (§73-36) to legalize the operation of a PCE on the second floor of a two-story commercial building within a commercial mall complex. The proposal is contrary to the use regulations of section 32-00. The Premises is located in a M1-1 zoning district.

PREMISES AFFECTED – 80-16 Cooper Avenue, southerly side of Cooper Avenue and the easterly side of 80th Street, Block 3810, Lot 350, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for decision, hearing closed.

101-07-BZ

APPLICANT– Harold Weinberg, P.E., for Moshe Blumenkranz, owner.

SUBJECT – Application April 26, 2007 – Special Permit (§73-622) for the enlargement of an existing single family detached residence. This application seeks to vary open space and floor area (§23-141) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2306 Avenue M, south side, 40th east of East 23rd Street, between East 23rd and East 24th Streets, Block 7627, Lot 42, Borough of Brooklyn.

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COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Harold Weinberg, Moshe Blumenkranz, Richel Blumenkranz and other.

For Opposition: Joseph Bergman and Lisa Rothman.

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for continued hearing.

104-07-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Rochelle Mandel, owner.

SUBJECT – Application April 30, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1243 East 29th Street, south side of Avenue L, Block 7647, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 5:00 P.M.

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*CORRECTION

This resolution adopted on January 4, 1983, under Calendar No. 513-82-BZ and printed in Volume LXVII, Bulletin Nos. 1-2, is hereby corrected to read as follows:

513-82-BZ

APPLICANT – Edward Lauria, P.E., for the City of New York Messrs. Jeffrey Tishman and Gary Spradling, lessees.
SUBJECT – Application August 24, 1982 – decision of the Borough Superintendent, under Section 72-21 of the Zoning Resolution, to permit in an M1-1 district, in an existing five story building, the use of the third and fourth floors as residential units with accessory studios.

PREMISES AFFECTED – 155 Hope Street, north side, 97.10 feet west of Powers Street, Block 2375, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD#18K

Appearances –

For Applicant: Edward Lauria, P.E.

For Opposition: None.

RECOMMENDATION OF THE COMMUNITY BOARD-

Favorable to the application.

ACTION OF BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chairperson Deutsch, Vice Chairman Fossella, Commissioner Agusta, Commissioner Carroll, Commissioner Wolf and Commissioner Bockman.....6

Negative.....0

THE RESOLUTION –

WHEREAS, a public hearing was held on this application on November 23, 1982, after due notice by publication in the Bulletin laid over to December 14, 1982, then to January 4, 1983; and

WHEREAS, the decision of the Borough Superintendent, dated August 6, 1982, acting on Alt. Applic. #315/1981, reads:

“1. Proposed Class “A” apartments for the subject building located in an M1-1 zone is not permitted as of right under Section 42-14 of the Zoning Resolution.”; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Commissioner Philip P. Agusta, R.A. and Commissioner Harry M. Carroll, P.E., who recommended that the application be granted; and

WHEREAS, CEQR has issued a conditional negative declaration; and

WHEREAS, this building is located on a narrow lot in a manufacturing zone; and

WHEREAS, the building is substandard and functionally obsolete as a manufacturing or commercial building and lacks an elevator; and

WHEREAS, the building is adjacent to residential development; and

WHEREAS, the building has minimal resale potential for total manufacturing or commercial use; and

WHEREAS, this application proposes to retain conforming uses on the first and second floors; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Section 72-21 of the Zoning Resolution, and that the applicant is therefore entitled to relief on the grounds of practical difficulty and/or unnecessary hardship.

Resolved, that the Board of Standards and Appeals does hereby make each and every one of the required findings and grants a variation in the application of the Zoning Resolution limited to the objection cited, and that the application be and it hereby is granted under Section 72-21 of the Zoning Resolution to permit, in an M1-1 district, in an existing five-story building, the use of the third fourth and fifth floors as residential units with accessory studios on condition that all work shall substantially conform to drawings as they apply to the objection above noted filed with this application marked, “Received October 19, 1982”-(17) sheets; “August 24, 1982”-(1) sheet and “December 9, 1982”-(4) sheets; and on further condition;

That the accessory studios shall be limited to studios in Use Group 9 and/or other permitted, non-hazardous commercial uses;

That all leases, brochures and offering plans shall contain the statement that this building is in an M1-1 district that permit uses that may not be in harmony with residential occupancy;

That these conditions shall appear on the Certificate of Occupancy;

That an approved smoke detector, hardwired with a continuously charged battery, emergency light and self-contained alarm be installed in each apartment; that a fire alarm station, connected to an alarm that can be heard throughout the building, be installed on each floor; that said alarm shall be installed with BSA approved components in accordance with NFPA No. 72 A 1979; that a controlled inspection report by a Professional Engineer or Registered Architect, giving a brief description of the installation and names of all components and that the work was performed as per above mentioned standard, be provided to the Building Department before a Certificate of Occupancy is issued; that no approval of the Fire Department of this alarm is required, but a copy of the controlled inspection report must be provided for their records; and that all laws, rules and regulations applicable be complied with, and that substantial construction be completed in accordance with Section 72-23 of the Zoning Resolution.

Adopted by the Board of Standards and Appeals, January 4, 1983.

***The resolution has been corrected to change: “Received February 19, 1982” to “October 19, 1982” and add plans dated: “August 24, 1982”-(1) sheet. Corrected in Bulletin Nos. 24-25, Vol. 92, dated June 28, 2007.**

BULLETIN

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Volume 92, Nos. 25-26

July 19, 2007

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Tuesday, July 10, 2007**

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128-07-BZ	1382 East 26 th Street, Brooklyn

DOCKETS

New Case Filed Up to July 10, 2007

172-07-BZ

121 East 85th Street, Site is situated on the north side of East 85th Street, 37 feet west of the corner formed by the intersection of Lexington Avenue and East 85th Street., Block 1514, Lot(s) 10,13, Borough of **Manhattan, Community Board: 8**. Under 72-21-To allow construction of new 28-story community facility/residential building.

173-07-BZ

1061 East 21st Street, Located on the east side of East 21st Street between Avenue I and Avenue J., Block 7585, Lot(s) 33, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT)-73-622-To allow the enlargement of a one-family residence.

174-07-BZ

1925 Coney Island Avenue, Northeast corner of Avenue P., Block 6758, Lot(s) 51, Borough of **Brooklyn, Community Board: 12**. (SPECIAL PERMIT) 73-211 & 73-212-Proposed reconstruction of an existing Auto Service Station with new metal canopy, new fuel tanks, pumps, new accessory convenience store.

175-07-BZ

90 West 225th Street, South side of 225th Street between Exterior Street and Broadway., Block 2215, Lot(s) 665, Borough of **Manhattan, Community Board: 7**. (SPECIAL PERMIT)-73-36-To permit a Physical Culture Establishment.

176-07-BZ

50-34 69th Street, Southwest corner of the intersection of Garfield Avenue and 69th Street., Block 2425, Lot(s) 33, Borough of **Queens, Community Board: 2**. Under 72-21-To permit the alteration and enlargement of an existing building for commercial use.

177-07-BZ

886 Glenmore Avenue, Corner of Glenmore Avenue and Milford Street, Block 4208, Lot(s) 17, Borough of **Brooklyn, Community Board: 7**. Under 72-21-Newly proposed 2 story, 2 family dwelling.

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

AUGUST 7, 2007, 10 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 7, 2007, at 10 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

517-68-BZ

APPLICANT – Alfonso Duarte, for 1667 Rental Depot Incorporated, owner.

SUBJECT – Application November 15, 2006 – Extension of Term/Amendment/Waiver of a variance previously granted pursuant to §72-21 permitting in an R3-2 district open automobile sales (UG 16A) with accessory office and automobile repairs on cars for sale. The application seeks to legalize the rental of automobiles and trucks (UG 8C). The term of the variance expired on October 7, 2005.

PREMISES AFFECTED – 1667 East Gun Hill Road, East side 175' south of Tiemann Avenue, Block 4802, Lot 21, Borough of the Bronx.

COMMUNITY BOARD #12BX

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0' east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

8-05-BZ

APPLICANT – Sheldon Lobel, P.C., for James Pi, owner.

SUBJECT – Application January 18, 2005 – To consider dismissal for lack of prosecution – propose use, bulk and parking variance to allow a 17 story mixed-use building in R6/C1-2 and R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, a/k/a 51-35 Reeder Street, entire frontage on Queens Boulevard between Reeder Street and Broadway, Block 1549, 41 (a/k/a 41 & 28), Borough of Queens.

COMMUNITY BOARD # 4Q

284-05-BZ

APPLICANT – Alfonso Duarte for Constantine Zahria, owner.

SUBJECT – Application September 9, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow a four-story industrial building with rooftop parking in an M1-1 district.

PREMISES AFFECTED – 34-29 37th Street, East side 290.28' south of 37th Avenue, Block 645, Lot 15, Borough of Queens.

COMMUNITY BOARD # 1Q

309-05-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Pafos Realty Corporation, owner.

SUBJECT – Application October 17, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow.

PREMISES AFFECTED – 53-03 Broadway, North side of Broadway on the corner of Broadway and 53rd Place, Block 1155, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

287-06-BZ

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT – Application October 27, 2006 – To consider dismissal for lack of prosecution – proposed bulk variance to legalize a recently developed residential/community facility building with two non-complying side yards in an R5 dis.

PREMISES AFFECTED – 32-12 23rd Street, 33rd Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

77-07-A

APPLICANT – Burgher Avenue Property Management LLC, owner

SUBJECT – Application April 9, 2007 – Proposed construction of a one story commercial building not fronting on a mapped street contrary to Article 3, §36 of the General City Law. C2-1 Zoning District.

PREMISES AFFECTED – 32 Adele Street, between

CALENDAR

Burgher and Evergreen Avenue, Block 3329, Lot 63,
Borough of Staten Island.

COMMUNITY BOARD #2SI

82-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point
Cooperative, owner; Nadine & Edward Frerks, owner.

SUBJECT – Application April 17, 2007 – Proposal to
reconstruct and enlarge an existing single family dwelling
and upgrade an existing private disposal system partially
located within the bed of a mapped street (12th Avenue) is
contrary to General City Law §35 and the Department of
Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 71 Bedford Avenue, Bedford
Avenue and mapped 12th Avenue, 88.81' east of Beach
204th Street, Block 16350, Lot p/o 300, Borough of
Queens.

COMMUNITY BOARD #14Q

87-07-A

APPLICANT – Robert C. Miller, for Breezy Point
Cooperative, Inc., owner; James Naus, lessee.

SUBJECT – Application April 19, 2007 – Proposal to
reconstruct and enlarge an existing one family home and
upgrade of an existing private disposal system within the
bed of mapped street, (Bayside Drive) is contrary to
General City Law Section 35 and the Department of
Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 347 Roxbury Avenue,
northwest of Seabreeze Avenue, Block 16350, Lot 50,
Borough of Queens.

COMMUNITY BOARD #14Q

153-07-BZY

APPLICANT – Mitchell A. Korbey, Esq., for 20 Bayard
Views, LLC, owner.

SUBJECT – Application June 8, 2007 – Extension of time
(§11-332) to complete construction of a minor development
commenced prior to the amendment of the zoning district
regulations on May 11, 2005. M1-2 /R6B & M1-2 /R6A.
PREMISES AFFECTED – 20 Bayard Street, a/k/a 27-35
Richardson Street, a/k/a 17 Richardson Street, Bayard
Street between Union Avenue and Lorimer Street, Block
2721, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

AUGUST 7, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing,

*Tuesday afternoon, August 7, 2007, at 1:30 P.M., at 40
Rector Street, 6th Floor, New York, N.Y. 10006, on the
following matters:*

ZONING CALENDAR

426-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Expert Realty,
LLC, owner.

SUBJECT – Application December 28, 2005 – Variance
(\$72-21) to allow a two-level enlargement of an existing
one-story commercial building contrary to FAR regulations
(\$43-12). M1-1 district.

PREMISES AFFECTED – 57-02/08 39th Avenue and 39-
02 58th Street, Block 1228, Lots 48, 52, 57, Borough of
Queens.

COMMUNITY BOARD #2Q

16-07-BZ

APPLICANT – Juan D. Reyes, III, for Daytop Village,
Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit
(\$73-44) to permit a reduction in required parking for a
Use Group 4A ambulatory and diagnostic treatment center
located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue,
Halperin Avenue between Blandell Avenue and
Williamsburg Road, Block 4074, Lot 11, Borough of
Bronx.

COMMUNITY BOARD #10BX

33-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for
Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (\$72-
21) to permit the conversion of the upper four floors of an
existing five-story manufacturing building for residential
use. The Premises is located in a M1-1 zoning district. The
proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of
Carroll Street, 200' east of intersection with Van Brunt
Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

69-07-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLP,
for 240 West Broadway, LLC, owner.

SUBJECT – Application March 23, 2007 – Variance (\$72-
21) to allow a nine (9) story residential building containing

CALENDAR

seven (7) dwelling units; contrary to use regulations (§42-10). M1-5 district (Area B-1 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 240 West Broadway, northwest corner of the intersection of North Moore Street and West Broadway, Block 190, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #1M

112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalmam, owners.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to permit the construction of a synagogue. The Premises is located in an R2 zoning district. The proposal is contrary to floor area ratio and lot coverage (§24-11), side yards (§24-35), rear yard (§24-36), wall height (§24-521) and parking (§25-31).

PREMISES AFFECTED – 1089-1093 East 21st Street, East 21st Street between Avenue I and Avenue J, Block 7585, Lots 21 & 22 (Tent. 21), Borough of Brooklyn.

COMMUNITY BOARD # 14BK

126-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Massachusetts Mutual Life Insurance Co., owner; AGT Crunch New York, LLC, lessee.

SUBJECT – Application May 17, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on a portion of the ground floor, second floor mezzanine, and on part of the second floor in a 43-story residential building. The proposal is contrary to §32-00. C6-4 zoning district.

PREMISES AFFECTED – 555 West 42nd Street, north side of West 42nd Street, at 11th Avenue, Block 1071, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 10, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

737-86-BZ

APPLICANT – Rampulla Associates Architects, for Angelo Falato, owner.

SUBJECT – Application February 9, 2007 – Extension of Term of a previously granted Variance (§72-21) for an existing one story retail store (Use Group 6) which will expire on June 2, 2007. R3-1 zoning district.

PREMISES AFFECTED – 3304 Amboy Road, between Buffalo Street and Hopkins Avenue, Block 4964, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a period of twenty years for a previously granted variance for a retail store (UG 6) in an R3-2 zoning district, which expired on June 2, 2007 and for the addition of an outdoor canopy with picnic tables; and

WHEREAS, on January 23, 2007 the Staten Island Commissioner of the New York City Department of Buildings, acting on Application No. 500866020, issued objections, which stated:

The proposed continued use of the premises as a retail store (use group 6) in an R3-2 zoning district beyond June 2, 2007 is contrary to section ZR 22-00 and BSA calendar 737-86-BZ. Extension of the term of use will require a special permit from the Board of Standards and Appeals; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 3, Staten Island, has recommended approval of this application for a term of ten years, with the following conditions: the term of the extension should be ten years; the curb cuts should be shortened for safer ingress and egress onto the property; plantings should be made

along the fence line behind and next to the residential neighbors' yards; a curb wall should be installed next door with rear yard drain to the drywell; the refrigerator next to the neighbor's fence and all illegal structures should be removed; and

WHEREAS, the site is located on the east side of Amboy Road between Buffalo Street and Hopkins Avenue; and

WHEREAS, the site is located in an R3-2 zoning district and is improved with a one-story retail food store, a canopy with picnic tables and parking for 11 vehicles; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 1986 when, under BSA Cal. No. 737-86-BZ, the Board granted a variance under ZR § 72-21 to permit in an R3-2 district the legalization of a one-story retail store; and

WHEREAS, on February 3, 1998, under the subject calendar number, the Board amended the grant to limit the hours of operation and extend the term of the variance until June 2, 2007; and

WHEREAS, at hearing, the Board raised concerns about illegal signage, the presence of a seating area along the rear property line, and the condition of the fence at the rear property line; and

WHEREAS, in response to the comments of the Board and Community Board 3, the applicant has made or proposes to make certain changes at the premises, including: 1) reducing the size of the southern curb cut from 30 feet to 25 feet; 2) removing illegal signs and metal sign structures and ensuring that the premises complies with C-1 district signage requirements; 3) removing chairs and seats located along the rear property line; 4) limiting the hours of operation for the outdoor seating area to 7 a.m. to 7 p.m. Monday through Sunday; 5) replacing the fence along the property line; and 6) installing a new curb; and

WHEREAS, the applicant now requests an additional twenty-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on June 2, 1987, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 2, 2007, to expire on June 2, 2017, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received February 9, 2007'-(1) sheet, 'April 12, 2007'-(2) sheets and 'June 12, 2007'-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 2, 2017;

THAT the hours of outdoor seating shall be limited to 7:00 am to 7:00 pm Monday through Sunday;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not

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specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 500866020)

Adopted by the Board of Standards and Appeals, July 10, 2007.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, and a reopening to legalize a change in use from automobile repair, truck rental, and sale of used cars (Use Group 16) to car sales (Use Group 8), and to extend the term which expired on September 27, 2005 (the Board notes that the certificate of occupancy erroneously stated the expiration date as October 27, 2005); and

WHEREAS, a public hearing was held on this application on September 16, 2006, after due notice by publication in the *City Record*, with continued hearings on October 31, 2006, December 5, 2006, January 23, 2007, March 6, 2007, March 20, 2007, April 24, 2007, and June 5, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens,

recommends disapproval of this application, citing concerns about the maintenance of the site, disruptions due to car washing, cars parked on the sidewalk, and an excessive numbers of cars being parked onsite; and

WHEREAS, the Queens Borough President and City Council Member Tony Avella recommend disapproval of this application, citing concerns that the site is not operated in compliance with the prior grants; and

WHEREAS, the Auburndale Improvement Association, the Station Road Civic Association, and certain neighbors recommend disapproval of this application, citing the same concerns as the Community Board; and

WHEREAS, the site is located on the northwest corner of Northern Boulevard and 167th Street, within a C1-2 (R2) zoning district; and

WHEREAS, the subject site has a total lot area of approximately 13,401 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,650 sq. ft. accessory building and a car sales area with parking for cars for sale and accessory customer parking; and

WHEREAS, the Board notes that the concerned elected officials and neighborhood associations have documented that the number of cars parked at the site exceeds the amount permitted under prior approvals; and

WHEREAS, on July 11, 1955, under BSA Cal. No. 281-54-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses at the site for a term of 15 years; and

WHEREAS, on May 14, 1968, under BSA Cal. No. 130-68-BZ, the Board granted an amendment to permit the enlargement of the accessory building; and

WHEREAS, the grant was subsequently extended for two terms of ten years; and

WHEREAS, on September 27, 1995, under the subject calendar number, the Board granted an amendment to legalize the change in use from a gasoline service station to an automobile and truck rental facility, limited to 15 cars and four trucks, with auto repairs and the sale of used cars limited to five; and

WHEREAS, the applicant now seeks to extend the term for a period of ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, as to the term, the Board notes that the request is for a legalization and has considered the testimony and evidence submitted into the record which reflects that the conditions and operation of the site are not in conformance with the prior grant; and

WHEREAS, accordingly, the Board has determined that a new ten-year term is not appropriate; and

WHEREAS, the applicant also proposes to legalize a change in the use at the site to the sale of more than five cars; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the Board notes that the change in use, from

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the gasoline service station with accessory uses (Use Group 16) permitted under the original variance to car sales (Use Group 8) is permitted pursuant to ZR § 11-413; and

WHEREAS, the applicant submitted several iterations of the site plan, which reflected different layouts for the cars for sale and variations of other site conditions; and

WHEREAS, at hearing, and in response to community members' concerns, the Board directed the applicant to address the following conditions: (1) signage must comply with C1 zoning district regulations; (2) the site is overcrowded and has an inefficient traffic flow; (3) parking of cars on the sidewalk is prohibited; (4) the fencing and landscaping around the site must be compatible with adjacent residential uses; and (5) any car washing must be controlled so as not to affect neighboring properties; and

WHEREAS, as to the signage, the applicant agreed to remove the sign on the fence and limit the signage to the building, which will comply with C1 zoning district regulations which permits 150 sq. ft. of signage for each frontage; the applicant proposes 150 sq. ft. of signage on the Northern Boulevard frontage; and

WHEREAS, as to the overcrowding at the site, although a prior iteration of the plans reflected parking for 41 cars, the applicant agreed to limit the number of cars to one car for each 200 sq. ft. of open space at the site and to provide the required 15 ft. aisle width; and

WHEREAS, specifically, the applicant agreed to designate five accessory parking spaces for customer parking at the northwest corner of the site and 33 spaces for cars for sale; and

WHEREAS, further, the applicant states that an employee of the car sales business would park and move the cars for sale; and

WHEREAS, as to the inappropriate parking of cars on the sidewalk and blocking driveways, the applicant has agreed to limit the number of cars at the site, which will eliminate the need to accommodate excess cars; and

WHEREAS, additionally, to improve the layout and traffic flow at the site, the applicant agreed to eliminate the two curb cuts at the corner of Northern Boulevard and 167th Street; and

WHEREAS, as to the fencing and landscaping, the applicant agreed to replace the existing pull down fencing on the Northern Boulevard frontage, with a brick wall of a height of 1'-6" in front of the new pull-down gate; the applicant also proposes to replace the fencing on the 167th Street frontage with a stepped low brick wall with wrought iron fence of a height of ten feet behind it in order to be more compatible with adjacent residential uses; and

WHEREAS, finally, the applicant agrees to provide opaque fencing along the rear property line adjacent to residential uses; and

WHEREAS, as to car washing, the applicant agreed to install an improved drainage system at the site to prevent any water from flowing onto adjacent sites; and

WHEREAS, additionally, during the hearing process, the

applicant removed the underground storage tanks and otherwise cleaned-up and eliminated the facilities associated with the abandoned auto repair use; and

WHEREAS, the applicant submitted a revised site plan, which reflected the noted modifications; and

WHEREAS, the Board agreed that the revised parking layout, the improved brick wall and fence design, and the removal of two curb cuts would improve the traffic circulation; and

WHEREAS, while the Board notes that the Community Board, City Council Member Avella, and the neighborhood associations do not approve of the proposed use of the site, the Board finds that with the noted modifications, such use is compatible with existing land uses in the area; and

WHEREAS, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and 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 under ZR §§ 11-411 and 11-413, to permit the legalization of a change in use to a car dealership and an extension of term for a period of two years from the date of this grant, to expire on July 10, 2009; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received June 25, 2007"-(5) sheets; and *on further condition*:

THAT this grant shall be for a term of two years, to expire on July 10, 2009;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT the total number of cars parked at the site shall be limited to 38, which includes a minimum of five parking spaces for accessory customer parking;

THAT all exterior lighting shall be directed away from adjacent residential uses;

THAT all signage shall comply with C1 zoning district regulations;

THAT no signage shall be posted above the pull-down gates, as per the BSA-approved plans;

THAT the hours of operation shall be limited to Monday through Saturday, 10:00 a.m. to 8:00 p.m. and Sunday, 11:00 a.m. to 5:00 p.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT construction shall be completed and a new certificate of occupancy obtained within six months of the date of this grant, by January 10, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the parking layout shall be as approved by DOB;

THAT this approval is limited to the relief granted by the

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Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

149-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Brodcom West Development Company, owner; AGT Crunch, lessee. SUBJECT – Application January 12, 2007 – Extension of term/Amendment for a physical culture establishment in a C4-7 zoning district, including legalization of change in operating entity and amend the hours of operations.

PREMISES AFFECTED – 35/75 West End Avenue, northwest corner of West End Avenue and West 61st Street, Block 1171, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on July 29, 2006; and

WHEREAS, on December 29, 2006, the Manhattan Borough Commissioner of the Department of Buildings, acting on Application No. 104556945, issued objections, which stated:

“The physical cultural establishment is not permitted as-of-right in C4-7 zoning district and it is contrary to ZR 32-10”; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, and then to decision on July 10, 2007; and

WHEREAS, Community Board 7, Manhattan, recommends approval of the application; and

WHEREAS, the subject premises is located on the northwest corner of West End Avenue and West 61st Street; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the site is located within a C4-7 zoning district, and is occupied by a 38-story mixed-use building; and

WHEREAS, the PCE occupies 1,749 sq ft. on the basement level and 14,016 sq. ft. on the first floor; and

WHEREAS, the PCE is operated as Crunch Fitness; and

WHEREAS, on July 30, 1996, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the existing PCE in the basement and first floor of the subject building; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant proposes minor changes in operating hours, but no other changes to the prior grant; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 30, 1996, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on July 30, 2016; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 17, 2007”–(6) sheets; and; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on July 30, 2016;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application No. 104556945)

Adopted by the Board of Standards and Appeals, July 10, 2007.

214-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner. SUBJECT – Application October 18, 2006 – Extension of Term/Extension of time to obtain a Certificate of Occupancy

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and Amendment of a Special Permit granted pursuant to §73-242 to permit within a C3 zoning district an eating and drinking establishment.

PREMISES AFFECTED – 2761 Plumb Second Street, northeast corner formed by intersection of Plumb Second Street and Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, an amendment to legalize certain site modifications, and an extension of the term for a previously granted special permit for an eating and drinking establishment, which expired on March 26, 2007; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject premises is located on the northeast corner of Plumb Second Street and Harkness Avenue, within a C3 zoning district; and

WHEREAS, the site has frontage on the Shell Bank Creek; and

WHEREAS, the restaurant is operated as T.G.I. Friday's; and

WHEREAS, on May 27, 1980, under BSA Cal. No. 1233-79-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a two-story enlargement to an existing wholesale and retail fish-packing establishment; and

WHEREAS, on December 1, 1987, under BSA Cal. No. 233-86-BZ, the Board granted a special permit, pursuant to ZR § 73-242 to permit a one-story enlargement of the existing building and for a partial conversion of that portion of the building into an eating and drinking establishment, for a term of five years; the fish-packing establishment has been maintained in the portion of the building without frontage on Shell Bank Creek and is not subject to the special permit; and

WHEREAS, the special permit was subsequently extended for a term of five years; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board permitted the re-establishment of the special permit, for a term of five years to expire on March 26, 2007; and

WHEREAS, this application seeks to extend the term of the special permit for an additional five years; and

WHEREAS, additionally, the applicant proposes to legalize modifications to the site, which include the addition of a cooler trailer and walk-in box, which are required by the New York City Department of Health and Mental Hygiene regulations, for use by the fish-packing and the eating and drinking establishments; and

WHEREAS, the floor area occupied by these structures has been included in the revised floor area calculations for the site, which the applicant represents comply with zoning district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 26, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of five years from the expiration of the last grant, to expire on March 26, 2012; to grant a nine-month extension of term to obtain a certificate of occupancy; and to permit the legalization of the noted site modifications; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received October 13, 2006”-(3) sheets and “May 30, 2007” – (2) sheets; and; and *on further condition*:

THAT this grant shall expire on March 26, 2012;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained by April 10, 2008;

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. 302221619)

Adopted by the Board of Standards and Appeals, July 10, 2007.

196-02-BZ, Vol. II

APPLICANT – Peter Hirshman, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application April 24, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy to a previously granted variance (ZR §72-21) for the addition of sleeping accommodations of 16 beds to an

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existing community facility (Dynamic Youth Community Inc.) in C8-2 zoning district.

PREMISES AFFECTED – 1826-32 Coney Island Avenue, west side of Coney Island Avenue, 46’ North of Avenue O, Block 6549, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 sleeping accommodations at an existing community facility building and to obtain a certificate of occupancy, which expired on November 19, 2006; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, and then to decision on July 10, 2007; and

WHEREAS, the application is brought on behalf of Dynamic Youth Community, Inc., a non-profit entity; and

WHEREAS, the subject premises is located on the west side of Coney Island Avenue, 46 feet North of Avenue O, within a C8-2 zoning district; and

WHEREAS, on November 19, 2002, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the addition of sleeping accommodations for 16 beds to an existing community facility building; and

WHEREAS, the grant was subsequently amended by letter dated June 4, 2003; and

WHEREAS, a condition of the grant was that work be completed within the time permitted by ZR § 72-23, which is four years from the date of the grant; and

WHEREAS, another condition of the grant was that a certificate of occupancy be obtained within two years of occupancy; and

WHEREAS, the applicant represents that construction was delayed as funding requirements were being met; and

WHEREAS, the applicant represents that the work has begun and is now 40 percent complete; and

WHEREAS, accordingly, the applicant requests a three-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a three-year extension of time to complete construction and obtain a certificate of occupancy is appropriate, with the conditions 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 November 19, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction and obtain a certificate of occupancy for a period of three years from the date of this grant; on condition that any and all work shall substantially conform to the approved drawings and on further condition:

THAT construction shall be complete and a certificate of occupancy obtained by July 10, 2010;

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. 301938312)

Adopted by the Board of Standards and Appeals, July 10, 2007.

41-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: United Homes (contract vendee).

SUBJECT – Application February 24, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 140 Beach 25th Street, to be known as 120 Beach 25th Street, Block 15815, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Queens Borough Commissioner, dated February 4, 2005, acting on Department of Buildings Application Nos. 401992992, 401993009, 401993385, 401992983, 401992723, 401992714, 401992705, 401993312, 401992670, 401992689, 401992698, 401993394 read in pertinent part:

“Proposed development in the bed of a mapped street (Beach 25th Street) is contrary to General City Law Section 35 Subdivision 2”; and

WHEREAS, this is an application to permit, within an R6 zoning district within a Waterfront Area, the construction of ten three-family homes and two six-family homes within the bed of

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a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, the application was filed on February 24, 2005; and

WHEREAS, on June 28, 2005, the applicant indicated an intent to file an application with the City Planning Commission (CPC) for Waterfront Certification; the Board agreed to allow the applicant time to obtain CPC approval; and

WHEREAS, on July 22, 2005, at the request of Board staff, the applicant revised the site plan to reflect the footprint of the buildings in relationship to the mapped street; and

WHEREAS, on November 28, 2005, the Department of Environmental Protection stated that it had reviewed the revised site plan and had no objections; and

WHEREAS, on August 2, 2006, the applicant notified the Board that the development had been revised so that the proposed homes were no longer within the bed of the mapped street; additionally, the applicant stated that the CPC certification had been obtained; and

WHEREAS, accordingly, the applicant stated that the waiver of Section 35 of the General City Law was not required for the homes; and

WHEREAS, however, the applicant requested that the application be kept open in order to address the need to install drywells within the bed of the mapped street, which would require a waiver of Section 35 of the General City Law; and

WHEREAS, on February 21, 2007, Board staff sent a letter to the applicant requesting information on the status of the application; and

WHEREAS, the Board did not receive any response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and

WHEREAS, on May 30, 2007, the Board sent the applicant a Notice of Hearing stating that the case had been put on the July 10, 2007 dismissal calendar; and

WHEREAS, the applicant did not respond to this notice; and

WHEREAS, because of the applicant's lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 41-05-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 10, 2007.

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the

previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 10 A.M., for continued hearing.

177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025 Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

297-99-BZII

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Co., LLC, owner; Exxon Mobil Corp., lessee.

SUBJECT – Application May 29, 2007 – Extension of Time to obtain a Certificate of Occupancy/Waiver of the rules for an existing gasoline service station (Mobil Station) which expired on September 19, 2004 in a C2-2/R6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

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ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

242-02-BZ

APPLICANT – Joseph Fullam, for Helen Fullam, owner.
SUBJECT – Application June 4, 2007 – Extension of Time to complete construction of a previously granted Variance (§72-21) in July 22, 2003 to construct a two family residence in an R3X/SR zoning district which expires on July 27, 2007.

PREMISES AFFECTED – 1 North Railroad Street, Annadale, west side of North Railroad, between Belfield Avenue and Burchard Court, Block 6274, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Fullam.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

84-06-BZY

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331, to renew a building permit and extend the time for the completion of the foundation for a two-story with attic mixed-use residential/community facility building; and

WHEREAS, this application was brought prior to a companion application under BSA Cal. No. 45-07-A, decided the date hereof, which is a request to the Board for a finding

that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that separate applications were filed and that the application under the subject calendar number was removed from the Board’s calendar on February 27, 2007, the date of the first hearing for the companion common law vested rights case, which was subsequently prosecuted at several hearings; the record is the same for both cases; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, with continued hearings on December 12, 2006, January 23, 2007 and February 27, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, certain neighbors and the Good Neighbors’ Association of Midwood, through counsel, appeared in opposition to the application (collectively the “Opposition”); and

WHEREAS, the site is located on the west side of East 19th Street, between Avenue N and Avenue O and it has a lot area of 3,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a two-story with attic mixed-use residential and community facility building, with 5,500 sq. ft. of floor area (1.49 FAR) and a height of 39’-2” (the “Building”); and

WHEREAS, the subject premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically for use, floor area, FAR (4.8 FAR was the maximum permitted for mixed-used residential and community facility buildings), height (there were not any height regulations), and setback; and

WHEREAS, however, on April 5, 2006 (the “Enactment Date”), the City Council voted to adopt the Midwood rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, because the site is now within an R4-1 district, the Building would not comply with the new zoning restrictions; and

The Validity of the Permits

WHEREAS, on December 8, 2005, the applicant professionally certified and obtained approval for a two-story with attic multiple-dwelling building with a community facility; and

WHEREAS, on February 28, 2006, DOB performed a special audit of the building plans, issued a stop work order (SWO), and ultimately issued a ten-day notice of intent to revoke the permit on March 6, 2006; and

WHEREAS, the applicant resolved the objections and obtained DOB’s approval on March 9, 2006 (the “Permit Date”) for Permit No. 302041261 (the “NB Permit”); and

WHEREAS, on March 29, 2006, the applicant filed a post-approval amendment (PAA) (“PAA Date”), which provided for a five-story building to be built at the site pursuant

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to the Quality Housing provisions; and

WHEREAS, the threshold issue is that any work performed in support of a vesting claim must be performed pursuant to a valid permit; and

WHEREAS, the validity of the permit under which the work was performed at the site has been called into question by the Opposition and by DOB; and

WHEREAS, as noted above, the PAA reflects a five-story building to be built pursuant to the Quality Housing provisions; and

WHEREAS, during the hearing process, DOB made a determination that Quality Housing provisions did not apply and that the plans associated with the PAA were non-complying even under the prior zoning; and

WHEREAS, accordingly, DOB determined that any work performed before March 9, 2006 or after March 28, 2006, could not meet the threshold requirement of work being performed pursuant to a valid permit; and

WHEREAS, the Board agrees with DOB that any work performed after March 28, 2006, cannot be considered for vesting purposes because the PAA plans would not have complied with the prior zoning and no permits could have been issued to permit the construction performed after that date; and

WHEREAS, at hearing, the Board stated that it would consider the work performed between March 9 and March 29, 2006 for vesting purposes because, despite several SWOs and other DOB objections to those plans, there was no incurable flaw in those plans for the original two-story with attic building that would make them inconsistent with the prior zoning under which the applicant proposes to vest; and

WHEREAS, however, the Board disregards the PAA and any work associated with it; and

WHEREAS, after the Enactment Date, DOB performed a special audit of the plans associated with the PAA under the regulations associated with the prior zoning and issued a ten-day notice of intent to revoke the permits on May 11, 2006; and

WHEREAS, DOB states that it did not receive a response from the applicant and revoked the permits on July 14, 2006; and

WHEREAS, the applicant claims that the notice of intent to revoke was never received; and

WHEREAS, furthermore, as noted, DOB determined that the PAA was not valid when issued because the Quality Housing provisions, upon which the initial plans were based do not apply to this site pursuant to ZR § 23-011(c)(3), which specifically excludes zoning lots with the characteristics of the subject lot and, on November 6, 2006, it revised its objections to reflect that the Quality Housing provisions were not applicable and that the plans associated with the PAA could not have complied with the R6 zoning district regulations; and DOB's Vesting Determination

WHEREAS, the applicant claims that when DOB inspected the site at the time of the rezoning, it gave a verbal determination that, as of the Enactment Date, the foundation had been poured and the site was therefore vested; and

WHEREAS, DOB states that because of the inspector's observation on April 6, 2006 that the foundation "appeared to be complete," DOB did not issue a SWO pursuant to the

rezoning; and

WHEREAS, subsequently, DOB received complaints that foundation work continued at the site and that it had not been complete at the Enactment Date; and

WHEREAS, DOB records show that because it could not gain access and get a full view of the site at the first inspection, the inspector could only observe that the foundation walls "appeared" to be in place and that no vesting determination was made by DOB; and

WHEREAS, DOB re-inspected the site on April 20, 2006 and witnessed foundation work being performed; DOB noted that due to backfilling, its inspector was unable to ascertain conclusively whether the foundation had been complete on the April 6, 2006 inspection and evidence submitted by the applicant in support of the vesting was contradictory; and

WHEREAS, accordingly, DOB subsequently issued a SWO; and

WHEREAS, as the result of the second inspection, DOB did not vest the work since it did not appear that the south foundation wall had been completed and that the presence of backfill at the first inspection precluded the inspector from seeing the entire site; and

WHEREAS, the applicant claims that the additional concrete was poured to repair a blowout to one of the foundation walls but DOB did not see any evidence to substantiate this claim at its second foundation inspection; and

WHEREAS, on April 27, 2006, DOB inspected the site a third time to investigate the applicant's claim that the additional concrete pouring was due to a blow-out on the south wall, but again did not find any evidence to support such a claim; and

WHEREAS, because the Building violated the provisions of the R4-1 zoning district and DOB ultimately determined that work on foundations was not completed on the Enactment Date, the NB Permit lapsed by operation of law; and Statutory Vesting Claim

WHEREAS, the applicant now applies to the Board to reinstate the NB Permit pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the

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Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

Excavation Work

WHEREAS, on February 28, 2006, DOB issued a SWO because it determined that excavation work was performed without permits and witnessed equipment for excavation activity on site; and

WHEREAS, the applicant claims that the noted excavation work was a result of demolition that was performed under a valid demolition permit; and

WHEREAS, the applicant claims that work completed prior to the PAA includes (1) shoring from March 14 (when a SWO was issued until a seismologist was hired) through March 22; and (2) lagging and excavation on March 23 and March 24 before another SWO was issued on March 27; and

WHEREAS, the applicant represents that lagging was completed on March 30, after the PAA went into effect and after the SWO was lifted; and

WHEREAS, accordingly, the Board is unable to conclude that excavation was completed between March 9 and March 29, 2006 because there is conflicting and inconclusive evidence in the record as to what work was performed under valid permits; and

Foundation Work

WHEREAS, as to the foundation, the applicant represents that form work was completed on April 3, 2006 and that concrete was poured on April 4, 2006; and

WHEREAS, as to substantial progress on the foundation, the applicant claims that 105 cubic yards of concrete, which represents the total amount of concrete initially proposed for the project, were poured for the foundation between the effective date of the PAA on March 29, 2006 and the Enactment Date on April 5, 2006; and

WHEREAS, the applicant admits that concrete was poured after the Enactment Date but claims that that was to repair blowouts and to make other repairs; and

WHEREAS, specifically, the applicant claims that 105 cubic yards of concrete were required for the foundations and that by the Enactment Date, 132 cubic yards had been poured; and

WHEREAS, at one point, the applicant stated that the additional 27 cubic yards associated with the purported repair work was poured before the Enactment Date and at another point, the applicant stated that the additional concrete was poured after the Enactment Date; and

WHEREAS, the Board notes that records from the concrete contractor submitted during the hearing process conflict with affidavits in the record that all concrete was poured by the Enactment Date; and

WHEREAS, the Board notes that, even if there were

conclusive evidence that the purported foundation work had been completed by the Enactment Date, due to the invalidity of the permits after the PAA Date, the PAA Date, rather than the Enactment Date, is the date on which the foundation work would have had to have been completed; and

WHEREAS, because any work performed after the PAA Date must be excluded from the analysis since the Board has determined that it was not performed pursuant to valid permits, only the lagging and shoring which was performed prior to the PAA Date has been considered; and

WHEREAS, the applicant has submitted photographs of the amount of work completed, which are not helpful because they reflect work performed both after the Enactment Date and while no valid permits were in effect; and

WHEREAS, the Board notes that substantial progress had not been made on primary elements of the foundation, including foundation forms and concrete pouring; and

Conclusion

WHEREAS, based upon the record before it, the Board is unable to conclude that excavation for the proposed development was complete or would have been completed prior to the PAA Date; and

WHEREAS, additionally, the Board has determined that substantial progress on the foundation had not been completed as of the PAA Date; and

WHEREAS, accordingly, because substantial progress had not been made on the foundation under lawfully issued permits, the applicant is not entitled to relief under ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the New Building permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 45-07-A.

Therefore it is Resolved that this application to renew DOB Permit No. 302041261 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, July 10, 2007.

232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard,

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Block 3122, Lot 213, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 22, 2006, acting on Department of Buildings Application No. 500832735, reads in pertinent part:

“The street giving access to the proposed construction of a new residential building Use Group 2 in R3-1 Zoning District is not duly placed on the official map of the City of New York and therefore referred to the Board of Standards and Appeals for approval”; and

WHEREAS, a public hearing was held on this application on March 6, 2007 after due notice by publication in the *City Record*, then to continued hearings on April 10, 2007, May 8, 2007, and June 19, 2007, and to decision on July 10, 2007; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the application requested permission to build a two-story, two-family home that does not front on a final mapped street; and

WHEREAS, by letter dated February 27, 2007, the Fire Department stated that it had reviewed the application and informed the Board that the proposed home, situated on a 20’ wide easement and fronting on a 12’ wide alley, would pose a serious life hazard because the proposed frontage space for 28 Sand Court would be along the side of the house and would not allow the proper positioning of the engine or the ladder apparatus in the event of a fire; and

WHEREAS, the Fire Department also expressed concern about whether there would be a working hydrant in close proximity to the building; and

WHEREAS, the Fire Department concluded that, even with an automatic sprinkler system, fire safety in the house would be compromised; and

WHEREAS, by letter dated March 26, 2007 the applicant in response to the issues raised by the Fire Department indicated that the proposed building would be fully sprinklered, that a new fire hydrant would be installed in proximity to the two entries to the building, that a new circulation pattern would be created, and that paved areas would provide adequate access to the building; and

WHEREAS, by letter dated April 24, 2007 the applicant has submitted a revised site plan indicating the change in the

class of construction of the proposed home to Class IID, and an agreement by the adjacent property owner on Lot 177 to honor the amended terms of the easement declaration which allows for ingress and egress for the benefit of the owner for Lot 213 (the subject lot); and

WHEREAS, by letter dated April 30, 2007, the Fire Department stated that it had reviewed the applicant’s April 24, 2007 letter, that the conditions described in its February 24, 2007 letter remain unchanged and that the proposed structure would be inaccessible to Fire Department equipment; and

WHEREAS, by letter dated June 6, 2007 the applicant provided a revised Site Plan showing that the main entrance of the dwelling has been relocated so that it fronts directly on the 30-foot, widened portion of the Sand Court, and indicating that “No Parking”/Fire Lane Signs would be posted along the easement, and that the owner would take all required actions, including instituting legal proceedings, to ensure that the easement would remain unobstructed; and

WHEREAS, this condition will also be required to be listed on the Certificate of Occupancy for the subject premises; and

WHEREAS, the Board has taken into consideration the increased level of fire protection and construction and the site restrictions that are to be implemented; and

WHEREAS, based upon the above, the Board deems that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated August 22, 2007, acting on Department of Buildings Application No. 500832735, is modified by the power vested in the Board by Section 36 of the General City Law, and 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 June 6, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the main entrance of the residence fronts directly on the 30-foot widened portion of Sand Court;

THAT the subject property be fully sprinklered and be of a Class IID construction; and

THAT a new fire hydrant will be installed in proximity to the two entrances to the building; and

THAT there will be “NO PARKING/FIRE LANE” signs posted along the Sand Court easement; and

THAT the owner will take any and all required actions, including the commencement of formal legal proceedings, to insure that the Sand Court easement area is kept free and clear of automobiles and other obstructions at all times; and

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THAT the above conditions shall appear on the Certificate of Occupancy; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

37-07-A

APPLICANT – Cozen O’Connor Attorneys, for 56-50 Main Street Realty, LLC, owner.

SUBJECT – Application June 19, 2007 – Proposed construction of a Commerce Bank located within the bed of Booth Memorial Avenue contrary to General City Law Section 35. C1-3/R5B.

PREMISES AFFECTED – 56-50 through 56-56 Main Street, northwest corner of Main Street and Booth Memorial Avenue, Block 5133, Lots 10 & 25, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 22, 2007, and updated on February 6, 2007, acting on Department of Buildings Application No. 402527672 reads in pertinent part:

Proposed plan is located in the bed of mapped street is contrary to GCL Section 35. Refer to BSA; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in the *City Record*, and then to decision on July 10, 2007; and

WHEREAS, this application seeks to build a Commerce Bank (Use Group 6) within the bed of Booth Memorial Avenue, a mapped street; and

WHEREAS, by letter dated July 10, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 26, 2007, the Department of Environmental Protection (“DEP”) states that it has reviewed the application and has advised the Board that amended Drainage Plan No. 33 D.S. (13), 33 D.S.W. (7), 33c (11) calls for a future 15 foot diameter combined sewer in booth Memorial Avenue between Main Street and 139th Street, and will require a minimum 10-foot wide Corridor on each side of the 6” diameter water main in the widening portion of Booth Memorial Avenue between Main Street and 138th Street

for the purposes of maintenance and /or reconstruction of the existing 6” diameter city water Main; and WHEREAS, by the same letter DEP required a revised submittal from the applicant prior to further review; and

WHEREAS, by letter dated April 30, 2007, DEP required a further revised submittal from the applicant; and

WHEREAS, by letter dated July 6, 2007, DEP has reviewed the engineer’s July 2, 2007 Pressure Regulator Plan and finds it acceptable contingent upon a written agreement between the owner and DEP allowing DEP and /or any other party assigned by the DEP, access in perpetuity to the subject property for construction, reconstruction and maintenance of DEP infrastructure; and

WHEREAS, by letter dated May 10, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has advised the Board that it has requested that the proposed left turn from northbound Main Street into parking lot be eliminated and also raised concerns regarding sufficient parking spots to accommodate the anticipated vehicular volume without vehicles queuing up in Main Street waiting for a parking spot; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter dated May 16, 2007, the applicant agrees to DOT’s conditions of eliminating the left hand turns into the site from the northbound lane. The applicant also states that with the proposed Main Street curb cut of 28 feet and the proposed drive-through tellers located approximately 100’ ft away from the Main Street entrance, there will be sufficient onsite space for car queuing; and

WHEREAS, by letter dated June 18, 2007, DOT states that it has reviewed the applicant’s submission and has no further objection or comments; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 22, 2007 and updated on February 6, 2007, acting on Department of Buildings Application No. 402527672, is modified by the power vested in the Board by Section 35 of the General City Law, 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 January 31, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT prior to construction applicant shall enter into an written agreement with DEP providing DEP and its assigns access to the premises in perpetuity for the purpose of construction, reconstruction and maintenance of DEP infrastructure;

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THAT all required DEP approvals are obtained prior to construction of the new building;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application February 8, 2007 – For a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue “N” and Avenue “O”, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a two-story with attic mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, this application was brought subsequent to a companion application under BSA Cal. No. 84-06-BZY, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that separate applications were filed and that the application under the statutory vested rights case was removed from the Board’s calendar on February 27, 2007, the date of the first hearing for the subject common law vested rights case and that the record is the same for both cases; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in *The City Record*, with continued hearings on April 17, 2007 and May 22, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, certain neighbors and the Good Neighbors’

Association of Midwood, through counsel, appeared in opposition to the application (the “Opposition”); and

WHEREAS, the site is located on the west side of East 19th Street, between Avenue N and Avenue O and it has a lot area of 3,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a two-story with attic mixed-use residential and community facility building, with 5,500 sq. ft. of floor area (1.49 FAR) and a height of 39’-2” (the “Building”); and

WHEREAS, the subject premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically with respect to use, floor area, FAR (4.8 FAR was the maximum permitted for mixed-used residential and community facility buildings), height (there were not any height regulations), and setback; and

WHEREAS, however, on April 5, 2006 (the “Enactment Date”), the City Council voted to adopt the Midwood rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Building does not comply with the R4-1 zoning district parameters as to height, FAR, and floor area; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the validity of the permits under which the work was performed at the site has been called into question by the Opposition and by DOB; and

WHEREAS, on December 8, 2005, the applicant professionally certified plans for a two-story with attic multiple-dwelling building with a community facility; and

WHEREAS, on February 28, 2006, DOB performed a special audit of the building plans, issued a stop work order (SWO), and ultimately issued a ten-day notice of intent to revoke the permit on March 6, 2006; and

WHEREAS, the applicant resolved the objections and obtained DOB’s approval on March 9, 2006 (the “Permit Date”) for Permit No. 302041261 (the “NB Permit”); and

WHEREAS, work at the site continued pursuant to the NB Permit, with the exception of periods when SWOs were in effect, as discussed below, until March 29, 2006, when the applicant filed a post-approval amendment (PAA and “PAA Date”), which provided for a five-story building to be built at the site pursuant to the Quality Housing provisions; and

WHEREAS, the applicant concedes that, after the PAA Date, work was performed at the site pursuant to the plans associated with the PAA; and

WHEREAS, the Board notes that the applicant asserts that the work performed after the PAA Date could also be used for the two-story with attic building; and

WHEREAS, during the hearing process, DOB made a determination that Quality Housing provisions did not apply and that the plans associated with the PAA were non-complying even under the prior zoning; and

WHEREAS, accordingly, DOB determined that any work performed after March 28, 2006, could not meet the

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threshold requirement of work being performed pursuant to a valid permit; and

WHEREAS, the Board agrees with DOB that any work performed after March 28, 2006, cannot be considered for vesting purposes because the PAA plans were not valid since they would not have complied with the prior zoning and no permits could have been issued to permit the construction performed in furtherance of those plans; and

WHEREAS, at hearing, the Board stated that it would consider the work performed between March 9 and the PAA Date, when work was performed pursuant to DOB-approved plans; the Board disregards the PAA and any work associated with it because it does not meet the threshold for work performed pursuant to a lawfully issued permit; and

WHEREAS, when a valid permit has been issued and work has proceeded under it, the Board notes that a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that prior to the PAA Date, the owner had completed the following: demolition, some excavation and lagging, and seismic testing and shoring for adjacent properties; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site showing the amount of work completed, work contracts, and copies of cancelled checks; and

WHEREAS, although the Board notes that the applicant also submitted pour tickets and affidavits from the architect and engineer documenting how much concrete was poured prior to the Enactment Date, the Board has not considered any of the concrete pouring as it took place after the PAA Date; and

WHEREAS, with respect to other periods of work stoppage, the Board notes that although the plans were self-certified on December 8, 2005, DOB audited them on February 28, 2006 and issued a SWO, which was not

resolved until March 9, 2006; and

WHEREAS, additionally, demolition work may have been performed prior to permitting and, on March 14, 2006, DOB issued a SWO for shoring work without a permit; and

WHEREAS, on March 15, 2006, a permit was issued for shoring; and

WHEREAS, because of the noted issues with the permit, the Board considers work only from the Permit Date and notes that work may have proceeded on several occasions for a short time without the appropriate permits; and

WHEREAS, further, the Board has not considered work performed after the PAA Date and up to the Enactment Date, contrary to the standard in vesting cases; and

WHEREAS, the Board recognizes that work was performed between the PAA Date and the Enactment Date, but has not considered it due to the failure to meet the threshold permit requirement during that period; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the PAA Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, the Board has reviewed the cases cited in the Opposition's submissions, as well as other cases of which it is aware through its review of numerous vested rights applications, and disagrees with the Opposition as to the threshold issues for vesting cases; and

WHEREAS, specifically, the Board distinguishes the cases cited for the premise that a valid permit is required for vesting, because a valid permit was in effect in this case until the PAA Date; and

WHEREAS, the Board has determined that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, specifically, the Board relies on Ageloff v. Young, 282 A.D. 707 (2d Dept. 1953) where the court found vested rights were established by staking, clearing, and excavating the site, and contracting for architectural services, and Hasco Electric Corp. v. Dassler, 144 N.Y.S.2d 857 (Sup. Ct. Westchester County 1955) where the court found vested rights were established by clearing trees and billboards in anticipation of construction work; and

WHEREAS, the Board notes that the courts in Ageloff and Hasco accepted site preparation work, the losses associated with it, and the expended soft costs to be sufficient to establish the right to vest under the common law; and

WHEREAS, in light of these cases, the Board has determined that the work performed at the site between March 9 and March 29, 2006, which includes demolition, some excavation, seismic monitoring, lagging, and shoring,

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can be characterized as substantial; and

WHEREAS, the Board also notes that the site preparation and excavation at the site occurred during the period when a valid permit was in effect; and

WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was sufficient to meet the minimum requirements established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of \$368,953 out of \$1,477,394 budgeted for the entire project; and

WHEREAS, thus, the expenditures up to the PAA Date represent approximately 25 percent of the total cost; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks and an accounting report; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, the Board has considered the costs for the following: architectural services, demolition, excavation, shoring, lagging, other construction work, seismology services, test boring, surveying, and DOB fees; and

WHEREAS, the Board has not considered the cost for concrete pours, site supervision, and other expenditures for work performed after the PAA Date; and

WHEREAS, the Board notes that the Opposition disputes the amount paid for architectural services, claiming that it represents the costs for both building designs (the original plans for the two-story with attic building and the plans associated with the five-story building and the PAA), rather than one; and

WHEREAS, the Opposition has not provided any evidence to support this claim; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of \$358,953 associated with pre-PAA Date project costs that would result if vesting were not permitted is significant; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the decreased level of return for the project if the height and floor area limitations of the new zoning were imposed; and

WHEREAS, specifically, the applicant notes that the permissible floor area ratio would decrease from 1.49 FAR to 1.15 FAR (0.75 residential FAR and 0.40 community facility FAR) and accordingly, the 3,100 sq. ft. proposed for community facility space would be reduced to 1,500 sq. ft.; and

WHEREAS, the Board agrees that the need to redesign, coupled with \$358,953 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, the Opposition expressed concerns about various other aspects of this application; and

WHEREAS, specifically, the Opposition contended that: (1) the vesting standard has not been met; (2) the PAA mooted the original plans; (3) the applicant has not acted in good faith during the process; (4) the applicant lacks credibility; and (5) not all of the purported expenditures are supported by evidence; and

WHEREAS, as to the vesting standard, the Board disagrees with the Opposition that the statutory vesting standard from ZR § 11-331 applies in a common law vesting case; as noted above, New York courts have set forth a separate set of criteria to be considered under the common law, which the Board has determined have been met in this case; and

WHEREAS, the Board notes that there is no requirement under the common law of vested rights that the foundations under consideration be completed; and

WHEREAS, as to the amount of work performed, the Board reiterates that the degree of construction at the site was sufficient to meet the minimum requirements established by New York courts for such a finding; and

WHEREAS, as to the effect of the PAA, as noted above, the Board has determined that the work performed from March 9, 2006 to the PAA Date was performed pursuant to valid building permits and has not included work performed after the PAA in its vesting analysis; and

WHEREAS, as to the applicant's good faith and credibility, the Board examined all of the submitted evidence and considered the testimony at hearing, and determined that there was sufficient substantiated evidence to support the applicant's claims as to work completed, within the applicant's own submissions and evidence from DOB; and

WHEREAS, as to the expenditures, the Board has excluded any expenditures made after the PAA Date and has only accepted expenditures for the kinds of work New York courts have considered, as noted above; also, the Board has only accepted expenditures which are documented by cancelled checks from the owner; and

WHEREAS, as to the expenditures, the Opposition contends that the applicant has not shown that the expenditures made were substantial in relation to the total expected cost of construction; and

WHEREAS, as discussed above, the applicant states that the total anticipated cost of the project is \$1,447,394,

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including soft costs such as architectural costs, but not costs associated with the purchase; and

WHEREAS, also as discussed above, the Board notes that the applicant submitted cancelled checks, and an accounting report documenting the claimed expenditures; and

WHEREAS, while the Board was not persuaded by any of the Opposition's arguments, it nevertheless understands that the community worked diligently on the Midwood Rezoning and that the Building does not comply with the new R4-1 zoning parameters; and

WHEREAS, however, the owner has met the test for a common law vested rights determination, and the owner's property rights may not be negated merely because of general community opposition; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the Opposition as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the NB Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302041261, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 10, 2007.

86-07-A

APPLICANT – Sheldon Lobel, P.C., for Theresa Mazzone and Pietro Mazzone, owners.

SUBJECT – Application April 18, 2007 – Proposed construction of a two story, one family residence not fronting on a mapped street contrary to General City Law Section 36. R3-1 (SRD) Zoning District.

PREMISES AFFECTED – 64 Chatham Street, southeast corner of intersection of Kenilworth Avenue and Chatham Street, Block 5724, Lot 124, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough

Commissioner, dated March 21, 2007, acting on Department of Buildings Application No. 500901349, reads in pertinent part:

“The street giving access to the proposed construction of a new one family building Use Group 1 in R3-1 zoning district is not duly placed on the official map of the City of New York and therefore referred to Board of Standards and Appeals for approval”; and

WHEREAS, a public hearing was held on this application on July 10, 2007 after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated June 11, 2007 the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated March 21, 2007, acting on Department of Buildings Application No. 500901349, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 18, 2007” -(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

70-06-A

APPLICANT – Eric Palatnik, P.C., for James Pullano, owner.

SUBJECT – Application April 19, 2006 – Proposed construction of a two- story, three family dwelling located within the bed of mapped street (Zev Place) is contrary to General City Law Section 35. Premises is located within an R3-2 Zoning District.

PREMISES AFFECTED – 4 Rockwell Avenue, west of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lot 1(tent), Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

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87-06-A & 88-06-A

APPLICANT – Patrick W. Jones, P.C. for Zhen Hu, owner.
SUBJECT – Application May 8, 2006 – Proposal to permit construction of two, four story mixed use building within the bed of the mapped, unimproved Delong Street contrary to General City Law Section 35. Premise is located within a C4-2 Zoning District.

PREMISES AFFECTED – 131-04 & 131-06 40th Road, south side of 40th Road, 430' west of intersection with College Point Boulevard, Block 5060, Lot 70 & 71, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick W. Jones and Zhen Hu.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

170-06-A & 171-06-A

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

326-06-A

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10' west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

50-07-A

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Yosi Shem-tov, owner.

SUBJECT – Application February 22, 2007 – Construction of a five story three family dwelling (UG2) with ground floor community facility use (UG4) located within the bed of a mapped street (101st Street) contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 100-21 39th Avenue, northside of 39th Avenue, Block 1767, Lot 61, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, JULY 10, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

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ZONING CALENDAR

43-06-BZ

CEQR #06-BSA-063Q

APPLICANT– Law Office of Fredrick A. Becker, for Emmanuel Charismatic Church, owner.

SUBJECT – Application March 13, 2006 – Zoning variance under §72-21 to allow a proposed house of worship to violate requirements for lot coverage (§24-11), front wall height (§24-521), front yard (§24-34), side yards (§24-35(a)), and accessory parking (§25-31). R5 district.

PREMISES AFFECTED – 31-09 35th Avenue, north side of 35th Avenue, 80’ 10” east of 31st Street, Block 608, Lots 3 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the denial of reconsideration by the Queens Borough Commissioner, dated February 13, 2006, acting on Department of Buildings Application No. 40228115, reads, in pertinent part:

1. Max lot coverage 55%
Proposed lot coverage 100% - not in compliance with ZR 24-11
2. Max height of front wall 35’ – Sky exposure plane 1:1
Proposed heights of front wall 40’ – sky exposure plane penetrated by 5’ vertically – not in compliance with ZR 24-521
3. Front yard required 10’
Proposed front yard 0’ – not in compliance with ZR 24-34
4. Side yards required 1 @ 8’
Proposed side yard 0’ – not in compliance with ZR 24-35a
5. Parking required 14 spaces (for “New Development”)
Parking provided 0 spaces – not in compliance with ZR 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, an enlarged three-story and cellar Use Group 4A house of worship, which does not comply with lot coverage, front wall height and sky exposure plane, front yard, side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35a and 24-31; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12,

2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 1, Queens, recommends approval of the application with the condition that an 8’ side yard be provided on the east side of the premises; and

WHEREAS, this application is being brought on behalf of Emmanuel Charismatic Church, a non-profit religious entity (the “Church”); and

WHEREAS, the subject premises is located on the north side of 35th Avenue, 80’-10” east of 31st Street, and is currently occupied by an existing one-story church and two small accessory buildings; and

WHEREAS, the proposal provides for an enlarged, 3-story church with the following parameters: 8,783 sq. ft. of floor area (9,018 sq. ft. is the maximum permitted); an FAR of 1.95 (2.0 FAR is the maximum permitted for a community facility), with Use Group 4A house of worship use space on the cellar level through third floor; 100% lot coverage (55% is permitted); a street wall of 40’- 0” (35’ is the maximum permitted); a front yard of 0’ – 0” (a front yard of 10’-0” is required); one side yard of 5’-0” at the second and third floors (8’-0” is required); no parking (14 parking spaces are required); and

WHEREAS, the proposed church will include the following: a coat room; bathrooms; a kitchen; a multi-purpose room that can be partitioned into classrooms for Sunday school and adult instruction; a main sanctuary occupying the first and second floors; and a third-floor with pastor’s office, church offices and permanent classrooms; and

WHEREAS, the applicant has revised its original proposal, which included no side yard, to incorporate a side yard of five feet at the second and third floors on the east side of the premises, which will reduce the capacity of the sanctuary from 320 to 302 persons, and reduce the number of classrooms on the third floor from five to four; and

WHEREAS, the applicant has also, in response to FDNY comments, revised the proposal to provide exit doors directly onto the street from both sides of the front of the Church; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Church: 1) to accommodate the congregation of approximately 150 families for services; 2) to have sufficient classroom space for Sunday school and adult instruction; and 3) to provide a pastor’s office, study rooms, adequate bathroom facilities, a social hall, kitchen and coatroom; and

WHEREAS, the existing church sanctuary cannot accommodate the current congregation for services; and

WHEREAS, the applicant states that the proposed amount of space in the 302-person-capacity sanctuary would minimally accommodate the congregation of 150 families for services; and

WHEREAS, the existing church lacks a pastor’s office and lacks study rooms and adequate bathroom facilities, social hall, kitchen and coatroom; and

WHEREAS, the existing church has insufficient

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classroom space and will not accommodate social gatherings after services; and

WHEREAS, the existing church is not handicapped-accessible; and

WHEREAS, the proposed church will be handicapped-accessible throughout the building; and

WHEREAS, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant notes that because of the limited size of the Site and the parking requirements imposed by ZR § 25-31, an as-of-right building could not utilize permitted floor area and could seat only 120 persons in the sanctuary; and

WHEREAS, the applicant further notes that an as-of-right building would not provide the additional rooms necessary to meet the Church's programmatic needs, thus necessitating the requested waivers; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the Church, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that 50% of the congregation lives within the area, and for the rest of the congregation, a substantial amount of parking is available on Sundays on 31st Street; and

WHEREAS, the applicant also notes that the area is well-served by public transportation, with a stop for the N and W trains one block away, and a public bus line on 31st Street; and

WHEREAS, the applicant states that the immediate area is characterized by single and multi-family dwellings and nearby commercial and warehouse uses; and

WHEREAS, the applicant further states that the lack of a front yard is in character with nearby buildings; and

WHEREAS, the height of the proposed church building would not be out of scale with the 3-, 4- and 6-story buildings within the blockfront on 35th Avenue in the vicinity of the church; and

WHEREAS, at hearing, the Board expressed concern that the lack of a side yard would affect light and air for the adjacent residence; and

WHEREAS, as noted, in response to the Board's concerns, the applicant revised the proposal to provide a 5'-0" side yard at the second and third floors and to improve egress; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Church the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as-of-right development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA063Q, dated March 13, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and

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Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, a proposed three-story and cellar Use Group 4A house of worship, which does not comply with lot coverage, front wall/sky exposure plane, front yard, side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35a, and 24-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 25, 2007" – eight (8) sheets; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: three stories, a street wall height of 40'-0", a lot coverage of 100 percent, and one side yard of 5'-0" at the second- and third-floor levels on the east lot line;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

98-06-BZ

CEQR #06-BSA-088Q

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 21, 2007 acting on Department of Buildings Application No. 402313493, reads, in pertinent part:

1. Proposed building exceeds the maximum floor area and FAR permitted by ZR 24-11.
2. Proposed building exceeds the maximum total height permitted by ZR 24-521.
3. Proposed building does not meet the minimum front yards requirements of ZR 24-34.
4. Proposed building does not meet the minimum side yard requirements of ZR 24-35.
5. Proposed building violates sky exposure plane and is contrary to ZR 24-521.
6. Proposed building does not meet the minimum side setback requirements of ZR 24-551.
7. Proposed building exceeds the maximum lot coverage permitted by ZR 24-11"; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in *The City Record*, with continued hearings on March 20, 2007, May 8, 2007, and June 5, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with the condition that a traffic study be completed to determine suitable improvements to surrounding streets (Dinsmore Avenue and Beach 9th Street) to mitigate any increase in vehicular traffic; and

WHEREAS, State Assemblywoman Audrey I. Pheffer provided testimony in support of this application; and

WHEREAS, State Senator Malcolm Smith provided testimony in support of this application; and

WHEREAS, the Board received additional testimony from neighbors citing concerns about the traffic impact; and

WHEREAS, this application is being brought on behalf of Yeshiva Siach Yitzchoc, a not-for-profit educational entity

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(the “Yeshiva”); and

WHEREAS, the Board notes that a companion application, under BSA Cal. No. 284-06-A, seeking a waiver of GCL Section 35 to permit a portion of the Yeshiva to be built within the bed of a mapped street, was brought concurrently and is addressed separately; and

WHEREAS, the subject premises is located on the southwest corner of Beach 9th Street and Dinsmore Avenue, and is currently occupied by a two-family home and garage, which will be demolished; and

WHEREAS, the current proposal provides for a four-story and cellar synagogue with the following parameters: a street wall and total height of 46’-0”, 24,962 sq. ft. of floor area (20,000 sq. ft. is the maximum permitted); and an FAR of 2.49 (2.0 FAR is the maximum permitted for a community facility); and

WHEREAS, additionally, the applicant proposes 64 percent lot coverage (a maximum of 60 percent is permitted); one side yard of 8’-0” at the rear of the site along the western lot line and one side yard of 0’-1” at the southern side of the site (two side yards of 8’-0” each are the minimum required); and one front yard of 9’-10” along Beach 9th Street and one front yard of 13’-3” along Dinsmore Avenue (two front yards with a width of 15’-0” each are the minimum required); and

WHEREAS, the proposed building will include the following: (1) a gymnasium, dining area, and kitchen in the cellar; (2) a lobby, three classrooms, and office space on the first floor; (3) a medrash, four classrooms, and office space on the second floor; (4) a cahal, a library, four classrooms, and office space on the third floor; (5) a study hall and Judaic library, four classrooms, and office space on the fourth floor; and (6) a play area on the roof; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) to add a high school curriculum; (2) to provide additional classrooms and larger classrooms to relieve overcrowding and to better accommodate the current enrollment while allowing for future growth; (3) to provide a gymnasium and a kitchen; (4) to provide space designated for tutoring and other individual services; and (5) to provide separate prayer space; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant represents that a complying building would only be able to accommodate nine classrooms rather than the 15 proposed; and

WHEREAS, additionally, the proposed building will permit the Yeshiva to provide parallel classrooms and the addition of a high school curriculum; and

WHEREAS, the applicant represents that the current enrollment is 180 students and does not extend beyond eighth grade and that the anticipated enrollment in 2012, with the addition of the high school component, will be 300 students; and

WHEREAS, accordingly, the applicant requests the noted floor area and FAR in order to accommodate the projected enrollment; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Yeshiva’s programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant represents that the requested yard, setback, and sky exposure plane waivers would enable the Yeshiva to develop the site with uniform floor plates, which are necessary to maximize efficiency of the building and the program; and

WHEREAS, the applicant represents that the floor-to-ceiling heights and classroom sizes are based on standards set for educational institutions; and

WHEREAS, in support of this assertion, the applicant submitted information on other yeshivas in the area which reflects these conditions; and

WHEREAS, the applicant represents that additional height is required to be able to meet classroom size guidelines, provide a viable gymnasium, and accommodate building infrastructure within the four floors and a cellar; and

WHEREAS, based upon the above, the Board finds that the limitations of the current overcrowded facility, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the Board notes that the immediate area is characterized by two-story single-family and two-family homes and, with several three- and four-story multiple dwelling buildings; and

WHEREAS, specifically, the adjacent property to the south on Beach 9th Street is a four-story multiple dwelling building; and

WHEREAS, at hearing, the Board asked the applicant to reduce the building height from the initially-proposed 51 feet; and

WHEREAS, specifically, the Board directed the applicant to lower the first floor to grade, rather than having it raised three feet above grade; and

WHEREAS, the Board noted that since the cellar is built to the lot line, in the earlier design with the raised first floor, the

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upper three feet of the cellar were visible and formed an extended platform at certain portions of the site; and

WHEREAS, in response, the applicant lowered the cellar level deeper into the ground and reduced the floor to ceiling heights from 12'-0" to 11'-6" to result in the first floor being at grade and a total building height of 46 feet; and

WHEREAS, the applicant represents that the building height cannot be reduced any further and still accommodate the standard floor to ceiling heights and the required height for the gymnasium at the cellar level; and

WHEREAS, as to the Community Board's request for a traffic study, the Department of Transportation's School Safety Engineering Office reviewed the application and surveyed the area and, by letter dated March 7, 2007, states that it has no objection to the proposed use at this location; and

WHEREAS, the applicant represents that there will be three school buses which will pickup and drop off on Beach 9th Street, a wide road; and

WHEREAS, additionally, the applicant has agreed to provide a uniform sidewalk with a width of 10'-0" around the perimeter of the site in an effort to help improve visibility and allow more room for drop-offs and circulation around the site; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Yeshiva could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, at hearing, the Board asked the applicant to explain the need for an additional 5,000 sq. ft. of floor area (0.49 FAR) beyond what is permitted under zoning district regulations; and

WHEREAS, specifically, the Board asked the applicant whether the program could be accommodated within the as of right 2.0 FAR, with the remaining requested waivers; and

WHEREAS, the applicant responded that the floor area had been calculated based on the needs for the projected enrollment and that the additional FAR would accommodate 312 students, while the as of right scenario could only accommodate 244 students, or up to seventh grade; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Yeshiva the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action

pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA088Q, dated May 13, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 24, 2007" – six (6) sheets "Received May 22, 2007" – six (6) sheets; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: four stories; a floor area of 24,692 sq. ft. (2.49 FAR); a street wall and total height of 46'-0", without bulkheads; a lot coverage of 64 percent; one front yard of 9'-10" along Beach 9th Street and one front yard of 13'-3" along Dinsmore Avenue; and one side yard of 8'-0" at the rear of the site along the western lot line and one side yard of 0'-1" at the southern side of the site;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the

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Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402313493, reads in pertinent part:

“Proposed development which rest partially within the bed of a mapped street requires approval from the NYC BSA pursuant to General City Law Section 35”; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in the *City Record*, with continued hearings on March 20, 2007, May 8, 2007, and June 5, 2007, and then to decision on July 10, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit a portion of a yeshiva to be built within the bed of a mapped street; and

WHEREAS, the Board notes that a companion

application has been filed, under BSA Cal. No. 98-06-BZ for a variance pursuant to ZR § 72-21, to permit on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, by letter dated May 7, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated January 18, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 22, 2007, the Department of Transportation (DOT) stated that it has reviewed the application and advised the Board that it would require the applicant to provide for a “full width” sidewalk with a minimum width of ten feet, free of any obstructions, for the entire length of the property on the south side of Dinsmore Avenue; and

WHEREAS, the Board notes that the March 22, 2007 letter did not indicate that DOT intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter May 22, 2007, in response to DOT’s request, the applicant submitted a revised plot plan and statement reflecting a proposed ten-foot sidewalk with curb for the full length of the property along the south side of Dinsmore Avenue; and

WHEREAS, by letter dated June 19, 2007, DOT states that it has reviewed the applicant’s revised submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402313493, 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 May 22, 2007 (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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

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131-06-BZ

CEQR #06-BSA-101R

APPLICANT – Papa Architects, for Beach-Land Realty, owner.

SUBJECT – Application June 23, 2006 – Special Permit pursuant to Z.R. §73-36 to permit the legalization of an existing Physical Culture Establishment in a one-story portion of the existing building. The Premise is located in a C4-2 zoning district. The proposal is contrary to Z.R. §32-10.

PREMISES AFFECTED – 146 New Dorp Lane, a/k/a 146-154 New Dorp Lane, Block 4209, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2 SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 13, 2007, acting on Department of Buildings Application No. 500770285, reads in pertinent part:

“Proposed physical culture establishment in a C2-2 zoning district, is contrary to Section 32-10 ZR and requires a special permit from the Board of Standards and Appeals, pursuant to Section 73-36 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 zoning district, the legalization of a physical culture establishment (PCE) in a one-story portion of a two-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on June 12, 2007 after due notice by publication in *The City Record*, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application on the condition that the approved use be limited to a PCE and that it not be converted to a Use Group 9 use; and

WHEREAS, the subject site is located at the southwest corner of New Dorp Lane and 8th Street, within a C2-1 zoning district; and

WHEREAS, the site is the subject of a prior grant, under BSA Cal. No. 489-80-A, which permitted the conversion of the second floor of the frame building from residential use to office use, with the installation of appropriate fire safety measures; and

WHEREAS, the PCE occupies approximately 2,992 sq. ft. of floor area on the first floor of the subject building; and

WHEREAS, the applicant represents that the PCE offers facilities and equipment for aerobics, weight-training, and cardio-vascular exercise; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 5:00 a.m. to 11:00 p.m. and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA101R, dated June 12, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and

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73-03, to permit, on a site within a C2-2 zoning district, the legalization of a physical culture establishment in a one-story portion of a two-story commercial building, contrary to ZR § 32-00, for a term of ten years to expire on July 10, 2017; *on condition* that all work shall substantially conform to drawings filed with this application marked “June 26, 2007”- (2) sheets and *on further condition*:

THAT the term of this grant shall expire on July 10, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT any massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

261-06-BZ

CEQR #07-BSA-020K

APPLICANT – Sheldon Lobel, P.C, for Congregation Mazah, owner.

SUBJECT – Application September 25, 2006 – Variance (§72-21) to permit the construction and operation of a Yehsiva (Use Group 3A) and accessory synagogue (Use Group 4A) in a M1-2 zoning district. The proposal is contrary to section 42-10.

PREMISES AFFECTED – 87-99 Union Avenue, west side of Union Avenue at the intersection of Harrison Avenue, Union Avenue and Lorimer Street, Block 2241, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinsemith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 4, 2006, acting on Department of Buildings Application No. 302084571, reads, in pertinent part:

“Proposed Yeshiva and accessory synagogue in an M1-2 zoning district is contrary to ZR 42-10 and must be referred to the BSA for approval”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-2 zoning district, the construction of a five-story Yeshiva and accessory synagogue, which is contrary to ZR § 42-10; and

WHEREAS, the application is brought on behalf of Congregation Mazah (the “Congregation”), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in the *City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located on the east side of Union Avenue, between Lorimer Street and Harrison Avenue in the Williamsburg section of Brooklyn; and

WHEREAS, the subject site is a roughly triangular, approximately 6,800 sq. ft. vacant zoning lot; and

WHEREAS, the Site is located in an M1-2 zoning district; and

WHEREAS, the applicant proposes to construct a cellar and five-story Yeshiva (UG 3A) with accessory synagogue (UG 3A), with a floor area of 28,590 sq. ft. and F.A.R. of 4.2, with a height of 72’; and

WHEREAS, the building’s cellar will include a Mikvah, an office, restrooms, storage space and mechanical rooms; and

WHEREAS, the building’s first floor will contain the accessory synagogue, which will be used by students during the week and by members of the Congregation on weekends, along with office space, restrooms and coatrooms; and

WHEREAS, the building’s second floor will contain the cafeteria, meat and dairy kitchens and a teachers’ lounge; and

WHEREAS, the building’s third floor will contain a Hebrew library and offices; and

WHEREAS, the building’s fourth and fifth floors will contain classrooms, offices and a Medrash, or large study hall; and

WHEREAS, the maximum allowable F.A.R. in the M1-2 district is 4.8 for community facility buildings or buildings used partly for community facility uses; and

WHEREAS, the maximum height permitted under ZR § 43-43 is 60’; and

WHEREAS, the applicant represents that except for its height, the proposed Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, an intermediate school is located on the

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opposite corner across Union Avenue from the Site pursuant to a special permit under ZR § 73-19 granted by the Board under Calendar No. 566-65-BZ and three additional schools are located within ¼ mile of the Site; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Congregation, which includes its mission to provide a school for religious and secular education to benefit members of the surrounding Orthodox Jewish community; and

WHEREAS, the Applicant represented at hearing that the Congregation has outgrown its existing building, which is located to the north of the Site; and

WHEREAS, the proposed building will allow the Congregation to offer secular and religious education for 150 to 180 male students from 13 to 20 years of age; and

WHEREAS, specifically, the Applicant states that the following are the programmatic needs of the Congregation, which necessitate the requested variance: (1) that the Congregation has outgrown its current facility, and (2) that the number of stories and height of the proposed Yeshiva are necessitated by the need to provide all of the uses proposed to be accommodated in the building; and

WHEREAS, the applicant represents that the size and irregular shape of the Site create inefficient floor plates and do not permit the accommodation of all necessary functions in a building that complies with the height limitation set forth by ZR § 43-43; and

WHEREAS, the applicant further represents that there are no available sites near the current location of the Congregation's facility where construction of the Yeshiva would be feasible; and

WHEREAS, the Board questioned, at hearing, whether the proposed ceiling heights in excess of 12 feet for the first-floor accessory synagogue and the for fifth-floor Medrash resulting in a total height of seventy-two feet (as opposed to the sixty feet that would be permitted to accommodate five stories) for the proposed building were required for the Yeshiva's programmatic needs; and

WHEREAS, in response the applicant submitted documentation as to the need for the proposed ceiling heights, along with a survey showing that the proposed ceiling heights are consistent with those of other Yeshivas and synagogues in the area surrounding the site; and

WHEREAS, the Board finds that the ceiling heights proposed for the building are necessary to serve the programmatic needs of the Congregation, and agrees that the construction of a Yeshiva with accessory synagogue in close proximity to the Congregation's existing location is necessary to address the Congregation's needs; and

WHEREAS, the Board acknowledges that the Congregation, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is entitled to deference unless it can be shown to have an adverse effect upon the health, safety,

or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the Congregation's current facility, when considered in conjunction with the programmatic needs of the Congregation, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Congregation is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant represents that adjacent sites are developed with seven-story buildings that are 73 feet tall; and

WHEREAS, the applicant further represents that the surrounding area is developed with large multi-family residential buildings; and

WHEREAS, the applicant submitted photographic documentation in support of the proposed Yeshiva's consistency with the character of the neighborhood; and

WHEREAS, the Board agrees that the proposed five-story building is compatible with the surrounding residential area with respect to both use and bulk; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood or impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and is inherent in the shape of the Site, which renders it unsuitable for as-of-right development; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Congregation to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA020K, dated November 6, 2006; and

WHEREAS, the EAS documents that the project as

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proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: November 6, 2006 EAS and the August 29, 2006 Phase I Environmental Site Assessment Report;

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials and Air Quality; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on March 6, 2007 and submitted for proof of recording on March 21, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 72-21 to permit, within an M1-2 zoning district, the construction of a five-story Yeshiva with accessory synagogue, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 12, 2007" - twelve (12) sheets and "Received June 27, 2007" - two (2) sheets; and *on further condition*:

THAT the proposed Yeshiva shall have an FAR of 4.2 and a street wall height of 72' - 0"; and

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

322-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Hamid Kavian, owner.

SUBJECT – Application December 13, 2006 – Variance (§72-21) to permit the construction of a two family dwelling on a vacant lot with less than the required side yards contrary to ZR §23-48 in an R3-2 zoning district.

PREMISES AFFECTED – 117-57 142nd Place, east side of 142nd Place, between 119th Road and Foch Boulevard, Block 12015, Lot 317, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 20, 2006, acting on Department of Buildings Application No. 402428627, reads in pertinent part:

"Proposed two side yards with a width of 3'-6" on each side are contrary to ZR 23-48 (Special provisions for existing narrow zoning lots)"; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story, two-family home that does not provide the required side yards for an existing narrow lot, contrary to ZR § 23-48; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, with continued hearing on July 10, 2007, and then to decision on July 10, 2007; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on the east side of 142nd Place, between 119th Road and Foch Boulevard, within an R3-2 zoning district; and

WHEREAS, the site has a width of approximately 22 feet, a depth of approximately 101.5 feet, and a total lot area of approximately 2,230 sq. ft.; and

WHEREAS, the applicant represents that the site has existed in its current configuration since before December 15, 1961; and

WHEREAS, the site is currently vacant; records indicate that a home was demolished, due to unsafe conditions, in May

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2004; and

WHEREAS, the applicant proposes to construct a two-story two-family home with two off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 1,337.6 sq. ft. of floor area (0.59 FAR), a wall height of 20.04 feet, a total height of 23.05 feet, a front yard of 35 feet, one parking space in the driveway, and one parking space in the cellar level garage; and

WHEREAS, however, the applicant proposes to provide one side yard of 3'-0" and one side yard of 4'-0" (two side yards of 5'-0" each are the minimum required); and

WHEREAS, the applicant states that side yard relief is necessary, due to the narrow width of the lot; and

WHEREAS, the applicant states that the narrowness of the lot is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations; and

WHEREAS, the applicant represents that the subject lot is one of only three vacant lots wholly within the 400-ft. radius; and

WHEREAS, the applicant has submitted a 400-ft. radius diagram that supports this assertion; and

WHEREAS, the applicant represents that the requested side yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing dimensions of the lot - 22 ft. wide and 101.5 ft. deep - cannot feasibly accommodate as of right development; and

WHEREAS, in support of this statement, the applicant submitted plans for a complying building, which reflects an exterior building width of only 12'-0" if side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant initially proposed to provide two side yards with widths of 3'-6" each; and

WHEREAS, at hearing, the Board suggested that the applicant increase the side yard on the northern property line to 4'-0" to be more compatible with the adjacent yard conditions; and

WHEREAS, the applicant represents that there is a context for narrow lots and non-complying yards within the immediate area; and

WHEREAS, the Board notes that housing in the area is predominantly two-story, two-family homes, similar to the one proposed; and

WHEREAS, additionally, the Board notes that because the proposed home provides a 35'-0" front yard and is set back from the front of the adjacent homes, the impact of the new building on the adjacent homes' side windows is minimized; and

WHEREAS, the Board agrees that the non-complying side yards are compatible with the neighborhood context; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R3-2 zoning district regulations except for side yards; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story two-family home that does not provide the required side yards for an existing narrow lot, contrary to ZR § 23-48; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 10, 2007" – (9) sheets and "May 31, 2007" – (2) sheet ; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: two stories, 1,337.6 sq. ft. of floor area (0.59 FAR), a wall height of 20.04 feet, a total height of 23.05 feet, one side yard with a width of 3'-0" and one side yard with a width of 4'-0", and two off-street parking spaces; and

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT off-street parking shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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.

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Adopted by the Board of Standards and Appeals, July 10, 2007.

32-07-BZ

CEQR #07-BSA-056Q

APPLICANT– Omnipoint Communications Inc., for E.C. Hassell Inc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application January 24, 2007 – Special Permit §73-30 and §22-21 – In an R3-2 zoning district, for a non-accessory radio tower for a public utility wireless communications facility and consist of a 62-ft. stealth flagpole (gold ball on top), together with antennas mounted and equipment cabinets on roof of nearby commercial building.

PREMISES AFFECTED – 146-10/16 Guy R. Brewer Boulevard, 240' south of the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, Block 13310, Lots 69 & 70, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Bandioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner of the New York City Department of Buildings, dated January 17, 2007, acting on Department of Buildings Application No. 402459040, states:

“Telecommunications Tower may be filed at the Board of Standards and Appeals as per ZR 73-30, other bulk regulation and TPPN 5/98 are not applicable since there is no use group for non-accessory radio towers”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan; and

WHEREAS, Queens Community Board No. 13 recommends disapproval of this application; and

WHEREAS, the applicant represents that the proposed facility will remedy a significant gap in wireless service in Queens; and

WHEREAS, the proposed stealth monopole will be located at 146-10/146-16 Guy R. Brewer Boulevard between Farmers Boulevard and 146th Drive; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a stealth monopole with a maximum height of 62 feet; and

WHEREAS, the proposed stealth monopole has been designed to resemble a flagpole equipped with an American flag and decorative gold ball; and

WHEREAS, all antennae and cables will be hidden within the stealth monopole; and

WHEREAS, three related equipment cabinets will be located on the roof of an existing one-story commercial building located adjacent to the proposed monopole; and

WHEREAS, at the Board’s suggestion, the applicant will construct a screen around the three rooftop equipment cabinets to shield them from view; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that the related equipment cabinets will be concealed behind a screen; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will neither alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

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WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-056Q, dated January 24, 2007; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and *grants* a special permit under ZR §73-03 and §73-30, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 21, 2007"- (5) sheets; and *on further condition*;

THAT stealth monopole, flag and screen for the equipment cabinets will be maintained in accordance with BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2007.

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

31-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Frank Falanga,

owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00.

PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

48-06-BZ

APPLICANT – Jack A. Adesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under §72-21 to allow an eight (8) story residential building containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is contrary to use regulations (§42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P. M., for continued hearing.

103-06-BZ

APPLICANT – Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district. PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

116-06-BZ

APPLICANT – Harold Weinberg, P.E., for David Nikchemny, owner.

SUBJECT – Application June 8, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§34-47) in an R3-1 zoning district.

PREMISES AFFECTED – 172 Norfolk Street, west side, 200' north of Oriental Boulevard and Shore Boulevards,

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Block 8756, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto III.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.
SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: None.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.
PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

212-06-BZ

APPLICANT – Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application August 22, 2006 – Variance (§72-21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to §22-10.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey Chester, Robert Pauls, Georges Jacquemart and Rudy Klofsman.

For Opposition: David Weprin, Council Member, Anna Levine, Rosemarie Guidice, Dave Kerper and Roberta Lernet.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

254-06-BZ

APPLICANT – Eric Palatnik, P.C., for Sarah Weiss, owner.
SUBJECT – Application September 18, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141(a)) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, corner of Avenue L and East 21st Street, Block 7639, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Off calendar without date.

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

333-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Alfred Caligiuri, owner.

SUBJECT – Application December 29, 2006 – Variance (§72-21) to permit the enlargement of an existing two family dwelling in an R2A zoning district which complies with the districts bulk and yard requirements but does not permit two family dwellings.

PREMISES AFFECTED – 29-26 Bell Boulevard, Bell Boulevard and 32nd Avenue, Block 6053, Lot 34, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

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For Applicant: Joseph Morsellino.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 24,
2007, at 1:30 P.M., for decision, hearing closed.

43-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for
Covenant House, owner; Hampshire House Hotels &
Resorts, lessee.

SUBJECT – Application February 8, 2007 – Zoning
variance under §72-21 to allow a proposed twelve (12) story
mixed-use development containing seventy-four (74)
apartment hotel rooms (U.G. 2), two-hundred and seventy
(270) transient hotel rooms (U.G. 5) and retail use (U.G. 6)
and/or a physical culture establishment (PCE) on the ground
and cellar levels. Proposed commercial uses (transient hotel,
retail and PCE) are contrary to use regulations (§22-00).
Proposed apartment hotel rooms exceed maximum number
of dwelling units (§23-22) and are contrary to recreation
requirements of the Quality Housing Program (§28-32).
Proposed development would also violate regulations for
floor area (§23-145), lot coverage (§23-145), rear yard for
interior portion of lot (§23-47), rear yard equivalent for
through lot portion (§23-533), height and setback (§23-633),
and location requirements for outdoor swimming pool (§12-
10).

PREMISES AFFECTED – 346-360 West 17th Street, a/k/a
351-355 West 16th Street, Block 740, Lot 55, Borough of
Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Paul Selver and Frank Fusaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 24,
2007, at 1:30 P.M., for decision, hearing closed.

117-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for
Rosebud Associates, LLC, owner.

SUBJECT – Application May 10, 2007 – Special Permit
(§73-36) to allow the operation of the proposed PCE on a
portion of the first floor and the second floor in vacant space
in an existing 21-story mixed-use building. The Premises is
located in a C1-9A "TA" zoning district. The proposal is
contrary to section 32-00.

PREMISES AFFECTED – 222 East 34th Street, south side
of East 34th Street, between Second and Third Avenues,
Block 914, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen May.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 24,
2007, at 1:30 P.M., for decision, hearing closed.

120-07-BZ

APPLICANT – Bryan Cave LLP, for Fiam Building
Associates, owner.

SUBJECT – Application May 11, 2007 – Zoning variance
under § 72-21 to allow the partial conversion to residential
use of an existing 12-story mixed-use building; contrary to
use regulations (§ 42-00). M1-6 district.

PREMISES AFFECTED – 24 West 30th Street, south side,
350' to the west of Fifth Avenue, Block 831, Lot 53,
Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Margery Perlmutter, Sam Stein, Jack
Freeman and Darrenmann.

ACTION OF THE BOARD – Laid over to August
14, 2007, at 1:30 P.M., for continued hearing.

128-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for
Sharon Perlstein and Sheldon Perlstein, owners.

SUBJECT – Application May 18, 2007 – Special Permit
(§73-622) for the enlargement of an existing single family
residence. This application seeks to vary open space and
floor area (23-141); less than the minimum side yards (§23-
461 and §23-48) and rear yard (§23-47) in an R-2 zoning
district.

PREMISES AFFECTED – 1382 East 26th Street, west side
of East 26th Street, between Avenue M and Avenue N, Block
7661, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to August 7,
2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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Volume 92, Nos. 27-28

July 26, 2007

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Tuesday, July 17, 2007**

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178-07-BZ

2261-2289 Bragg Street, 220'-0 north from intersection of Bragg Street and Avenue W., Block 7392, Lot(s) 57, Borough of **Brooklyn, Community Board: 15**. Under 72-21-Existing 3-story synagouge, proposed 7-story vertical extension, total of 10-story mixed residential and community facility.

179-07-BZ

74-21 Queens Boulevard, Located on north of Queens Boulevard, 25 feet from the intersection of Queens and 76th Street., Block 1529, Lot(s) 6, Borough of **Queens, Community Board: 4**. Under 72-21-To permit the construction of a nine-story mixed-use building with residential use.

180-07-BZ

47 West 13th Street, Located on the north side of West 13th Street between Fifth and Sixth Avenues., Block 577, Lot(s) 15, Borough of **Manhattan, Community Board: 2**. (SPECIAL PERMIT) 73-36-To permit the operation of a Physical Culture Establishment on a portion of the first floor and cellar of an existing building

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

AUGUST 14, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 14, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

80-54-BZII

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates LLC, owner.

SUBJECT – Application July 2, 2007 – ZR §11-411 for the Extension of Term of a previously granted variance which, which expired on July 2, 2006, to permit commercial uses on the first floor and cellar of an existing residential building located in an R8B zoning district; the Extension of Time to obtain a Certificate of Occupancy which expired on April 24, 2002 and a Waiver of the rules.

PREMISES AFFECTED – 150 East 39th Street, Located on south side of 39th Street between Third and Lexington Avenues, Block 894, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

61-07-A

APPLICANT – Alfonso Duarte

OWNER - Felix Bello

SUBJECT – Application March 9, 2007 – Proposed legalization of an existing retail establishment located within the bed of mapped street is contrary to General City Law Section 35. C1-4 /R6B Zoning District.

PREMISES AFFECTED – 102-07 Roosevelt Avenue, in bed of mapped Street (102nd Street), Block 1770, Lot 49, Borough of Queens.

COMMUNITY BOARD # 3Q

73-07-A

APPLICANT– Fire Department of The City of New York

OWNER – L. W. Equity Associates Incorporated

LESSEE – Fabco Shoe Store

SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.

PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #11BK

AUGUST 14, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 14, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

10-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Samuel Benitez, owner.

SUBJECT – Application January 20, 2005 – Zoning variance under § 72-21 to allow a five (5) story residential building containing twenty-seven (27) dwelling units and fifteen (15) parking spaces contrary to use regulations (§ 42-00); M1-2 district.

PREMISES AFFECTED – 443 39th Street, a/k/a 459 39th Street, 39th Street between 4th Avenue and 5th Avenue, Block 705, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #7BK

59-06-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Paul Schillace, owner, Carvel Ice Cream, lessee.

SUBJECT – Application April 3, 2006 – Zoning variance under § 72-21 to allow a one-store retail building (UG 6) with thirteen (13) unenclosed accessory parking spaces contrary to use regulations (§ 22-00); R4 district.

PREMISES AFFECTED – 1006 East 233rd Street, Southeast corner of Paulding Avenue, Block 4879, Lot 40, Borough of The Bronx.

COMMUNITY BOARD # 12BX

311-06-BZ thru 313-06-BZ

APPLICANT – Rothkrug, Rothkrug, & Spector, LLP, for White Star Lines LLC.

SUBJECT – Application December 4, 2006 – Zoning variance under § 72-21 to allow three, four (4) story residential buildings containing a total of six (6) dwelling units, contrary to use regulations (§ 42-10); M1-1 district.

PREMISES AFFECTED – 300/302/304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lots 38, 39, 40. Borough of Brooklyn.

COMMUNITY BOARD #6BK

113-07-BZ

APPLICANT – Omnipoint Communications, Inc., for Joseph Norman, owner; Omnipoint Communications Inc.,

CALENDAR

lessee.

SUBJECT – Application May 7, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communication facility and will consist of an 82-foot stealth, together with antennas mounted therein and related equipment at the base thereof.

PREMISES AFFECTED – 155 Clay Pit Road, northeast corner of the intersection of Veterans Road East and Clay Pit Road, Block 7105, Lot 679, Borough of Staten Island.

COMMUNITY BOARD #3SI

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 17, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

741-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Hillside Auto Center S.S., Inc., owner.

SUBJECT – Application January 8, 2007 – §11-411 and §11-412 – to extend the term of a variance for a gasoline service station with accessory uses for an additional period of ten years from September 23, 2005 and to amend the resolution to permit a portion of the building to be used as an accessory convenience store and to permit a metal canopy and new fuel pump. The site is located in an R-2 zoning district.

PREMISES AFFECTED – 241-15 Hillside Avenue, northwest corner of 242nd Street, Block 7909, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of the previously granted variance, which permitted a gasoline service station and which expired on September 23, 2005, and an amendment to permit the legalization of a convenience store and other site changes; and

WHEREAS, a public hearing was held on this application on March 6, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2007, and then to decision on July 17, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, initially recommended disapproval of this application, citing concerns about providing a buffer with adjacent uses, signage, days and hours of operation, inappropriate vehicle parking, improper maintenance of the site, and landscaping; and

WHEREAS, the Community Board withdrew its objection after the applicant agreed to address all of its concerns; and

WHEREAS, City Council Member David I. Weprin

provided testimony in support of the Community Board's earlier position, which has been withdrawn; and

WHEREAS, the site is located on the northwest corner of 242nd Street and Hillside Avenue; and

WHEREAS, the site is located within an R2 zoning district, and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 21, 1950 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station and automotive repair shop for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, the grant was most recently extended on May 27, 1998 for a term of ten years from the expiration of the prior grant, to expire on September 23, 2005; and

WHEREAS, the Board notes that since the last grant, the site has been rezoned from an R3-2 zoning district to an R2 zoning district; and

WHEREAS, the applicant now seeks a ten-year extension of term; and

WHEREAS, pursuant to ZR §11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant seeks to legalize certain site modifications, including the conversion of a portion of the building to an accessory convenience store and the addition of a metal canopy and a new fuel pump configuration; and

WHEREAS, the Board notes that the site modifications were approved by DOB and have been completed and that no new construction is proposed; and

WHEREAS, at hearing, the Board directed that applicant to remove any signage which did not comply with C1 zoning district regulations; and

WHEREAS, in response, the applicant submitted photographs which reflect that the signage has been removed; and

WHEREAS, in response to the Community Board's concerns the applicant agreed to: (1) eliminate commercial vehicle parking; (2) lock access gates when not in use; (3) remove roof-mounted lighting; (4) fit the existing iron fence with opaque screening; (5) restore and reseed grass on the adjacent property; (6) remove and replace any non-complying signage; (7) remove lighting around the building canopy; (8) keep the repair shop closed on Sundays; (9) remove all graffiti; (10) not offer cars for sale; and (11) provide a street tree along 242nd Street; and

WHEREAS, the applicant has revised the plans to reflect compliance with the noted conditions; and

WHEREAS, pursuant to ZR §11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendments to the

MINUTES

approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on March 21, 1950, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from September 23, 2005, to expire on September 23, 2015 and to permit the legalization of the conversion of a portion of the accessory building into a convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received May 10, 2007"--(10) sheets"; and *on further condition*:

THAT the term of this grant shall expire on September 23, 2015;

THAT the site shall be maintained free of debris and graffiti;

THAT lighting shall be directed away from adjacent uses;

THAT fencing along the northern property line shall be 100 percent opaque;

THAT a street tree shall be planted and maintained along the 242nd Street frontage, as per the BSA-approved plans;

THAT signage shall be installed, as per the BSA-approved plans;

THAT parking lot gates are to remain locked after hours;

THAT the hours of operation for the repair shop shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Saturday;

THAT there shall be no car sales at the premises;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review all signage for compliance with C1 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 402118855)

Adopted by the Board of Standards and Appeals, July 17, 2007.

52-55-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bouck Oil Corp., owner.

SUBJECT – Application November 28, 2006 – Amendment,

filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.

PREMISES AFFECTED – 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for an amendment to a previously-approved gasoline service station with accessory uses to permit the enlargement of an existing building to be used as an accessory convenience store; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in *The City Record*, with continued hearings on March 13, 2007, May 15, 2007, and June 19, 2007, and then to decision on July 17, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Bouck Avenue and East Gun Hill Road; and

WHEREAS, the site is located within a C1-2 (R5) zoning district, and is improved upon with a gasoline service station with auto repairs; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 26, 1955 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, the grant was most recently extended on November 12, 2002 for a term of ten years from the expiration of the prior grant, to expire on October 14, 2010; and

WHEREAS, the applicant seeks an amendment to permit the enlargement of the accessory building and its conversion to an accessory convenience store; and

WHEREAS, the applicant proposes to eliminate the accessory automotive repair use and to replace it with an accessory convenience store; and

WHEREAS, the applicant proposes to enlarge the floor

MINUTES

area of the building from 1,259 sq. ft. to 1,887 sq. ft.; and

WHEREAS, the Board notes that this enlargement is within the parameters set forth at ZR §11-412; and

WHEREAS, at hearing, the Board directed that applicant to remove any signage which did not comply with C1 zoning district regulations; and

WHEREAS, in response, the applicant agreed to remove the awning sign which was located above the repair shop bays and submitted photographs which reflect that the signage has been removed; and

WHEREAS, the applicant also agreed to eliminate the curb cut on Bouck Avenue at the corner of East Gun Hill Road; and

WHEREAS, the applicant has revised the plans to reflect compliance with these conditions; and

WHEREAS, pursuant to ZR §11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on July 26, 1955, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit the enlargement of the building and its conversion to an accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received November 28, 2006”-(1) sheet; and “April 10, 2007”-(4) sheets; and “June 5, 2007”-(1) sheet; and *on further condition*:

THAT the site shall be maintained free of debris and graffiti;

THAT lighting shall be directed away from adjacent uses;

THAT signage shall be installed as per the BSA-approved plans;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB shall review all signage for compliance with C1 zoning district regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 201084405)

Adopted by the Board of Standards and Appeals, July 17, 2007.

189-96-BZ

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D’Angelo-CNandonga, lessee.

SUBJECT – Application March 14, 2007 – Extension of Term for a Special Permit (§73-244) for a UG12 eating and drinking establishment with entertainment and dancing (Flamingos) in an C2-3/R-6 zoning district; and to increase the number of occupancy from 190 to 200 which will expire on May 19, 2007.

PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue, 58’ east side of Forley Street, Block 1502, Lot 3, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John Chen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted special permit, which expired on May 19, 2007, for an eating and drinking establishment without restrictions on entertainment (UG 12A), and an amendment of the resolution to increase the occupancy from 190 to 200 persons and to permit minor changes to the first-floor bar and dancing space, removal of pool tables and furniture from the cellar waiting area, and conversion of the second-floor space from a catering establishment to offices; and

WHEREAS, the denial of reconsideration by the Queens Borough Commissioner, acting on Department of Buildings Application No. 401982075, dated February 22, 2007, reads, in pertinent part:

“Request for renewal of BSA Cal. No. 189-96-BZ, using the first floor and cellar accessory waiting area as an eating and drinking establishment without restriction on entertainment (UG12A) the special permit shall expire on May 19, 2007”; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in *The City Record*, to continued hearing on June 19, 2007, and then to decision on July 17, 2007; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan and Vice Chair Collins; and

WHEREAS, the site is comprised of two tax lots and a single zoning lot, with a total area of 2,418 square feet, and is located on the northwest corner of Roosevelt Avenue and Forley Street, with 40 feet of frontage along Roosevelt Avenue and fifty feet of frontage along Forley Street; and

WHEREAS, the site is located within a C2-3 (R6) zoning district and is improved upon with two buildings occupied by an eating and drinking establishment with entertainment and dancing with a capacity of 190 persons on the first floor, a

MINUTES

second floor that housed a catering establishment and a cellar waiting area with a capacity of 190 persons, doing business as Flamingos; and

WHEREAS, Community Board 4, Queens, recommends disapproval of this application based on noise complaints and safety concerns with respect to the proposed 200-person capacity of the establishment and the waiting area capacity of an additional 200 persons; and

WHEREAS, members of the community provided testimony in writing to the Board about problems with noise (primarily emanating from the area of the rear entrance on Forley Street) and litter generated by patrons of the eating and drinking establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 1999, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

WHEREAS, on May 14, 2002, the Board granted an additional three-year; and

WHEREAS, on June 7, 2005, the Board granted an additional three-year term; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the hours of operation for the eating and drinking establishment are from 10 a.m. until 4 a.m., seven days a week; and

WHEREAS, in response to Board, Community Board and community concerns, the applicant has agreed to post signs inside and outside the building in proximity to the Forley Street exit doors limiting the use of the doors to an emergency exit, and to replace the fountain on the Forley Street frontage with a planter; and

WHEREAS, although Community Board 4 expressed concern about the total occupancy of 400 persons in the premises (200 in the eating and drinking establishment and an additional 200 in the cellar waiting area), the Board notes that the special permit requires that “a minimum of four square feet of waiting area within the zoning lot shall be provided for each person permitted under the occupant capacity” and that therefore provision of a waiting area for 200 persons is required in order to meet the findings for the special permit; and

WHEREAS, based upon the above, the Board finds the requested extension and amendments 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 19, 1999, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for an eating and drinking establishment with entertainment and dancing for three (3) years from May 19, 2007, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received March 14, 2007’-(3) sheets and ‘June 5, 2007’-(2) sheets; and *on further condition*:

THAT the term of this grant shall be for three (3) years

from the last expiration date, to expire on May 19, 2010;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT the doors fronting on Forley Street shall be used for emergency egress only and shall be posted with appropriate signage;

THAT a new certificate of occupancy and public assembly permit shall be obtained within six months of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 401982075)

Adopted by the Board of Standards and Appeals, July 17, 2007.

199-00-BZ, Vol. III

APPLICANT – John C. Chen, for En Ping, Ltd., owner; Valentin E. Partner Atlantis, lessee.

SUBJECT – Application February 23, 2007 – Extension of Term of a Special Permit (§73-244) for a UG12 eating and drinking establishment (Club Atlantis) in a C2-3/R-6 zoning district which expired March 13, 2007.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Chen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of term of a previously granted special permit, which expired on March 13, 2007, for an eating and drinking establishment without restrictions on entertainment (UG 12A) (“the Premises”), and an amendment of the resolution to permit installation of an access door to the adjacent restaurant; and

WHEREAS, the denial of reconsideration by the Queens Borough Commissioner, acting on Department of Buildings Application No. 401018206, dated February 22, 2007, reads, in

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pertinent part:

“Request for renewal of BSA Cal. No. 199-00-BZ, using the first floor and cellar accessory waiting area as an eating and drinking establishment without restriction on entertainment (UG12A), the special permit shall expire on March 13, 2007”; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in *The City Record*, to continued hearing on June 19, 2007, and then to decision on July 17, 2007; and

WHEREAS, the Premises had site and neighborhood examinations by Chair Srinivasan and Vice Chair Collins; and

WHEREAS, the Premises occupies part of a one-story building that occupies the entire zoning lot located at the northwest corner of Roosevelt Avenue and 77th Street; and

WHEREAS, the building is also occupied by an enclosed garage for five vehicles, a restaurant (owned by the owner of the eating and drinking establishment), and four retail stores; and

WHEREAS, the Premises is located within a C2-3 (R6) zoning district and is occupied by an eating and drinking establishment with entertainment, doing business as Club Atlantis; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, Councilperson Sears wrote to the Board to recommend approval of this application; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 13, 2001, when, under the subject calendar number, the Board granted a special permit under ZR §73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

WHEREAS, on June 15, 2004, the Board granted an additional three-year term; and

WHEREAS, the applicant now requests an extension of term and amendment of the resolution to permit installation of a fire-proof self-closing access door (which will not be used by patrons) to the adjoining restaurant; and

WHEREAS, in its approval, Community Board 3 stipulated that trees should be planted, or planters installed, along 77th Street; and

WHEREAS, the applicant diligently but unsuccessfully sought the necessary approvals to plant trees or install planters from the property owner, the NYC Department of Transportation and the NYC Department of Parks and Recreation; and

WHEREAS, based upon the above, the Board finds the requested extension and amendments appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 13, 2001, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for an eating and drinking establishment with entertainment and dancing for three (3) years from March 13,

2007, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received February 23, 2007’ –(2) sheets; and *on further condition*:

THAT the term of this grant shall be for three (3) years from the last expiration date, to expire on March 13, 2010;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy and public assembly permit shall be obtained within six months of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 401018206)

Adopted by the Board of Standards and Appeals, July 17, 2007.

671-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 24 Pack LLC, owner; Euclide Enterprises, Inc., lessee.

SUBJECT – Application March 21, 2007 – Amendment to a previously granted Variance (§72-21) to convert the existing service bays to an accessory convenience store, an area previously approved for a new bay to a mechanical room and (§11-412) to legalize a UG6 eating and drinking establishment (Texas Chicken); Extension of Time to complete construction and to obtain a Certificate of Occupancy and a Waiver of the rules in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 1249-1265 Sutter Avenue, blockfront from Euclid Avenue to Doscher Street, Block 4249, Lots 55 & 59, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for continued hearing.

142-70-BZ

APPLICANT – Barbara Hair, Esq., for Target Realty LLC, owner.

SUBJECT – Application December 12, 2006 – Amendment to a variance previously approved pursuant to §72-21 of the zoning resolution which allowed commercial office space

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(Use Group 6) on the cellar level of a residential building located in a R7-2 zoning district. The application seeks a change of use in the existing commercial space on the cellar level from Use Group 6 office to Use Group 6 store.

PREMISES AFFECTED – 8 St. Marks Place, south side, 126' east of 3rd Avenue, Block 463, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Barbara Hair.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for continued hearing.

844-86-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Fred Lynn Associates, owner; Pyramida Billiards, lessee.

SUBJECT – Application February 12, 2007 – Extension of Term of a previously granted Special Permit (§73-50) for the enlargement of a one (1) story building, in a C8-2 zoning district, that encroaches into the open area required along a district boundary which expired on April 28, 1997; an Amendment to legalize the change in use from an auto repair shop (UG16) and custom clothing manufacturer (UG11) to a billiard parlor (UG12) and eating and drinking establishment (UG6) and to permit the addition of a 979. sq. ft. mezzanine in the UG6 portion of the building; an Extension of Time to obtain a Certificate of Occupancy which expired on May 4, 1999 and a Waiver of Rules of Practice & Procedure.

PREMISES AFFECTED – 1828/1836 McDonald Avenue, west side of McDonald Avenue, between Avenue P and Quentin Road, Block 6632, Lots 17 & 20, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

81-93-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2255 Bedford Development Assoc., LP, owner.

SUBJECT – Application November 30, 2006 – Amendment of a previous resolution to permit conversion of portions of the cellar to artist studio space and portions of the first floor to residential apartments within a building that the Board granted the re-establishment of residential use on the upper floors and the approval of a childcare center on portions of the cellar and the entire ground floor of a building located in a C8-2 zoning district.

PREMISES AFFECTED – 2255 Bedford Avenue, east side of Bedford Avenue 34' north of intersection with Snyder Avenue, Block 5107, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

102-95-BZ, Vol. IV

APPLICANT – The Law Office of Fredrick A. Becker, for The Argo Corporation as agent for 50 West 17 Realty Company, owner; Renegades Associate d/b/a Splash Bar, lessee.

SUBJECT – Application May 8, 2007 – Extension of Term of a special permit (§73-244) for a previously granted UG12 eating and drinking establishment with dancing (Splash Bar) for a term of three years which expired on March 5, 2007 in a C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

391-04-BZIII

APPLICANT – Moshe M. Friedman, for Mellech Fastag, owner.

SUBJECT – Application May 29, 2007 – Amendment to a Special Permit (73-622) for a single family residence for an enlargement to second floor in an R-2 zoning district.

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PREMISES AFFECTED – 2610 Avenue L, south side of Avenue L, 60’ east of the intersection of Avenue L and East 26th Street, Block 7644, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 14, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

70-07-A

APPLICANT – John C. Chen, AIA, for Tae Wook Chang, owner.

SUBJECT – Application March 23, 2007 – Existing warehouse that does not front a legally mapped street contrary to General City Law Section 36. M3-1. Zoning District.

PREMISES AFFECTED – 49-30 Galasso Place, east side of 49th Street, 274’ south of Galasso Place, Block 2575, Lot 292, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John C. Chen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 12, 2007, acting on Department of Buildings Application No. 401630641, reads in pertinent part:

“Request for reconsideration for existing 22’ access easement as opposed to min 30’ fire access as per General City Law Section 36. The existing one-story warehouse does not have the street frontage, application filed to legalize the structure and mezzanine for accessory office”; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated May 30, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens

Borough Commissioner, dated March 12, 2007, acting on Department of Buildings Application No. 401630641, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 20, 2007” -(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2007.

137-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Edward Scheibel, lessee.

SUBJECT – Application May 22, 2007 – Reconstruct and enlargement of an existing single family home and the upgrade of an existing non -conforming private disposal system not fronting on a mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 19 Janet Lane, north side of Janet Lane, 190.95’ east of Beach 203rd Street, Block 15350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 8, 2007, acting on Department of Buildings Application No. 4025581230, reads in pertinent part:

“A-1 The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the official map of the City of New York, Therefore:

- A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law
- B) The existing dwelling to be reconstructed and enlarged does not provide at least 8% of the total

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perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code

A-2 The proposed upgraded private disposal system is partially in the bed of the service road contrary to Building Department policy”; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated May 31, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 8, 2007, acting on Department of Buildings Application No. 4025581230, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 22, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2007.

287-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: 32-42 33 Street, LLC, owner.

SUBJECT – Application September 15, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 32-42 33rd Street, between Broadway and 34th Avenue, Block 612, Lot 53, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for deferred decision.

67-07-A

APPLICANT – Kevin Finnegan, Esq., for Benjamin Shaul, Magnum Mgmt., owner.

SUBJECT – Application July 17, 2007 – An appeal seeking

to revoke permits and approvals that allow the construction of a penthouse that exceeds the permitted height limitations governed by ZR 23-692 (Sliver Law). R7-2 Zoning District. PREMISES AFFECTED –515 East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Kevin Finnegan, Brian Cook of Manhattan Borough President Office, Lisa Kaplan of Council Member Mendez Office, Matt Viggiano of NYS Senator Connor Office, Jessica Loeser of Assemblyman Silver’s Office, Susi Schropp, Monte P. Schapiro, Melissa Baldock, Rob Hoolander, John Fout and Robert Boddington.

For Opposition: Marivin Mitzner, Stephen P. Kramer of Department of Buildings, Egr Sejeffield.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57th Apartments, Inc., owner.

SUBJECT – Application June 11, 2007 – Appeal seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under Section 23-692(a) and is not listed as a permitted obstruction in Section 23-62. R10 Zoning district.

PREMISES AFFECTED –441 East 57th Street, north side of east 57th Street, between 1st Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCE –

For Applicant: Caroline G. Harris, Caroline Melb of Council Member Lappin’s Office, Brian Cook of Manhattan Borough President Office, Lo van der Valk, Melissa Baldock and Nerman Gordon.

For Opposition: Stephen P. Krammer of Department of Buildings, and Stuart Beckerman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JULY 17, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

29-06-BZ

CEQR #06-BSA-056K

APPLICANT – Sheldon Lobel, P.C., for Iliva Honovich,
owner.

SUBJECT – Application February 16, 2006 – Zoning
variance pursuant to ZR §72-21 to allow a proposed multiple
family dwelling containing fourteen (14) dwelling units to
violate applicable floor area, open space, lot coverage,
density, height and setback, and front and side yards
requirements; contrary to ZR §§23-141, 23-22, 23-45, 23-
461 and 23-633. Premises is located within an R4 district.
PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th
Street and East 19th Street, Block 7463, Lots 47, 49,
Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, decisions of the Brooklyn Borough
Commissioner, dated April 26, 2006 and July 17, 2007, acting
on Department of Buildings Application No. 302063120, read
in pertinent part:

“No front yards required by Section 23-45 of the
Zoning Resolution have been provided.

No side yards required by Section 23-461 of the
Zoning Resolution have been provided”; and

“Proposed height of building exceeds that permissible
by Section 23-631, Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, on a site within an R4 zoning district, a proposed four-
story residential building with nine units, 15 parking spaces,
10,392.5 sq. ft. of floor area, and an FAR of 1.35, which does
not comply with front yard, side yard, height, and setback
regulations, and is contrary to ZR §§ 23-45, 23-461, and 23-
631; and

WHEREAS, a public hearing was held on this
application on September 19, 2006, after due notice by

publication in the *City Record*, with continued hearings on
October 24, 2006, January 9, 2007, and May 15, 2007, and
then to decision on July 17, 2007; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan and
Commissioner Ottley-Brown; and

WHEREAS, the subject premises, which comprises two
tax lots, 47 and 49, is located on the northwest corner of
Voorhies Avenue and East 18th Street; and

WHEREAS, the combined lot is approximately 77 feet
wide and 100 feet deep and has a total lot area of 7,700 sq. ft.;
and

WHEREAS, tax lot 49 is currently occupied by a two-
and-one-half-story 14-unit rooming house and tax lot 47 is
currently occupied by a two-story two-family home, both of
which will be demolished; and

WHEREAS, the applicant initially proposed a five-story
building with a height of 50 feet, a floor area of 18,030 sq. ft.
(2.3 FAR), 14 residential units, and 18 parking spaces; and

WHEREAS, the original proposal required all of the
requested waivers noted above as well as waivers for FAR, lot
coverage, open space ratio, density, and parking; and

WHEREAS, the Board notes that the applicant initially
claimed that the hardship at the site included: (1) the existing
obsolete non-conforming frame building that is underbuilt and
that cannot be expanded; (2) the Single Room Occupancy
(SRO) status of the building which requires a purportedly
burdensome process to obtain a Certificate of No Harassment
from the Department of Housing Preservation and
Development, a threshold step in redeveloping the site; (3) the
location within the Special Flood Hazard Area, which does not
permit cellars under the Building Code without a waiver from
the Board; and (4) additional soil conditions and a high water
table, which make providing a cellar cost-prohibitive; and

WHEREAS, the Board considered the original proposal
and determined that the following claimed hardships were not
relevant to this application: (1) the obsolescence of the
building, because the building will be demolished; and (2) the
SRO status, which is not unique and which should be reflected
in the value of the property and is not before the Board; and

WHEREAS, the Board notes that this grant is
conditioned on the applicant obtaining a Certificate of No
Harassment from the Department of Housing Preservation and
Development for the SRO which is now vacant; and

WHEREAS, the Board accepted the applicant’s hardship
claims as to the Special Flood Hazard Area, the soil conditions,
and the water table, which are discussed in more detail below;
and

WHEREAS, accordingly, the applicant revised the
application to eliminate and reduce the degree of the waivers
which the Board deemed were not justified by any purported
hardship; and

WHEREAS, the applicant now proposes to construct a
four-story residential building with nine residential units; a
floor area of 10,392.5 sq. ft.; an FAR of 1.35; and a lot
coverage of 55 percent, which are all complying parameters

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under ZR § 23-141, the Primary Built-up Area (PBA) provisions for R4 "Infill" that apply to the subject site; and 15 parking spaces; and

WHEREAS, at the Board's request, the applicant submitted an analysis, which reflects that the PBA provisions apply to the subject site; and

WHEREAS, the applicant proposes to provide a street wall and total height of 40'-6" (25 and 35 feet, respectively, are the maximum permitted), no front yards (two front yards with a minimum depth of 18'-0" are required under the PBA provisions), and no side yards (two side yards with a minimum total width of 15'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the proposed building's first floor will be occupied by a partially-enclosed parking area, the entrance, a mechanical room, and the elevator and staircases; and

WHEREAS, the second and third floors will each be occupied by four apartments and the third floor will be occupied by one apartment; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is located within the Special Flood Hazard Area; (2) there is a high water table at the site; and (3) the soil composition is porous; and

WHEREAS, as to the Special Flood Hazard Area, the applicant submitted a map indicating that the site is located within a Special Flood Hazard Area, which reflects that the grade level at the site is substantially below the Regulatory Flood Datum and would require that the first floor be nearly three feet above the adjacent grade in order to comply with Building Code § 27-317 and DOB TPPN #1/04, dated February 20, 2004; and

WHEREAS, therefore, a cellar used for parking would be approximately five feet below grade and approximately eight feet below the Regulatory Flood Datum, which would violate the Building Code and be in conflict with the noted DOB TPPN; and

WHEREAS, the Board has authority to grant the originally requested waiver to permit construction below the Regulatory Flood Datum but, as noted, that waiver request has been withdrawn; and

WHEREAS, this Hazard Area condition results in a limitation on the cellar space to certain non-inhabitable spaces (including storage rooms), completely waterproofed against floodwaters, and structurally designed against uplift of a cellar slab by a hydrostatic pressure of approximately 500 pound per sq. ft., and lateral pressure against the walls reaching a maximum of at least the same at the level of the cellar slab; and

WHEREAS, the applicant notes that open parking at grade is permissible below the Regulatory Flood Datum; and

WHEREAS, as to the uniqueness of this condition, the applicant states that only a small portion of the subject R4 zoning district is within the Special Flood Hazard Area and that the portions of the surrounding area within it are located within zoning districts which permit greater bulk so that the hardship

and associated costs can be offset by more available floor area; and

WHEREAS, additionally, the applicant represents that adjacent buildings constructed prior to the enactment of the Hazard Area regulations substantially exceed the proposed bulk; and

WHEREAS, as to the water table, the applicant represents that the water table was found to be seven feet below grade; and

WHEREAS, the applicant submitted boring tests to substantiate this assertion; and

WHEREAS, as to the soil conditions, the applicant represents that the soil has been detected to be porous in nature and that percolation from sustained or heavy rainfalls can thus raise the elevation of the water table; and

WHEREAS, the applicant represents that the effect of these conditions is that a cellar is not feasible; and

WHEREAS, specifically, the applicant represents that the construction of a cellar is costly and would require special safety measures and that, even without a cellar, the noted conditions and required dewatering result in the need for a more expensive pile foundation; and

WHEREAS, accordingly, because a cellar cannot be provided, standard uses, which could be located underground and would not contribute to the floor area, such as parking and mechanicals, must be accommodated on the first floor, thus raising the building height; and

WHEREAS, the Board agrees that since the first floor must accommodate the required parking and mechanicals and cannot also feasibly accommodate any of the proposed residential space, the allowable floor area is unable to be utilized within the maximum permitted height and street wall while providing the minimum required yards; and

WHEREAS, the Board notes that only 645.5 sq. ft. of floor area on the first floor are counted towards floor area while the second and third floors accommodate 4,156 sq. ft. and 4,119 sq. ft., respectively; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) the existing buildings, which the applicant claims cannot be enlarged because of their frame construction, (2) a residential building which is under-built under the PBA provisions and would therefore result in a loss of income associated with the insufficient floor area, and (3) the original proposal for a five-story building, which exceeds the permitted FAR; and

WHEREAS, the applicant concluded that a complying scenario would not result in a reasonable return primarily because (1) the existing building cannot be enlarged for use as a multiple-dwelling and (2) construction costs related to cellar construction, as well as additional incremental costs related to the foundation system, all of which relate to the above-

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mentioned Hazard Area, water table, and soil conditions, would be prohibitively high; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by three-, four-, five-, six- and seven-story multiple dwelling buildings along Voorhies Avenue east and west of the site, including a seven-story multiple dwelling building immediately to the east, and by three-, four-, and six-story multiple dwelling buildings south of the site; and

WHEREAS, further, the applicant notes that the blocks to the east, west, and south of the site are zoned R6 or C1-2, C2-2, and C4-2 (R6 equivalents); and

WHEREAS, the Board observes that the fourth floor of the proposed building is only a small partial floor, which is focused towards the corner of the building and the site, and that the majority of the building is three stories; and

WHEREAS, also, the Board notes that the adjacent seven-story building on Voorhies Avenue similarly does not provide front yards or side yards; the three-story row houses on East 18th Street do not have front yards; and none of the buildings at the corners of Sheepshead Bay Road and Voorhies Avenue, one block away, provide front yards; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board does not regard these conditions to be a self-created hardship; and

WHEREAS, the Board notes that the applicant initially claimed that additional floor area was required to overcome the hardship at the site because the building envelope was constricted; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require that the first floor be dedicated to space which does not generate floor area thus restricting the allowable floor area within the permitted building envelope, but disagrees that additional floor area is needed to make the building feasible; and

WHEREAS, throughout the hearing process, the applicant provided several iterations of the proposal which requested floor area and FAR in excess of what is permitted,

which the Board found unconvincing; and

WHEREAS, as noted, the applicant revised the application to eliminate the floor area and FAR waiver as well as other noted waivers, and to reflect the permitted floor area distributed appropriately on the site; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.2 and 617.6 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA056K, dated July 10, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, a proposed four-story residential building, which does not comply with front and side yards, height, and setback, and is contrary to ZR §§ 23-45, 23-461, and 23-631, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 25, 2007"-eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of four stories, nine residential units, a total height of 40'-6", a floor area of 10,392.5 sq. ft., an FAR of 1.35, a lot coverage of 55 percent, and 15 parking spaces, all as illustrated on the BSA-approved plans;

THAT DOB shall not issue any building permits until the

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owner has obtained a Certificate of No Harassment;

THAT the parking layout shall be as approved by DOB;

THAT all balconies shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2007.

163-06-BZ

CEQR #07-BSA-007Q

APPLICANT – Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3) story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (§23-141c), front yard (§23-45), side yards (§23-462), and off-street parking (§25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43rd Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the denial of reconsideration by the Queens Borough Commissioner dated July 7, 2006, acting on Department of Buildings (DOB) Application No. 402395403 reads, in pertinent part:

1. Proposed open space ratio is non-complying and contrary to section 23-141(c) Z.R.
2. Proposed ten (10) foot front yard is contrary to Section 22-45 Z.R.
3. No side yards have been provided, contrary to Section 23-462 Z.R.
4. Proposed number of off-street parking spaces are contrary to Section 25-22 Z.R.

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, the construction of two (2), three-story and cellar two-family houses (UG 2), with side yards of 0' – 0" (8' – 0" side yards

are required), contrary to ZR § 23-462; and

WHEREAS, the originally filed application also sought waivers of open space ratio, front yard and off-street parking requirements, as reflected in DOB's Denial of Reconsideration, and requested an FAR of 1.65, which was predicated on the assumption of the applicability to the premises of the Predominantly Built-up Area (PBA) provisions for R5 "Infill" under which a 1.65 FAR would be permitted; and

WHEREAS, a public hearing was held on this application on March 13, 2007, after due notice by publication in *The City Record*, with continued hearings on May 8, 2007 and June 19, 2007, and then to decision on July 17, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown; and

WHEREAS, on December 5, 2006, Community Board 4, Queens, recommended disapproval of the application as originally filed, based on the following facts:

"The buyer should have been aware of the zoning regulations before the property was purchased.

"The adjacent homeowner will not be able to repair his property.

"The proposal is not conducive to the surrounding area, as it will add to already congested streets with a lack of parking and overcrowded schools"; and

WHEREAS, the subject premises is located on the south side of 43rd Avenue, between 72nd and 74th Streets, and immediately to the east of a railroad right-of-way, and is currently occupied by a two-family house and garage at the front of the premises and a second garage at the rear; and

WHEREAS, the proposal, as finally modified, provides for construction of two (2), three-story and cellar, two-family houses (UG 2) with the following parameters: 5,273 sq. ft. of floor area (5,273 sq. ft. is the maximum permitted); an FAR of 1.25 (1.25 FAR is the maximum permitted); an open space ratio of 54% (45% is required); 54.6% lot coverage (55% is permitted); total building height of 30' – 0" (33' – 0" is the maximum permitted); a front yard of 10' – 0" (a front yard of 10'-0" is required); two side yards of 0'-0" (8'-0" side yards are required); and off-street parking for 4 vehicles (a minimum of 4 parking spaces are required); and

WHEREAS, after questioning by the Board at hearing, the applicant conceded that PBA provisions are not applicable to the premises and that the permitted FAR is 1.25; and

WHEREAS, the proposal was subsequently modified to reduce the FAR from 1.65 to 1.25, which is permitted; and

WHEREAS, as a result of the reduction in FAR from 1.65 to 1.25, the proposal was additionally modified as follows: the proposed occupancy of each building was reduced from three (3) to two (2) families; the garages in each building were extended to provide a total of four (4) off-street accessory parking spaces (one for each dwelling unit); and the depths of the buildings were reduced at the rear while maintaining ten (10) foot front yards, thus eliminating the waivers requested for open space ratio (§23-141(c)), front yards (§23-45(a)) and

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parking (§25-22(a)); and

WHEREAS, as a result of the changes in the proposal, the only remaining non-compliance would be with respect to Z.R. § 23-462 (side yards); and

WHEREAS, with respect to ZR § 72-21(a), the applicant states that the unique characteristic of the premises is that its irregular, trapezoidal shape, fifty feet wide at the street line, but twenty-five feet wide at the rear lot line, prevents development of the permissible number of apartment units without violating parking and open space requirements; and

WHEREAS, the applicant makes the additional argument that because the premises abuts a railroad right-of-way, on which no development is permissible without a special permit from the City Planning Commission, an additional hardship is imposed; and

WHEREAS, the applicant failed to establish a connection between the shape of the premises and the waivers requested for parking and front yards; and

WHEREAS, however, the project as modified no longer requires waivers for parking and front yards; and

WHEREAS, the Board agrees that the unique shape of the premises creates a hardship in development, but disagrees that proximity to the railroad right-of-way is either unique or contributes to difficulty in developing the property; and

WHEREAS, with respect to ZR § 72-21(b), the applicant argues that complying with side yard requirements on the irregularly shaped lot would limit development to only one as-of-right residential building, and that the apartments in that building would be irregular in shape and “dysfunctional” because of the narrowness of the rear of the building; and

WHEREAS, the Board acknowledges that the configuration of the premises does impose a hardship on the property owner in developing the property that would not allow for a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the neighborhood surrounding the premises is primarily residential, with most buildings being two to three stories in height, that few of the buildings in the neighborhood have complying side yards, and some have no side yards, and that the buildings existing on the premises do not have complying side yards; and

WHEREAS, the proposed buildings, which do not have side yards, abut the railroad right-of-way on one side, and a garage on the other, so that the neighboring residence is not affected; and

WHEREAS, as modified, the project will provide one off-street parking space for each dwelling unit and will not create additional demand for on-street parking; and

WHEREAS, the Board agrees that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title but is attributable to the physical characteristics of the premises, as described above; and

WHEREAS, with respect to ZR § 72-21(e), in response to comments by the Board and Community Board 4, the applicant has modified the proposal so as to eliminate non-compliances with ZR §§ 23-141(c) (open space ratio), 22-45 (front yards), and 25-22 (off-street accessory parking); and

WHEREAS, the Board agrees that the variance sought is the minimum required to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA007Q, dated November 8, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, two proposed three-story and cellar Use Group 2 two-family residences, which do not comply with side yard requirements, contrary to ZR § 23-462, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received May 31, 2007”–seven (7) sheets and “Received July 2, 2007”–one (1) sheet; and *on further condition*:

THAT the building parameters shall be: two (2), three-story and cellar, two-family houses (UG 2) with 5,273 sq. ft. of

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floor area; an FAR of 1.25; an open space ration of 54%; 54.6% lot coverage; total building heights of 30' – 0"; front yards of 10' – 0"; two side yards of 0'-0"; and off-street parking for four vehicles;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2007.

215-06-BZ

APPLICANT – Vassalotti Associates Architects, LLP., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2006 – Special Permit (§11-411) for the re-establishment and extension of term for an existing gasoline service station, which has been in continuous operation since 1955. C1-2/R2 zoning district. PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam A. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, a denial of reconsideration of objections by the Queens Borough Commissioner, dated August 1, 2006, acting on Department of Buildings Application No. 400524072, reads in pertinent part:

“Proposal to extend term of variance previously granted by Board of Standards and Appeals, and secure new Certificate of Occupancy for an automotive service station located in a C1-2 within a R3-2 is contrary to Board of Standards and Appeals Cal. No. 327-55-BZ”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval to permit an automotive service station, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in

the *City Record*, and then to decision on July 17, 2007; and

WHEREAS, Community Board 12, Queens, has not made a recommendation with respect to this application; and

WHEREAS, the premises is located on the south side of Hillside Avenue, at the intersection with 202nd Street, with 100 feet of frontage along Hillside Avenue and 95 feet of frontage along 202nd Street, within a C1-2/R3-2 zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 9,630 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,557 sq. ft. convenience store building, four (4) gasoline pump islands with one multiple pump dispenser on each island with three (3) on-site accessory parking spaces; and

WHEREAS, on July 24, 1956, under BSA Cal. No. 327-55-BZ, the Board granted a variance to permit in a local retail use district the construction of a gasoline service station, lubritorium, non-automatic car wash, minor auto repair shop (with hand tools only), and the parking of motor vehicles awaiting service for a term of fifteen (15) years; and

WHEREAS, on November 16, 1971, under BSA Cal. No. 327-55 -BZ, the Board extended the term of the variance for an additional ten (10) years; and

WHEREAS, on October 21, 1980, under BSA Cal. No. 327-55 -BZ, the Board reopened and amended the resolution to extend the variance for a term of ten (10) years and to omit required shrubbery from planting areas; and

WHEREAS, on November 15, 1983, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to legalize an existing storage trailer to be used for the storage of non-combustible items; and

WHEREAS, on June 4, 1985, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to permit the addition of one additional pump to each existing pump island; and

WHEREAS, on February 6, 1990, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to permit changes in the design and arrangement of the existing gasoline station; and

WHEREAS, on June 30, 1992, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to extend the term of the variance for a period of ten (10) years to expire on July 24, 2001 and to eliminate the metal storage container and chain link fence and to restore a portion of the grass strips that had been covered with asphalt; and

WHEREAS, on December 10, 1996, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to permit replacement of the accessory building with a new accessory building containing a convenience store and attendants’ area and erection of a canopy over four new pump islands; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 327-55-BZ, which, as extended, expired on July 24, 2001; and

WHEREAS, pursuant to ZR §11-411, the Board may extend the term of an expired variance; and

WHEREAS, the Board has determined that evidence in

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the record supports the findings required to be made under ZR § 11-411; and

Therefore it is Resolved, 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 §11-411, for a reinstatement of a prior Board approval of an automotive service station; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received August 23, 2006"-(3) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on July 24, 2011;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the site shall be brought into compliance with the BSA-approved plans and all conditions of this grant, and a new certificate of occupancy shall be obtained within six months of the date of this grant, on January 24, 2008;

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 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. (D.O.B. Application No. 400524072)

Adopted by the Board of Standards and Appeals, July 17, 2007.

308-06-BZ

APPLICANT – Eric Palatnik, P.C., for David Levitan, owner.

SUBJECT – Application November 22, 2006 – Special Permit (§73-622) for the enlargement of two semi-attached single family homes to be converted to a detached single family home. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district.

PREMISES AFFECTED – 1458-1460 East 26th Street, between Avenue "N" and Avenue "O", Block 7679, Lots 77 & 79, Borough Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 6, 2006, acting on Department of Buildings Application No. 302249305, reads in pertinent part:

1. Proposed Plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed Plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the minimum required 150%.
3. Proposed Plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than the total of 30'-0".
4. Proposed Plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area exceeds the permitted Floor Area of 2,260 s.f."; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of two attached semi-detached one-family homes and the conversion of them into a single one-family home, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141(a) and 23-47; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 19, 2007, and then to decision on July 17, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue N and Avenue O; and

WHEREAS, the subject site comprises two tax lots, Lot 77 and Lot 78, and has a combined lot area of 4,520 sq. ft.; and

WHEREAS, the site is occupied by two attached semi-detached single-family homes with a combined floor area of 2,572 sq. ft. (0.57 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,572 sq. ft. (0.57 FAR) to 4,405 sq. ft. (0.97 FAR); the maximum floor area permitted is 2,260 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 55 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not

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located within 20'-0" of the rear lot line; and

WHEREAS, the applicant submitted photographs of nine single-family homes on lots with comparable widths (40 feet) within the surrounding area; and

WHEREAS, at hearing the Board asked the applicant to confirm the location of these homes; and

WHEREAS, in response, the applicant provided a map, which reflected that all nine of the homes are between Avenue N and Avenue O, within one block of the subject site; and

WHEREAS, additionally, the Board asked the applicant to confirm that the front wall height complies with zoning district regulations; and

WHEREAS, in response, the applicant confirmed that the proposed front wall height is 21'-10" and complies with zoning district regulations; 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, 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 R2 zoning district, the proposed enlargement of a two attached semi-detached one-family homes and the conversion of them into a single one-family home, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear yard, contrary to ZR §§23-141(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 5, 2007"-(9) sheets and "June 27, 2007"-(2) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 550 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a floor area of 4,405 sq. ft., an FAR of 0.97, a rear yard of 20'-0", and an open space ratio of 55 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the layout of the off-street parking space shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 302249305)

Adopted by the Board of Standards and Appeals, July 17, 2007.

97-07-BZ

CEQR #07-BSA-076Q

APPLICANT – The Law Office of Fredrick A. Becker, for Atlas Park, LLC, owner; TSI Glendale Inc., dba New York Sports Club, lessee.

SUBJECT – Application April 24, 2007 – Special Permit (§73-36) to legalize the operation of a PCE on the second floor of a two-story commercial building within a commercial mall complex. The proposal is contrary to the use regulations of section 32-00. The Premises is located in a M1-1 zoning district.

PREMISES AFFECTED – 80-16 Cooper Avenue, southerly side of Cooper Avenue and the easterly side of 80th Street, Block 3810, Lot 350, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCE –

For Applicant: Fredrick A. Becker and Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 17, 2007, acting on Department of Buildings Application No. 402256116, reads in pertinent part:

"Proposed Physical Culture Establishment is not permitted as of right in a Manufacturing District (M1-1). This is contrary to Section 42-10 ZR"; and

WHEREAS, this is an application under ZR §§73-36 and 73-03, to permit, on a site within an M1-1 zoning

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district, the establishment of a physical culture establishment (PCE) in portions of first and second floors of a commercial mall complex known as The Shops at Atlas Park, contrary to ZR §42-10; and

WHEREAS, a public hearing was held on this application on June 19, 2007 after due notice by publication in *The City Record*, and then to decision on July 17, 2007; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Cooper Avenue and 80th Street; and

WHEREAS, the site is occupied by one building in a commercial mall complex; and

WHEREAS, the PCE has been in operation since January 2007; and

WHEREAS, the PCE occupies a total of 27,111 sq. ft. of floor space, which includes 408 sq. ft. on the first floor and 26,703 sq. ft. on the second floor; and

WHEREAS, the applicant represents that the PCE offers classes and equipment for physical improvement, bodybuilding, weight reduction, aerobics and martial arts; and

WHEREAS, the PCE will be operated as a New York Sports Club; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA076Q dated March 26, 2007; and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy;

Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the establishment of a physical culture establishment on portions of the first and second floors of a building within a commercial mall complex, contrary to ZR §42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 24, 2006"-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 31, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 7:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2007.

MINUTES

104-07-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Rochelle Mandel, owner.

SUBJECT – Application April 30, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1243 East 29th Street, south side of Avenue L, Block 7647, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2007, acting on Department of Buildings Application No. 302332321, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed Floor Area Ratio exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed Open Space Ratio is less than the required 150%.
3. Plans are contrary to ZR 23-461(a) in that the existing total side yards are less than the required 13'-0".
4. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".
5. Plans are contrary to ZR 23-45 in that the existing minimum front yard is less than the required minimum of 15'-0".
6. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and side, front, and rear yards, contrary to ZR §§ 23-141(a), 23-461(a), 23-45, and 23-47; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in *The City Record*, and then to decision on July 17, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue L and Avenue M; and

WHEREAS, the subject site has a lot area of 3,150 sq. ft., and is occupied by a single-family home with a floor area of 1,849.9 sq. ft. (0.59 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 1,849.9 sq. ft. (0.59 FAR) to 2,925 sq. ft. (0.93 FAR); the maximum floor area permitted is 1,575 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 62.4 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the proposed enlargement will maintain the existing non-complying front yard of 13'-7" (a minimum depth of 15'-0" is required); and

WHEREAS, the proposed enlargement will maintain the non-complying side yards with widths of 2'-8" (a side yard with a width of 5'-0" is the minimum required) and 6'-11" (side yards with a total width of 9'-8" are the minimum required); and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to confirm that the bay window will have a depth of 1'-6" or less; and

WHEREAS, in response, the applicant modified the plans to reflect that the bay window did not extend beyond a depth of 1'-2"; and

WHEREAS, additionally, the Board directed the applicant to clearly indicate which portions of the attic would count as floor area; 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, Board finds that the proposed enlargement 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)

MINUTES

and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and side, front, and rear yards, contrary to ZR §§23-141(a), 23-461(a), 23-45, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 30, 2007"–(6) sheets, and "July 2, 2007"–(3) sheets, and "July 13, 2007"–(2) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 418.8 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a floor area of 2,925 sq. ft., an FAR of 0.93, a front yard of 13'-7", side yards of 2'-8" and 6'-11", a rear yard of 20'-0", and an open space ratio of 62.4 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, July 17, 2007.

342-05-BZ& 343-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Kingsbridge Terrace, LLC, owner.

SUBJECT – Application November 29, 2005 – Zoning variance (§72-21) to allow six (6) three-family buildings (18 dwellings) and six (6) accessory parking spaces; contrary to regulations for use (§ 22-12), FAR (§ 23-141), lot coverage (§23-141), number of dwelling units (§23-22), building height (§23-631), side yards (§ 23-461), minimum number of accessory parking spaces (§25-23), and special requirements for developments with private roads (§26-21). PREMISES AFFECTED – 1, 3 & 5 Maya Drive, southeast corner of Kingsbridge Terrace and Perot Street, Block 3253, Lot 204, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Sandy Anagnostou, Jack Freeman, Sachar Eddie and Edgar Diaz.

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for continued hearing.

39-06-BZ

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§ 72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 zoning district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Moshe M. Friedman and Hiram Rothkrug.

For Opposition: Anthony Perre.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for decision, hearing closed.

75-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to §72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§23-142 and §35-22), open space ratio (§23-142, §35-22 and §35-33) and sky exposure plane (§23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for decision, hearing closed.

108-06-BZ

MINUTES

APPLICANT– Eric Palatnik, P.C., for S & L-G Realty Corp., owner.

SUBJECT – Application May 30, 2006 – Zoning variance under §72-21 to allow a proposed 15-story residential building (U.G. 2) containing twenty-six (26) dwelling units and ground floor retail use (U.G. 6) to locate in an M1-6 district; contrary to §42-00 (use regulations).

PREMISES AFFECTED – 143 West 30th Street, between 6th and 7th Avenues, Block 806, Lot 4, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik and Gregory Geroges.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

126-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Hafif, owner.

SUBJECT – Application June 14, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (§23-141); less than the required side yards (§23-461) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1762 East 23rd Street, East 23rd Street, between Quentin Road and Avenue R, Block 6805, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for decision, hearing closed.

152-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Administration: DC Tanzosh, Fire Department.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B zoning district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright and Elane Kalmon.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

59-07-A

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application March 8, 2007 – Proposed building frontage is contrary to BC 27-291 Article 2. Provide Fire Department Approval. R6B Zoning District.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Borough of 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright and Elane Kalmon.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

291-06-BZ

APPLICANT – Paul Bonfilio, AIA., for 6860 Austin Realty Corp., owner.

SUBJECT – Application November 2, 2006 – Special Permit (§73-44) to allow the reduction in the number of required parking spaces for an enlargement to an existing community facility building (Ambulatory Diagnostic/Treatment Facility). The Premises is located in a C8-2 zoning district. The proposal is contrary to Section 36-21.

PREMISES AFFECTED – 68-60 Austin Street, Austin Street, between Yellowstone Boulevard and 69th Road, Block 3234, Lot 29, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Paul Bonfilio and Tarek M. Zeid.

MINUTES

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

301-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111’ north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for decision, hearing closed.

329-06-BZ

APPLICANT – Wholistic Healthworks, Inc., for Albino J. Testani, owner.

SUBJECT – Application December 21, 2006 – Special Permit (§73-36) to legalize a PCE in C2-2/R2A/R4 zoning districts. The proposal is contrary to Section 32-00.

PREMISES AFFECTED – 34-34 Bell Boulevard, west of Bell Boulevard, 184.07’ from 35th Avenue, Block 6112, Lot 39, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for postponed hearing.

10-07-BZ

APPLICANT – Kenneth Philogene, for George Smirnov, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to construct a two story, one family home on an undersized vacant lot with less than the total required side yards (§23-48) in an R3-1 zoning district.

PREMISES AFFECTED – 118 Graham Boulevard, south side of Graham Boulevard, Block 3768, Lot 23, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Kenneth Philogene.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

46-07-BZ

APPLICANT– Sheldon Lobel, P.C., for Moishe Bergman, owner.

SUBJECT – Application February 15, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1328 East 23rd Street, located on the west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for decision, hearing closed.

54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss, owner.

SUBJECT – Application February 23, 200 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1776 East 26th Street, west side of 26th Street, between Avenue R and Quentin Road, 200’ north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Katherine A. Levine and Edward Jaworski.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado, owner.

SUBJECT – Application March 28, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1941 East 26th Street, eastern side of 26th Street between Avenue S and Avenue T, Block 7305, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing

MINUTES

101-07-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Blumenkranz, owner.

SUBJECT – Application April 26, 2007 – Special Permit (§73-622) for the enlargement of an existing single family detached residence. This application seeks to vary open space and floor area (§23-141) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2306 Avenue M, south side, 40' east of East 23rd Street, between East 23rd and East 24th Streets, Block 7627, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Frank Sellitto.

For Opposition: Joseph Bergman.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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August 2, 2007

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DOCKETS

New Case Filed Up to July 24, 2007

181-07-BZ

72-18 Amstel Boulevard, North side of Amstel Boulevard between Beach 72nd Street and 73rd Street., Block 16070, Lot(s) 13, Borough of **Queens, Community Board: 14.** (SPECIAL PERMIT) §73-30 – For a proposed 20-foot extension to an existing 50-foot non-accessory radio tower and related equipment at grade.

182-07-BZ

229 Exeter Street, East side 220'-0" south of Oriental Boulevard between Oriental Boulevard and the Esplanade., Block 8743, Lot(s) 36, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) §73-622 – Proposed to erect enlargements in the front and the rear of existing one family residence which will remain as a one family residence.

183-07-BZ

4566 Broadway, Northeast corner of the intersection of Broadway and Nagle Avenue., Block 2172, Lot(s) 1, Borough of **Manhattan, Community Board: 12.** Under §72-21 – To authorize the proposed mixed use development.

184-07-BZ

32 Fountain Avenue, West side, between Atlantic Avenue and Wells Street., Block 4154, Lot(s) 61, Borough of **Brooklyn, Community Board: 5.** Under §721-21 – To permit the proposed threee family residential development (UG2) within the underlying M1-1 ZD.

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

AUGUST 21, 2007, 10 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday morning*, August 21, 2007, at 10 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

214-96-BZ

APPLICANT – Rampulla Associates Architects, for Colonial Funeral Home, owner.

SUBJECT – Application July 2, 2007 – Extension of Term of a previously granted Variance (§72-21) which expires on April 7, 2008, to permit in an R3-1 zoning district, a UG7 (Colonial Funeral Home) and the existing accessory parking on the adjacent lot (Lot 30) which houses a conforming UG1 single family home.

PREMISES AFFECTED – 2819 Hylan Boulevard, North side Hylan Boulevard east corner of Hylan Boulevard and Tysens Lane. Block 4256, Lot 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

7-00-BZ, Vol. III

APPLICANT – Friedman & Gotbaum, LLP, for Trustees of the NYC Rescue Mission, owners.

SUBJECT – Application July 26, 2007 – Extension of Time to Complete Construction for a Variance previously granted on May 30, 2000 to permit within an M1-5 zoning district an enlargement to a UG3, non-profit homeless shelter for men, (New York City Rescue Mission) which expired on February 10, 2005.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White streets, Block 195, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

323-06-A

APPLICANT – Vito J. Fossella, P.A., for Michael Sidnam, owner.

SUBJECT – Application December 14, 2006 – Proposed enlargement of an existing one family dwelling located within the bed of mapped street (North Avenue) which is contrary to Section 35 of the General City Law. R3X Zoning.

PREMISES AFFECTED – 389 College Avenue, Northside of College Avenue; 140.08' east of the corner formed by the intersection of College Avenue and Lockwood Place, running thence east 111.38', thence north 168.99', thence s/w 82.20', thence west 64.92', thence south 89.27'. Block 391, Lot 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

AUGUST 21, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday afternoon*, August 21, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

315-05-BZ

APPLICANT – David L. Businelli, AIA, for Diggy's LLC, owner.

SUBJECT – Application October 28, 2005 – Zoning variance under §72-21 to allow a two-story horizontal extension of an existing three-story mixed commercial retail (UG 6) and residential building containing one (1) dwelling unit. Twenty (20) open accessory parking spaces are proposed. Proposed commercial use is contrary to use regulations (ZR §22-10). R3X district (Special South Richmond District).

PREMISES AFFECTED – 862 Huguenot Avenue, South side of Huguenot Avenue, 0' east from Hawley Avenue. Block 6815, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #3SI

328-06-BZ

APPLICANT – Francis R. Angelino, Esq., for Okada Denki Sanyo Company Limited, owner.

SUBJECT – Application December 20, 2006 – Zoning variance under ZR §72-21 to allow an eight (8) story residential building containing six (6) dwelling units and ground floor retail use; contrary to regulations for use (§42-00, §111-104(e), and §111-102(b)). M1-5 district (Area B-2 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 50-52 Laight Street, Between Hudson and Greenwich Streets, Block 219, Lots 2 & 3, Borough of Manhattan.

COMMUNITY BOARD #1M

80-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 319 West LLC, owner. The Lantern Group, Incorporated, lessee.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to community facility floor area (§24-111), wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue.

CALENDAR

Block 1253, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

118-07-BZ

APPLICANT – Rothkrug Rothkurg & Spector LLP, for A Very Special Place, Incorporated, owner.

SUBJECT – Application May 11, 2007 – Special Permit (§73-44) to allow the proposed two-story, Use Group 6B office development which has less than the required parking. The proposal is contrary to section 36-21. C1-1/R3-2 district.

PREMISES AFFECTED – 49 Cedar Grove Avenue, Between Wavecrest Street and Seaform Street. Block 4087, Lot 1 & 70, Borough of Staten Island.

COMMUNITY BOARD #2SI

142-07-BZ

APPLICANT – Moshe M. Friedman, for Steven Weinberger, owner.

SUBJECT – Application May 29, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and side yards (§23-461) & (§23-48) in an R3-2 zoning district.

PREMISES AFFECTED – 2216 Avenue R, 56'-0" west of intersection formed by Avenue R and East 23rd Street. Block 6828, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

146-07-BZ

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77th Street, North side of East 77th Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

166-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen LLP, for Mindy Guzzone, owner. JCR Fitness, Incorporated d/b/a Fitness Together, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture establishment on the ground floor of a five-story mixed-use building. The proposal is contrary to section 32-00. C2-3 zoning district.

PREMISES AFFECTED – 213 Court Street, between Wyckoff and Warren Streets. Block 390, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 24, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

1236-27-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corporation, owner; BP Products, lessee.

SUBJECT – Application February 22, 2007 – Extension of Term for a previously granted special permit of a UG 16 Automotive Service Station (BP Products North America) which expired on February 22, 2007 in a C2-2/R3-1 zoning district.

PREMISES AFFECTED – 163-01 Cross Bay Boulevard, southeast corner of 163rd Street, Block 14201, Lot 63, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for an automotive service station, which expired on February 22, 2007; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Cross Bay Boulevard and 163rd Street; and

WHEREAS, the site is located in a C2-2 (R3-1) zoning district and is improved upon with an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 29, 1928 when, under the subject calendar number, the Board granted a variance for the reconstruction of an existing automotive service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on August 10, 1999, the grant was amended to permit certain site modifications and an extension of term, to expire on February 22, 2007; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may

permit an extension of term for a previously granted variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 29, 1928, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 22, 2007 to expire on February 22, 2017, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received May 21, 2007’–(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 22, 2017;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(Alt. 1094/61)

Adopted by the Board of Standards and Appeals, July 24, 2007.

704-59-BZ

APPLICANT – Peter Hirshman, for S & B Bronx Realty Associates, owner; G. R. Parking Lot, lessee.

SUBJECT – Application December 5, 2006 – Extension of Term/waiver of the rules for a previously granted variance of a UG8 Parking lot for more than five motor vehicles which expired on June 3, 2000 in an R8 zoning district.

PREMISES AFFECTED – 53 East 177th Street, northeast corner of Walton Avenue and East 177th Street, Block 2828, Lots 1, 45, 46, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a parking lot, which expired on June 3, 2000; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication

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in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, Community Board 5, Bronx, recommends approval of this application; and

WHEREAS, the subject premises is located on the northeast corner of Walton Avenue and East 177th Street; and

WHEREAS, the site is located within an R8 zoning district and is occupied by a parking lot with a total lot area of approximately 7,500 sq. ft.; and

WHEREAS, on March 8, 1960, under the subject calendar number, the Board granted a variance to allow parking and storage of more than five motor vehicles at the site; and

WHEREAS, this grant was extended four times; and

WHEREAS, most recently on June 5, 1990, the grant was extended for a term of ten years to expire on June 3, 2000; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant represents that there have not been any changes to the site; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 8, 1960, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the prior grant, to expire on June 3, 2010; *on condition* that the use shall substantially conform to the drawings filed with the application marked "Received December 5, 2006"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 3, 2010;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(Alt. 279/59)

Adopted by the Board of Standards and Appeals, July 24, 2007.

Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the term for a previously granted variance for retail and office use in an R3-2 zoning district, which expired on August 12, 2006; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, with a continued hearing on May 22, 2007 and July 10, 2007, and then to decision on July 24, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject premises is located on the east side of Richmond Avenue, 894.75 feet north of Rockland Avenue; and

WHEREAS, the site is located within an R3-2 zoning district and is occupied by a three-story building with retail and office use; and

WHEREAS, On July 19, 1977, under BSA Cal. No. 839-76-BZ, the Board granted a variance to permit the construction of a one-story building for use as a restaurant, which was never built; and

WHEREAS, on February 23, 1982, under BSA Cal. No. 945-76-BZ, the Board granted a variance to permit the construction of a one-story catering and restaurant establishment, which was never built; and

WHEREAS, on August 12, 1986, under the subject calendar number, the Board granted a variance to permit the construction of retail stores and offices (Use Group 6) at the site for a term of 20 years; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional 20 years; and

WHEREAS, the applicant represents that there have not been any changes to the site; and

WHEREAS, at the Board's direction, the applicant provided a sign analysis, which reflects that the signage

177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025

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complies with the approved plans; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 12, 1986, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of 20 years from the expiration of the prior grant, to expire on August 12, 2026; *on condition* that the use shall substantially conform to the drawings filed with the application marked "Received April 2, 2007"- (7) sheets and "Received June 18, 2007"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on August 12, 2026;

THAT all signage shall conform with the BSA-approved plans;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT 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. 500845516)

Adopted by the Board of Standards and Appeals, July 24, 2007.

21-91-BZ

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver, a reopening, an extension of time to obtain a certificate of

occupancy, and an extension of term for a previously granted variance for an automotive glass establishment with used car sales, which expired on June 10, 2005, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in *The City Record*, with continued hearings on May 22, 2007 and June 19, 2007, and then to decision on July 24, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application, citing concerns that the site is not properly maintained and that it has a negative effect on the adjacent property; and

WHEREAS, the Concerned Homeowners Association recommends disapproval of this application, citing concerns about the incompatibility of the use, and the failure to comply with conditions of prior grants, including the permitted hours of operation, the number of cars parked at the site, the presence of a trailer at the site, and poor maintenance of the site; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about site maintenance and the incompatibility of the use; and

WHEREAS, the site is located on the northeast corner of Linden Boulevard and Montauk Avenue; and

WHEREAS, the site is located in an R5 zoning district and is occupied by an automotive glass and minor repair establishment with used car sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 1958 when, under BSA Cal. No. 963-57-BZ, the Board granted a variance for the construction of an automotive service station with accessory uses; and

WHEREAS, the grant was subsequently extended and amended at various times until the use was discontinued in 1979 and the variance lapsed; and

WHEREAS, on June 20, 1995, under the subject calendar number, the Board granted a new variance to permit the legalization of a change in use from an automotive service station (Use Group 16) to an automobile glass establishment (Use Group 7) with used car sales (Use Group 16) for a term of ten years to expire on June 20, 2005; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, additionally, the applicant requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that no additional changes to the site are proposed; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the poor maintenance of the site; (2) the presence of a trailer, which is not permitted per the BSA-approved plans; (3) the excess signage; (4) insufficient street trees and landscape buffering; (5) the presence of barbed wire fencing; (6) non-opaque chain link fencing adjacent to the residential use; and (7) the negative impact on the adjacent property; and

WHEREAS, in response to the noted concerns, the applicant proceeded to bring the site into compliance and provided photographs into the record reflecting that (1) the site and the adjacent site have been cleaned up; (2) the trailer has

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been removed from the site; (3) the excess signage has been removed; and (4) the barbed wire has been removed; and

WHEREAS, additionally, the applicant agreed to work with the Department of Parks and Recreation to replace any missing street trees; and

WHEREAS, also, the applicant revised the site plan to reflect that (1) the curb cut on Montauk Avenue has been removed and the gate there has been welded shut; (2) parking spaces are limited to the approved number of cars, 13 for sale; and (3) a planted buffer is provided along the northwest property line adjacent to the residential use; and

WHEREAS, based upon its review of the record, the Board finds that a limited extension of term and the requested extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on June 20, 1995 and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for two years from the date of this grant, to expire on July 24, 2009, and to permit a six-month extension of time to obtain a certificate of occupancy, *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received March 12, 2007"-(3) sheets and "June 12, 2007"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on July 24, 2009;

THAT the site shall be maintained free of debris and graffiti;

THAT opaque fencing and a landscape buffer shall be provided along the northwest property line;

THAT the site conditions shall conform to the BSA-approved plans;

THAT the number of cars for sale at the site shall be limited to 13;

THAT all signage shall comply with C1 zoning district regulations;

THAT the hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the site shall be brought into compliance with all conditions of this grant and a certificate of occupancy shall be obtained by February 24, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 302033396)

Adopted by the Board of Standards and Appeals, July 24, 2007.

145-92-BZ

APPLICANT – Deirdre Carson of Greenberg Traurig, for PPI New York, LLC, owner; Eddie Gyms LLC, lessee.

SUBJECT – Application March 23 2007 – Extension of Term/Amendment/Waiver to request a renewal of the term of a special permit granted pursuant to (Z.R.§73-36) which permits the operation of a Physical Culture Establishment located on the third and fourth stories of a building located in a C2-8/C8-4 zoning district.

PREMISES AFFECTED – 403 East 91st Street, north side of East 91st Street between 1st and York Avenues, Block 1571, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on May 16, 2004; and

WHEREAS, on March 14, 2007, the Manhattan Borough Commissioner of the Department of Buildings, acting on Application No. 104247316, issued objections, which stated:

"Proposed layout indicates a physical cultural establishment and is not permitted as of right & use is contrary to [Z.R.] 32-00"; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the subject premises is located on the north side of East 91st Street, between First and York Avenues; and

WHEREAS, the site is located within a C2-8/C8-4 zoning district, and is occupied by a four-story and cellar building formerly used to manufacturing purposes; and

WHEREAS, the PCE occupies a total of 7,987 sq ft. on the third (2,631 sq. ft.) and fourth (5,356) floors of the building; and

WHEREAS, the PCE is operated as Edge Gym; and

WHEREAS, on May 17, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize an existing PCE on the third and fourth floors of the subject building; and

WHEREAS, on December 10, 2002, under the subject calendar number, the Board reopened and amended the resolution to permit a reduction in the amount of floor area occupied on the third floor of the building by the PCE; and

WHEREAS, the instant application seeks to extend the

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term of the special permit for an additional ten years; and
WHEREAS, no change is proposed in the operating hours of the PCE; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 10, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on May 16, 2014; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 23, 2007"-(6) sheets; and; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on May 16, 2014;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

(DOB Application No. 104247316)

Adopted by the Board of Standards and Appeals, July 24, 2007.

1328-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC., owner.

SUBJECT – Application June 5, 2007 – Extension of Term for a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 165 West End Avenue, 100' northwest corner of West 66th Street and End Avenue, Block 1179, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

1330-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Time to request a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 205 West End Avenue, West 70th Street, between West End and Freedom Place, Block 1179,

Lot 60, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

1332-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Term – To request a variance, originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 185 West End Avenue, northwest corner of West 66th Street and West End Avenue, Block 1179, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

247-85-BZ

APPLICANT – Francis R. Angelino, Esq., for Herald Towers, LLC, owner; TSI Herald, Inc., lessee.

SUBJECT – Application January 8, 2007 – Extension of Term/Waiver – Reopening of a special permit for a Physical Culture Establishment located in an C5-3, C6-6(MID) zoning district.

PREMISES AFFECTED – 40/60 West 34th Street, a/k/a 1282/130 Broadway, southeast corner of West 34th Street and Broadway, Block 835, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

200-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Blans Development Corp., owner.

SUBJECT – Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37th Avenue, a/k/a 37-16 108th Street, southwest corner of 108th Street and 37th Avenue, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

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THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August
21, 2007, at 10 A.M., for decision, hearing closed.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for
303 Park Avenue South Leasehold Co., LLC, owner; New
York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of
Term/Amendment – To allow the operation of a Physical
Culture Establishment/Health Club and change in hour of
operation, on portions of the cellar, first floor and second
floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South,
northeast corner of Park Avenue South and East 23rd Street,
Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to August
21, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

287-05-A

APPLICANT – New York City Board of Standards and
Appeals.

OWNER: 32-42 33 Street, LLC, owner.

SUBJECT – Application September 15, 2005 – To consider
dismissal for lack of prosecution.

PREMISES AFFECTED – 32-42 33rd Street, between
Broadway and 34th Avenue, Block 612, Lot 53, Borough of
Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson...4

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board
in response to a letter dated August 17, 2005, addressed to the
appellant and to Councilmember Vallone that purports to be a
final determination of the Commissioner of the NYC
Department of Buildings (“DOB”) (the “Final Determination”);
and

WHEREAS, the Final Determination states, in pertinent
part:

This responds to your letter dated August 4, 2005
wherein you express concern about the proliferation
of cellular antennas in the City and specifically

question the Department’s justification for issuing a
permit dated May 22, 2003 for the installation of
cellular equipment at 32-42 33rd Street, Queens (the
“Premises”), without a special permit from the Board
of Standards and Appeals (the “BSA”).

This letter affirms the Department’s determination to
permit the cellular antennas on the roof of the
Premises without obtaining a special permit from
BSA. While you correctly note that the Zoning
Resolution § 22-21 provides that “telephone
exchanges or other communication equipment
structures” are permitted by special permit from the
BSA, Included in this category are the telephone
wires that extend across properties, and related
telephone boxes that are often attached to buildings,
in order to provide land telephone service to homes in
a neighborhood. These wires and boxes have been
routinely permitted for many years notwithstanding
that the service they provide may not be limited
solely, or even primarily, to the building or zoning lot
on which they are situated.

Likewise, on July 1, 1998, the Department issued
Technical Policy and Procedure Notice #5/98 which
recognized that cellular telephony had become a
prevalent form of communication essential to the
public interest and clarified the conditions under
which small antennas and related equipment would
not be classified “communication equipment
structures.” The cellular installation that was
permitted at the Premises meets the requirements of
TPPN 5/98 and therefore is not subject to the
requirement for a Special Permit from BSA.

We trust this responds to your inquiry. This is a final
determination that may be appealed to the Board of
Standards and Appeals.

WHEREAS, the Final Determination was provided in
response to a letter dated August 4, 2005 from Councilmember
Vallone and the appellant Astoria Neighborhood Coalition, Inc.
(“Appellant”), which represents that it is a New York not-for-
profit corporation, that requested a final determination with
respect to the permit issued on May 22, 2003 for the cellular
telephone equipment installed on the roof of the Premises so
that this appeal could be filed; and

WHEREAS, the Appellant challenges DOB’s
determination, in compliance with TPPN 5/98, that the
installation of cellular telephone equipment on the roof of 32-
42 33rd Street, Queens (the Premises) does not require a special
permit pursuant to ZR § 22-21 from the Board; and

WHEREAS, a public hearing was held on this appeal on
April 10, 2007, after due notice by publication in *The City
Record*, with continued hearings on June 5, 2007 and July 17,
2007, and then to decision on July 24, 2007; and

WHEREAS, the premises had a site and neighborhood
examination by Chair Srinivasan; and

WHEREAS, DOB and Omnipoint Communications, Inc.
(“Omnipoint”), the owner of the cellular telephone equipment
installed at the Premises, have been represented by counsel
throughout this Appeal, and Appellant has been represented by
one of its members, who lives in close proximity to the

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Premises; and

PROCEDURAL HISTORY

WHEREAS, the Alteration Type 2 DOB permit for installation of the cellular telephone equipment (consisting of antennas and equipment cabinets) on the roof of the Premises was issued on May 22, 2003 pursuant to DOB Application No. 401572712; and

WHEREAS, installation of the equipment on the roof of the Premises was completed no later than January 2004; and

WHEREAS, after correspondence with Appellant and Councilperson Vallone, the Commissioner of DOB issued the Final Determination on August 17, 2005; and

WHEREAS, on September 15, 2005, the Appellant filed the instant appeal; and

WHEREAS, on April 11, 2006 Omnipoint filed a "Statement in Support of Dismissal"; and

WHEREAS, the Board declined to dismiss the appeal and held three hearings on the instant appeal prior to closing the matter and setting a decision date of July 24, 2007; and

WHEREAS, the Board notes that it has in several instances granted extensions of time to Appellant; and
SECTION 22-21 OF THE ZONING RESOLUTION AND THE SPECIAL PERMIT

WHEREAS, Z.R. § 22-21 lists uses that are permitted in residential districts by special permit pursuant to Z.R. § 73-14 from the Board of Standards and Appeals in residential districts; and

WHEREAS, in all residential districts, "Public utility or public service facilities" are permitted by special permit from the BSA; and

WHEREAS, furthermore, the specific enumeration of "public utility or public service facilities" includes "telephone exchanges or other communications equipment structures"; and

WHEREAS, Z.R. § 73-14 provides, in pertinent part, that:

In all *Residence Districts*, the Board of Standards and Appeals may permit . . . telephone exchanges or other communications equipment structures, provided that the following findings are made:

- (a) that such *use* will serve the residential area within which it is proposed to be located; that there are serious difficulties in locating it in a district wherein it is permitted as of right and from which it could serve the *residential* area, which make it necessary to locate such *use* within a *Residence District*; and

* * * * *

The Board may prescribe appropriate conditions or safeguards to minimize adverse effects on the character of the surrounding area, including requirements that . . . any such use shall be landscaped; and

WHEREAS, Appellant contends that the cellular telephone equipment installed at the Premises falls within the category of "telephone exchanges or other communications equipment structures," and it therefore requires a special permit from BSA, regardless of size; and

WHEREAS, DOB, as explained below, asserts that it has the authority under the New York City Charter to interpret or "clarify" the Zoning Resolution; and

THE TPPN

WHEREAS, TPPN #5/98, dated July 1, 1998, reads, in pertinent part:

"The Department recognizes that cellular telephony has become a prevalent form of communication essential to the public interest. As such, those companies wishing to erect cellular antennas, and install related equipment are to be treated with the deference afforded other public utilities. Thus, to the extent the cellular antennas and related equipment meet the specifications and requirements set forth below, they are not subject to zoning. These specifications and requirements are based on the standards for cellular telephony at this time, and are designed to permit necessary and customary public utility service. To the extent the antenna and related equipment do not meet these criteria, they may be classified as Use Group 7 'communication equipment structures,' and as such, may require a special permit in residence districts pursuant to Z.R. § 22-21.

1. The antennas must be attached to a building or other structure that has a use independent of supporting the antennas.
2. The antennas may not extend higher than six (6) feet above the height of the roof or parapet on the roof, or six feet above any penthouse or bulkhead, if placed on such penthouse or bulkhead.
3. The antennas shall each have an area no more than 8.45 square feet or one meter in diameter.
4. The related cellular equipment must not occupy more than 5% of the floor area on a zoning lot or 400 square feet"; and

WHEREAS, TPPN #5/98 contains additional Building Code requirements, which are not at issue in the instant appeal; and

WHEREAS, in April 2007, through both a review of plans and a physical inspection, DOB confirmed that the antennas and cabinets installed at the Premises comply with TPPN #5/98; and

WHEREAS, Appellant does not dispute that the antennas and other equipment fall within the category of equipment exempted from special permit requirements set forth in TPPN #5/98 but rather challenge the ability of the jurisdiction of DOB to issue the TPPN; and

DISCUSSION

A. DOB's Authority to Interpret the Zoning Resolution

WHEREAS, Appellant argues that DOB's issuance of TPPN #5/98 was beyond its authority and effectively changed the Zoning Resolution without going through the public process required for text amendment of the Zoning Resolution; and

WHEREAS, DOB asserts that the City Charter gives DOB the power to enforce the Zoning Resolution, and concomitant with the power to enforce or administer the Zoning Resolution is the power to clarify or interpret; and

WHEREAS, DOB further argues that TPPN #5/98 is a clarification, rather than a "variance" from the requirements of the Zoning Resolution; and

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WHEREAS, Appellant in its April 24, 2007 submission provides a list of TPPNs printed from DOB's web page at www.nyc.gov as evidence that only TPPN #5/98 changes the Zoning Resolution instead of merely clarifying or interpreting it; and

WHEREAS, Appellant discusses none of the listed TPPNs or makes any attempt otherwise to distinguish them from TPPN #5/98; and

WHEREAS, Omnipoint points out that other TPPNs on the list submitted by appellants – specifically, TPPN #10/99 (setting a specific square footage minimum for determining whether a convenience store is accessory to an automotive service station) and TPPN #11/93 (setting criteria to qualify Pet Receiving Facilities similar to other veterinary medical facilities for use and siting purposes) – are analogous to TPPN #5/98 in carving out certain categories of uses for a different standard of regulatory scrutiny; and

WHEREAS, the Board notes that neither of the key phrases -- “telephone exchanges” or “communications equipment structures” – or their component words, is a defined term within the Zoning Resolution; and

WHEREAS, if DOB cannot interpret or define the phrases “telephone exchange” and “communications equipment structure,” it would not be possible for DOB to enforce ZR § 22-21; and

WHEREAS, furthermore, Omnipoint observes that § 641 of the City Charter gives broad authority to the Commissioner of DOB to regulate alterations of buildings and equipment, including “the regulation of electrical wires and wiring apparatus . . . used . . . for signaling, communication, alarm and data transmission in or on any building or structure . . .”; and

WHEREAS, although not dispositive on the issue of DOB's authority to interpret the Zoning Resolution, Omnipoint also cites language from federal regulations, the Building Code and the Zoning Resolution that supports its position that the cellular telephone equipment at issue in the instant appeal is neither a “telephone exchange” nor a “communications equipment structure”; and

WHEREAS, both DOB and Omnipoint also cite In the Matter of Cellular Telephone Company, D/B/A Cellular One v. Armand Rosenberg, et al., 82 N.Y.2d 364 (1993) for the proposition that wireless carriers provide an essential public service and should be accorded favored treatment in matters of zoning; and

B. DOB's Interpretation of ZR § 22-21 in TPPN #5/98 is a Reasonable Exercise of its Authority to Interpret the Zoning Resolution

WHEREAS, DOB observes that in the six months between September 1, 2006 and February 28, 2007, it issued over 100 permits for cellular antennas in residential districts; and

WHEREAS, TPPN #5/98 was issued in response to the growing number of applications for permits to install cellular telephone equipment; and

WHEREAS, TPPN #5/98 has the effect of expediting the permitting by DOB of many small cellular telephone equipment installations that fall below the minimum specifications set forth in TPPN #5/98 and that are no more obtrusive than landline telephone poles and wires that do not

require approvals from DOB or the Board; and

WHEREAS, only small installations, which are unlikely to have other significant impacts, fall within the ambit of TPPN #5/98; and

WHEREAS, given the limited requirement of the special permit set forth at Z.R. § 73-14 that the “telephone exchange or other communications equipment structures” serve the residential area in which they are located and that there are “serious difficulties” in locating them elsewhere, along with the nature of such cellular telephone antennas as are at issue in the instant appeal to serve only the area in which they are located, the siting of such small structures would be expected to be routine and therefore a proper area for DOB's exercise of its authority to interpret the Zoning Resolution; and

WHEREAS, the Zoning Resolution does not define “telephone exchange” or “communications equipment structure” in such a way as to preclude DOB from exercising its authority to interpret the Zoning Resolution; and

WHEREAS, Omnipoint argues that the cellular telecommunications equipment at issue in this appeal is neither a “telephone exchange” nor a “communications equipment structure” and therefore not even within the scope of the special permit; and

WHEREAS, Omnipoint further points to Appellant's omission of the word “structure” from its characterization of Z.R. § 22-21 in its April 24, 2007 submission in order to broaden the applicability of the special permit beyond the structures intended to be covered; and

WHEREAS, whether or not Omnipoint's argument that the antennas in the instant case are not “structures” regulated under the special permit is correct, their small size and ubiquity make their status under the Zoning Resolution appropriate for clarification by DOB through TPPN #5/98; and

WHEREAS, at hearing, Omnipoint cited statistics indicating the level of integration of cellular communications into the New York telecommunications network, including usage of the particular cellular antennas at issue in the instant appeal, which included 1,443 “911” calls in 2006, and 1.6 million minutes of calls in 2007; and

WHEREAS, the effect of TPPN #5/98 is to streamline the siting process for small cellular telephone equipment installations, which provide a public benefit and which are now thoroughly integrated into the telephone communications network; and

WHEREAS, DOB explicitly recognized in TPPN #5/98 that cellular telephone equipment has become “a prevalent form of communication essential to the public interest”; and

WHEREAS, the Final Determination reiterates that “it has long been accepted that there are certain public utility uses that are so essential to the public interest and that are so incidental to the principal uses on the zoning lot, that they are not the intended subject of zoning use restrictions”; and

WHEREAS, in its submission of March 23, 2007, DOB states that, “[a]s cellular telephone service has become a service effectively comparable in ubiquity to traditional landline phone service, it is necessary and appropriate to treat cellular antenna

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facilities comparably to telephone wiring facilities, with the provisions of the Zoning Resolution being inapplicable to basic transmission facilities of reasonable, minimal size and scope as described in the TPPN"; and

WHEREAS, the Board finds that DOB reasonably exercised its authority to interpret the Zoning Resolution in issuing TPPN #5/98 by permitting certain categories of cellular telephone equipment without requiring a special permit from the Board of Standards and Appeals; and

C. Prior BSA Decisions Do Not Contradict DOB's Authority to Issue the TPPN

WHEREAS, Appellant argues that TPPN #5/98 removed cellular telecommunications equipment installations like the one at issue in the instant appeal from public review and BSA jurisdiction under Z.R. § 73-14; and

WHEREAS, the Board directed Appellant to provide evidence of its assertion that BSA has customarily granted special permits pursuant to Z.R. § 73-14 to such telecommunications equipment installations; and

WHEREAS, Appellant did not introduce any such evidence into the record; and

WHEREAS, Appellant cites BSA Cal. No. 631-87-BZ, which involved the issuance of a special permit for the installation of cellular telephone transmission equipment on and in a Queens building as precedent for requiring a special permit for installation of all rooftop cellular telephone transmission equipment; and

WHEREAS, the DOB objection on which BSA Cal. No. 631-87-BZ was based states:

The use of a portion of the cellar in an R4 Zone for a "telephone exchange or other communications equipment structure," including roof mounted antennae, in Use Group 6 is contrary to Section 22-10 of the Zoning Resolution; and

WHEREAS, the language of the DOB objection makes clear that the denial was based on the equipment proposed to be installed in the cellar, and not on the antennas; and

WHEREAS, BSA Cal. No. 631-87-BZ, decided over ten years prior to the issuance of TPPN #5/98, is distinguishable from the matter in the instant appeal in that 1) it involved the installation of a substantial amount of equipment in the cellar of the building, 2) it would not fall within the exemption from special permit requirement created by TPPN #5/98, and 3) it arose during the early implementation of a cellular telephone network, and before either the federal Telecommunications Act of 1996 or before DOB had reasonably determined, based on the proliferation of cellular communications, that certain small cellular installations should not be required to go through the application process for a special permit from the Board; and

WHEREAS, even if the cellular equipment at issue in BSA Cal. No. 631-87-BZ were comparable to that giving rise to the instant appeal, DOB correctly notes and the Board agrees that cellular communications companies are always free to seek a special permit, as the TPPN does not – and could not – prohibit an applicant from seeking a special permit or prohibit the BSA from granting one; and

D. Federal Law

WHEREAS, Omnipoint, in its Statement in Support of Dismissal, cites the federal Telecommunications Act of 1996

(the "Act") in support of its argument that Appellant lacks standing (a question not addressed by the Board herein); and

WHEREAS, the Act specifically provides that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulation concerning such emissions, 47 U.S.C. § 332(c); and

WHEREAS, Omnipoint also cites Cellular Telephone Co. v. Oyster Bay, 166 F.3d 490 (2d Cir. 1999) and Reno v. ACLU, 521 U.S. 844, 857 (1997) for the general proposition that federal policy is to promote the availability of cellular communication; and

WHEREAS, although the Act explicitly limits local authority only with respect to regulating cellular transmission facilities on the basis of potential health effects; and

WHEREAS, TPPN #5/98, to the extent it makes the siting of small cellular telephone transmission facilities less burdensome, is consonant with federal policy; and

WHEREAS, in the absence of City legislation to regulate small cellular telecommunications installations, federal policy supports the rationale behind TPPN #5/98; and
ISSUES NOT ADDRESSED IN THIS APPEAL

WHEREAS, in its "Statement in Support of Dismissal," dated April 11, 2006, Omnipoint makes a number of arguments in support of dismissal of the instant appeal, including arguments based on statutory law and equitable principles; and

WHEREAS, in the interest of deciding the substantive issues presented by this appeal, the Board declines to rule on any of the above reasons for dismissal of the instant appeal; and
CONCLUSION

WHEREAS, the Board finds that DOB acted within the scope of its authority in issuing TPPN #5/98; and

WHEREAS, the Board also finds that DOB acted reasonably in exercising its authority to interpret the Zoning Resolution in TPPN #5/98; and

WHEREAS, DOB's clarification of Z.R. § 22-21 is consistent with its practice in issuing prior Technical Policy and Procedure Notices; and

WHEREAS, the Board declines to substitute its judgment for either that of DOB, which is charged with interpretation of the Zoning Resolution, or that of the City Council, which may act to provide citizens the opportunity to be heard on all matters, however small, involving the installation of cellular telephone equipment; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated August 17, 2005, determining that the cellular telephone equipment installed at the Premises did not require a special permit from the Board of Standards and Appeals pursuant to Z.R. § 22-21, is hereby denied.

Adopted by the Board of Standards and Appeals, July 24, 2007.

87-06-A & 88-06-A

APPLICANT – Patrick W. Jones, P.C. for Zhen Hu, owner.
SUBJECT – Application May 8, 2006 – Proposal to permit

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construction of two, four story mixed use building within the bed of the mapped, unimproved Delong Street contrary to General City Law Section 35. Premise is located within a C4-2 Zoning District.

PREMISES AFFECTED – 131-04 & 131-06 40th Road, south side of 40th Road, 430' west of intersection with College Point Boulevard, Block 5060, Lot 70 & 71, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick W. Jones.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application Nos. 402285674 & 402285665, reads in pertinent part:

Respectfully request to waive objection #1. Proposed new building is in the bed of a mapped street and is contrary to Section 35 of the General City Law Section; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in the *City Record*, and then to decision on July 24, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit, within the bed of a mapped street (Delong Avenue), two, four-story buildings to be occupied by retail use (UG 6A) on the basement, mezzanine, and first floor levels and with apartments on the second, third, and fourth floors; and

WHEREAS, Community Board 7, Queens, has recommended approval of this application on condition that it complies with all applicable laws and zoning regulations including any conditions related to the Long Island Railroad and any right of way; and

WHEREAS, by letter dated June 22, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 22, 2007, the Department of Environmental Protection states that it has reviewed the revised site plan, which reflects widths of 19'-8.75" at the narrowest point of Delong Avenue and 46'-8" at the widest point of Delong Avenue, which will be available for the maintenance and or reconstruction of the existing and future 12-inch diameter sanitary and 36-inch diameter storm sewers and states that it has no further comments on the application; and

WHEREAS, by letter dated September 5, 2006, the Department of Transportation (DOT), states that it has reviewed the application and advised the Board that it requires additional information from the developer with respect to the provisions for emergency vehicle access/turnaround, such as a cul de sac, at the dead end of 40th Road, the number of off-

street parking spaces and location of all proposed curb cuts, in addition to the number of dwelling units, square footage for retail activities, and the peak-hour vehicular trips generated; and

WHEREAS, the Board notes that the September 5, 2006 letter did not state that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated October 23, 2006, in response to DOT's request, the applicant states that the Fire Department does not have any issues regarding the development of the lots, and that these lots are not situated at the terminus of 40th Road and should not be connected to the DOT technical review of the cul de sac; and

WHEREAS, by letter dated May 22, 2007, the DOT has reviewed the October 23, 2006 submission of the applicant, which included the approval letter from the Fire Department, and has advised the Board that it will defer to the Fire Department's authority and not request the inclusion of a cul de sac at the end of 40th Road; and

WHEREAS, by letter dated June 28, 2007, the applicant has provided that no analysis of vehicular trip generation is warranted given that the size of the proposed development does not reach the City Environmental Quality Review (CEQR) threshold for additional traffic review and no curb cuts or parking spaces are proposed; and

WHEREAS, by letter dated July 19, 2007, DOT states that it has reviewed the applicant's submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application Nos. 402285674 & 402285665, 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 May 8, 2006"- (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 the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the lot subdivision is to be as approved by DOB; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2007.

50-07-A

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APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Yosi Shem-tov, owner.

SUBJECT – Application February 22, 2007 – Construction of a five story three family dwelling (UG2) with ground floor community facility use (UG4) located within the bed of a mapped street (101st Street) contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 100-21 39th Avenue, northside of 39th Avenue, Block 1767, Lot 61, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 23, 2007, acting on Department of Buildings Application No. 402188725, reads in pertinent part:

Proposed building is in the bed of a mapped street. Comply with Section 35 of the General City Law or refer to the Board of Standards and Appeals for an Administrative Appeal; and

WHEREAS, a public hearing was held on this application on July 10, 2007 after due notice by publication in the *City Record*, and then to decision on July 24, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit the construction of a five-story three-family building (UG 2) with a community facility medical office (UG 4) within the bed of a mapped street; and

WHEREAS, Community Board 3, Queens, has recommended approval of this application on condition that approvals are obtained from the Department of Transportation (DOT), the Department of Environmental Protection (DEP), and the Fire Department (FDNY); and

WHEREAS, by letter dated June 13, 2007, the FDNY states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 9, 2007, DEP states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated May 22, 2007, the DOT states that it reviewed the application and advises the Board that it has concerns with regard to the availability of any parking in the area; and

WHEREAS, further, DOT requires that the applicant provide a site plan showing the number of off-street parking spaces, if any are intended, as well as the location of all curb cuts; and

WHEREAS, the Board notes that the May 22, 2007 letter did not state that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated June 11, 2007, in response to DOT's request, the applicant submitted a revised plot plan and statement reflecting two accessory off-street parking spaces and

the location of the proposed curb cut on 39th Avenue; and

WHEREAS, by letter dated July 12, 2007, DOT states that it has reviewed the applicant's revised submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 23, 2007, acting on Department of Buildings Application No. 402188725, 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 June 22, 2007"-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2007.

149-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Edward Joyce, lessee.

SUBJECT – Application June 7, 2007 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law and the proposed upgrade on an existing legal non-conforming private disposal system partially in the bed of the Service Road is contrary to Building Department Policy. R4 Zoning District. PREMISES AFFECTED – 17 Roosevelt Walk, southeast corner of Roosevelt Walk and West End Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough

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Commissioner, dated May 25, 2007, acting on Department of Buildings Application No. 402564444, reads in pertinent part:

- A-1 The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the official map of the City of New York, therefore:
 - A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law
 - B) The existing dwelling to be reconstructed and enlarged does not provide at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code
- A-2 The proposed upgraded private disposal system is partially in the bed of the service road contrary to Building Department policy; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated June 11, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 25, 2007, acting on Department of Buildings Application No. 402564444, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received June 7, 2007"-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2007.

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the

proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district. PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Mark Davis.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

84-07-A & 85-07-A

APPLICANT – Law Office of Anthony J. Tucci, for Brook Property Management, LLC, owner.

SUBJECT – Application April 18, 2007 – Proposal to build two, semi- attached, one family homes which does not front on a mapped street contrary to Article 3, §36 of the General City Law and NYC Building Code §27-291. R3-1 Zoning District.

PREMISES AFFECTED –12 & 14 Brook Avenue, near Hylan Boulevard, Block 4721, Lots 45 & 46, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant:

For Opposition: John Lafemina.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District.

PREMISES AFFECTED – 41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Irving Minkin and Christopher Papa.

For Opposition: Janina Gaylard.

For Administration: Janine Gaylard.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JULY 24, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

333-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Alfred Caligiuri, owner.

SUBJECT – Application December 29, 2006 – Variance (§72-21) to permit the enlargement of an existing two family dwelling in an R2A zoning district which complies with the districts bulk and yard requirements but does not permit two family dwellings.

PREMISES AFFECTED – 29-26 Bell Boulevard, Bell Boulevard and 32nd Avenue, Block 6053, Lot 34, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

WHEREAS, the denial of reconsideration by the Queens Borough Commissioner dated July 7, 2006, acting on Department of Buildings (DOB) Application No. 402388527 reads, in pertinent part:

“Proposed use Group 2 contrary to R2A district in that 2 family dwelling not permitted in R2A zone. (ZR 21-11 and 22-00)”;

and
WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2A zoning district, the enlargement of a non-conforming two-family house (UG 2), contrary to ZR § 21-11 and 22-00; and

WHEREAS, the proposed enlargement otherwise conforms with all zoning requirements, except for its continued use as a two-family house; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, on December 26, 2006, Community Board 11, Queens, recommended approval of the application; and

WHEREAS, on March 9, 2007, the Queens Borough President recommended approval of the application; and

WHEREAS, the subject premises is located on the west side of Bell Boulevard, between 29th and 32nd Avenues, and is occupied by an existing non-conforming two-family house; and

WHEREAS, the Board initially approved the construction of the existing wood-frame two-family house under BSA Cal. No. 1042-48-A; and

WHEREAS, the premises was subsequently rezoned to an R2A district, in which the existing two-family house is a non-conforming use; and

WHEREAS, the proposal provides for enlargement of the existing, non-conforming two-family house as follows: 3,312 sq. ft. of floor area (3,325 sq. ft. is the maximum permitted); an FAR of 0.5 (0.5 FAR is the maximum permitted); 29% lot coverage (30% is permitted); total building height of 34’ – 2’’ (35’ – 0’’ is the maximum permitted); a front yard of 15’ – 0’’ (a front yard of 15’ - 0’’ is required); two side yards of 5’ - 0’’ and 8’ – 7’’ (5’ - 0’’ and 8’ – 0’’ side yards are required); and off-street parking for 2 vehicles (a minimum of 2 parking spaces are required); and

WHEREAS, the only non-compliance would be with respect to the number of dwelling units in the building; and

WHEREAS, with respect to ZR § 72-21(a), the applicant states that the unique characteristics of the premises are that the existing two-family house is situated on a 6,650 square foot lot that is significantly larger than most other lots in the neighborhood and is significantly underbuilt, with a house of only 927 square feet and 0.15 FAR (3,325 square feet and 0.5 FAR are permitted); and

WHEREAS, the applicant states that of the 92 lots within 400’ of the premises, only eight are as large as the premises; and

WHEREAS, the applicant states further that the two- and three-family houses along Bell Boulevard in the neighborhood of the premises have an average FAR of 1.2 (and a range of from 0.47 to 2.05 FAR); and

WHEREAS, the applicant argues it would suffer unnecessary hardship and practical difficulties if it had to convert the two-family house to a single-family house in order to expand; and

WHEREAS, the Board agrees that the premises is one of the few oversized lots in the area underdeveloped with a legal non-conforming two-family house; and

WHEREAS, the Board acknowledges that the large lot size and underbuilt nature of the premises does create unnecessary hardship and practical difficulties for the owner; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the neighborhood surrounding the premises is fully developed with many one-, two-, and three-family houses that have greater bulk than the existing house on the premises and that exceed permitted FAR; and

WHEREAS, furthermore, the Board notes that in all respects the enlargement of the currently legal two-family

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house complies with zoning; and

WHEREAS, the Board agrees that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title but is attributable to the physical characteristics of the premises and to the rezoning of the area to a 2A zoning district, which caused the existing two-family house to become a non-conforming use; and

WHEREAS, with respect to ZR § 72-21(e), the applicant states that the proposed expansion will comply with all applicable zoning requirements except that the two-family house will remain a non-conforming use in the R2A zoning district; and

WHEREAS, the Board agrees that the variance sought is the minimum required to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

Therefore it is Resolved that the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2A zoning district, the enlargement of a Use Group 2 two-family residence, contrary to ZR §§ 21-11 and 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 30, 2007" – (11) sheets and "Received July 17, 2007" – (1) sheet; and *on further condition*:

THAT the building parameters shall be: one two-family house (UG 2) with 3,312 sq. ft. of floor area; an FAR of 0.5; 29% lot coverage; total building height of 34' – 2"; front yard of 15' – 0"; two side yards of 5' – 0" and 8' – 7"; and off-street parking for 2 vehicles;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2007.

43-07-BZ

CEQR #06-BSA-060M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Covenant House, owner; Hampshire House Hotels & Resorts, lessee.

SUBJECT – Application February 8, 2007 – Zoning variance under §72-21 to allow a proposed twelve (12) story

mixed-use development containing seventy-four (74) apartment hotel rooms (U.G. 2), two-hundred and seventy (270) transient hotel rooms (U.G. 5) and retail use (U.G. 6) and/or a physical culture establishment (PCE) on the ground and cellar levels. Proposed commercial uses (transient hotel, retail and PCE) are contrary to use regulations (§22-00). Proposed apartment hotel rooms exceed maximum number of dwelling units (§23-22) and are contrary to recreation requirements of the Quality Housing Program (§28-32). Proposed development would also violate regulations for floor area (§23-145), lot coverage (§23-145), rear yard for interior portion of lot (§23-47), rear yard equivalent for through lot portion (§23-533), height and setback (§23-633), and location requirements for outdoor swimming pool (§12-10).

PREMISES AFFECTED – 346-360 West 17th Street, a/k/a 351-355 West 16th Street, Block 740, Lot 55, 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 and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 24, 2007, acting on Department of Buildings Application No. 104579029, reads in pertinent part:

1. Proposed Use Group #5 (Transient Hotel), UG #6 (Retail and Offices) and Physical Culture Establishment in R8B is contrary to 22-00 ZR.
2. Proposed converted building is contrary to 23-633 ZR and 23-633(b) ZR in that it exceeds maximum base height and maximum building height.
3. Proposed accessory hotel space and mechanical equipment room located within the rear yard equivalent contrary to 23-44 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8B zoning district, the modification and conversion of an existing community facility building into a transient hotel (Use Group 5) with 316 rooms, accessory hotel use (Use Group 5), retail use (Use Group 6), and a physical culture establishment (PCE), which does not conform with use regulations, contrary to ZR § 22-00, and

WHEREAS, the application includes the partial demolition (to create an interior courtyard) and reconstruction of the existing building, which results in a total floor area of 150,646 sq. ft. (5.95 FAR), a streetwall height of 83.5 feet and total height of 97.5 feet on West 16th Street, a streetwall height of 135.67 feet and a total height of 150.67 feet on West 17th Street, and does not comply with height, setback, and rear yard equivalent regulations, contrary to ZR §§ 23-44, 23-633, and 23-633(b); and

WHEREAS, the existing building (1) is overbuilt at 162,123 sq. ft. and 6.4 FAR (101,200 sq. ft. and 4.0 FAR are

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the maximum permitted), (2) has 100 percent lot coverage (70 percent is the maximum permitted), (3) exceeds the maximum permitted heights on both wings (a 60'-0" streetwall and a 75'-0" total height are the maximum permitted), and (4) does not provide any rear yards or rear yard equivalents at grade (rear yards of 30'-0" or rear yard equivalents of 60'-0" are the minimum required); and

WHEREAS, the Board notes that the proposed building will maintain existing non-compliances as to lot coverage and rear yard; decreases non-compliance as to floor area and FAR; and increases the degree of non-compliance as to height and setback and rear yard equivalent; and

WHEREAS, the applicant initially proposed a 6.2 FAR mixed-use building with a transient hotel (270 rooms) and a residential apartment hotel (74 units), with a partial demolition and reconstruction for a total floor area of 156,523 sq ft.; and

WHEREAS, the original proposal required all of the requested waivers noted above as well as (1) a waiver for the failure to provide recreation space accessible only from the residential portion of the building as required by the Quality Housing Program; (2) a waiver to permit the requested residential density; and (3) a waiver to permit an insufficient distance between the pool, which would be accessory to the residential use, and the lot line; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in the *City Record*, with a continued hearing on July 10, 2007, and then to decision on July 24, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, approved the original application with the following recommendations: (1) that a 15'-0" setback be provided above the sixth floor on the West 16th Street frontage, (2) that a traffic attendant be provided, (3) that a night club or other Use Group 10 use be prohibited, and (4) that the building be designed to conform to the standard for LEED certification; and

WHEREAS, City Council Speaker Christine Quinn provided testimony in support of the application, noting that the applicant has agreed to the noted Community Board recommendations; and

WHEREAS, the Community Board subsequently reviewed the current proposal and recommends its approval; and

WHEREAS, the site is located 100 feet east of Ninth Avenue, with frontage on West 16th Street and West 17th Street, within an R8B zoning district; and

WHEREAS, the site is irregularly-shaped with a lot area of 25,300 sq. ft., a lot width of approximately 175 feet at its West 17th Street frontage, a lot depth of 184 feet in its two separate through-lot segments (with widths of 25 feet and 75 feet on the West 16th Street frontage), and a depth of 92 feet at two other segments with frontage only on West 17th Street; and

WHEREAS, separate lots comprise the remaining 75 feet of frontage on West 16th Street abutting the site and are not part of this application; and

WHEREAS, the site is occupied by a building with (1) an

11-story portion for the width of the West 17th Street frontage (the "West 17th Street Wing"), which will be enlarged; (2) a five-story portion for the 75 ft. wide segment of the West 16th Street frontage, which will be partially demolished and reconstructed (the "West 16th Street Wing"); and a one-story garage on the 25 ft. wide segment of the West 16th Street frontage, which will be enlarged (the "Garage Building"); and

WHEREAS, on December 15, 1964, under BSA Cal. No. 1086-64-BZ, the Board granted a variance to permit on a site within what was then partially an M1-5 zoning district and partially an R8 zoning district, the construction of an 11-story union training and recreation building that was non-complying as to rear yard, rear yard equivalent, setback, and lot coverage regulations; and

WHEREAS, the entire site has since been rezoned to be within an R8B zoning district; and

WHEREAS, the existing building was built for the National Maritime Union and included dormitory-style sleeping accommodations and other services, as noted above, for union members; it was most recently occupied by Covenant House, a social service institution that will relocate; and

WHEREAS, the West 17th Street Wing has a unique design, built to reflect the union's nautical heritage, with circular windows and a sloping façade on its street frontage, which results in each successive floor having a shallower depth than the floor below; and

WHEREAS, the applicant now proposes to demolish the second through fifth floors of the rear portion of the West 16th Street Wing and to relocate a portion of the demolished floor area by constructing new sixth and seventh stories above the West 16th Street Wing, and a new twelfth story above the West 17th Street Wing; and

WHEREAS, the applicant also proposes to add two floors above the existing Garage Building to be occupied by a loading dock, accessory hotel use, and mechanical space, which will be connected to the West 17th Street Wing; and

WHEREAS, the two wings are to be connected at the first floor and cellar level; and

WHEREAS, the cellar will be occupied by accessory hotel use, retail storage, and/or a PCE; and

WHEREAS, the first floor will be occupied by accessory hotel use, retail use, and/or a PCE; and

WHEREAS, the second floor will be occupied by the courtyard pool area, accessory hotel use, and hotel rooms; and

WHEREAS, the remainder of both wings will be occupied by hotel rooms, except for the twelfth floor of the West 17th Street Wing, which will be occupied by accessory hotel use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance and compliance with applicable zoning district regulations: (1) the existing building is overbuilt and obsolete for a conforming use; and (2) the site is irregularly-shaped; and

WHEREAS, as to the existing building, as noted, the building was specifically tailored to meet the Maritime Union's needs and to support a unique community facility program; and

WHEREAS, the design of the existing building includes the following features: (1) full lot coverage for the five-story

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base that cannot be fully utilized because of large floor plates that do not provide sufficient access to light and air for a conforming residential or community facility use without significant expense to demolish four floors at the interior of the site; (2) the absence of windows in the West 16th Street Wing; (3) an 8.5 degree slope that sets back and narrows at each floor in the north façade of the West 17th Street Wing; and (4) the unique fenestration – a pattern of circular windows - of the West 17th Street Wing; and

WHEREAS, as to the lot coverage and the lack of fenestration on the West 16th Street Wing, the applicant represents that this was viable for the original user which located support facilities on the lower floors, which did not require access to light and air; and

WHEREAS, the applicant asserts that community facility reuse of the existing building is limited to an institution that could be accommodated with large amounts of non-living space with few windows, and rooming units on the upper floors, and that marketing attempts to identify such a user were unsuccessful; and

WHEREAS, the applicant represents that in order to accommodate a new community facility use or a conforming residential use, the second through fifth floors of the West 16th Street Wing must be demolished to provide the access to light and air required by those uses through the introduction of a central courtyard and new windows on the interior walls of both wings; and

WHEREAS, the applicant represents that the location of the existing column lines precludes the demolition of the middle portion of the West 16th Street Wing to grade to provide the required rear yard because it would require a complicated and costly alteration of the basic building structure; and

WHEREAS, the applicant has documented the additional costs associated with demolishing the interior portion of the building and creating two new interior facades in order to provide the courtyard; and

WHEREAS, the applicant represents that the demolished floor area cannot be replaced as of right because the building would still be overbuilt and the heights of both wings of the existing building exceed the height limits set forth in R8B zoning district regulations; and

WHEREAS, additionally, the Board notes that the cellar covers the entire lot and was viable for community facility uses but has limited potential for a conforming use; and

WHEREAS, accordingly, the Board finds that the proposed use of the cellar for accessory hotel use, an accessory restaurant and kitchen, retail storage, and/or a PCE is appropriate; and

WHEREAS, as to the sloping façade, the applicant states that this condition results in none of the 11 floors of the West 17th Street Wing having the same depth; and

WHEREAS, specifically, the applicant represents that the depths of the West 17th Street Wing's middle floors – 51.8 feet to 55.5 feet - are too shallow for a double-loaded corridor layout yet too deep for a single-loaded layout, which would result in smaller, less desirable residential units; and

WHEREAS, the applicant represents that there are similar problems associated with the even shallower upper floors; and

WHEREAS, the applicant notes that this design was able to accommodate the specific original use of transient dormitory-style rooming units on the upper floors, based on the standards for such accommodations when the building was built; and

WHEREAS, the applicant asserts that these conditions do not meet current requirements and are not satisfactory for standard community facilities; and

WHEREAS, thus, the applicant asserts that the unique layout of the floors is more compatible with the proposed use and requires less significant modifications to accommodate the proposed use than would be required to accommodate a conforming residential use; and

WHEREAS, the applicant represents that the varying floor depths result in higher construction costs because they prevent the subdivision of each floor into units of the same size and configuration and require additional offsets in the vertical elements of the plumbing and HVAC systems because they cannot accommodate the basic straight line connections between floors that a typical building can; and

WHEREAS, this condition reduces the ratio of sellable to gross floor area from the 85 to 88 percent found in a typical conversion to approximately 76 percent in the 4.7 FAR residential and community facility building scenario discussed below; and

WHEREAS, as to the fenestration, as noted, the West 16th Street Wing does not have any windows and the West 17th Street Wing has a unique circular-windowed design; and

WHEREAS, the applicant states that neither condition is compatible with a residential use and that there are considerable costs associated with providing a new skin for the entire building in order to provide sufficient access to light and air; and

WHEREAS, the applicant represents that, given the unique built conditions, the costs associated with converting this building to a conforming use are greater than they would be to convert a comparably-sized building with a conventional form; and

WHEREAS, as noted, the applicant represents that the considerable costs associated with converting the building to a conforming residential use cannot be overcome because the building cannot feasibly accommodate residential units that would be marketable; and

WHEREAS, as to the site's shape, as noted, the lot is irregularly-shaped with a frontage of 175 feet on West 17th Street, its widest point, with segments which extend through the block to West 16th Street with widths of 75 feet and 25 feet and two segments which only extend halfway through the block; and

WHEREAS, this condition results in different portions of the lot having different rear yard requirements since the through lot portions could provide rear yard equivalents and the remainder must provide a standard 30 ft. rear yard; and

WHEREAS, the applicant represents that because the site is irregularly-shaped and has a higher percentage of perimeter wall area than a standard rectangular site, there is an increase in construction costs and it is more difficult to create efficient floorplates; and

WHEREAS, the applicant represents that the condition of

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a full lot coverage building of this size in the mid-block on a through lot in a residential zoning district is unique; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance and compliance with the applicable zoning district regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conversion to another as-of-right community facility use; (2) a 4.7 FAR conforming residential and community facility use; (3) a 5.2 FAR hotel, which does not recapture the demolished floor area for the courtyard; (4) a 6.2 FAR conforming residential use with community facility; and (5) the initial proposal for a 6.2 FAR mixed-use apartment hotel/transient hotel; and

WHEREAS, the applicant concluded that due to the uniqueness of the lot, the existing building conditions, and premium construction costs: (1) the community facility would result in a loss, (2) the conforming 4.7 FAR residential and community facility use would result in a loss, (3) the 5.2 FAR hotel would result in an insufficient return; and (4) the 6.2 FAR residential building would result in an insufficient return; and

WHEREAS, the applicant concluded that the initial proposal for a 6.2 FAR mixed-use apartment hotel/transient hotel would result in a sufficient return; and

WHEREAS, at hearing, the Board asked the applicant to provide additional analysis of the 5.2 FAR hotel alternative, a lesser variance request which recaptures less floor area and reduces the height and setback waivers; and

WHEREAS, the applicant submitted a supplementary analysis which reflects that a 5.2 FAR hotel would be 18,043 sq. ft. smaller than the proposed building and would contain 276 rooms as opposed to the 316 rooms proposed; and

WHEREAS, the applicant represents that this reduced number of rooms cannot generate the income required to offset the incremental costs incurred in addressing the site's physical conditions, specifically, costs associated with the demolition of the interior portion of the building to create a courtyard and the cost of a new skin on each of the building's four principal facades, which are not present on the typical building site; and

WHEREAS, the applicant also notes the additional hard costs associated with creating a 60'-0" courtyard rather than the proposed 50'-0" courtyard; and

WHEREAS, the applicant revised the proposal to its current iteration as a 5.95 FAR transient hotel with accessory uses with the noted changes to the building envelope and has submitted evidence reflecting that it achieves a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to the proposed use, the applicant notes that the existing building, designed for and used as a community facility with transient sleeping accommodations, has not been used for conforming residential use; and

WHEREAS, further, the applicant represents that the immediate area is a mix of commercial, residential, and institutional uses with some remaining manufacturing/industrial uses; and

WHEREAS, specifically, the Maritime Hotel is adjacent to the site; the former Port Authority Building (the "Terminal Building") occupies the entire block across from the site on West 16th Street, within an M1-5 zoning district; and the Fulton Houses, a high density housing development with multiple buildings is across Ninth Avenue; and

WHEREAS, the Board notes that there is also a large school building across West 17th Street, which occupies a through lot for a majority of the block; and

WHEREAS, as to the proposed height and setback, the applicant notes that the Maritime Hotel, which spans a through lot from West 16th Street to West 17th Street on Ninth Avenue, has 13 stories; the Terminal Building has 17 stories; and the Fulton Houses comprises buildings with seven and 25 stories; and

WHEREAS, the applicant proposes to nestle the West 17th Street Wing's new twelfth floor between the existing mechanical and stair towers, which reach a height of 150.67 feet, and to set it back 12'-8" from the floor below, which is itself set back from the street due to the sloping façade; and

WHEREAS, similarly, the three-story enlargement to the West 16th Street Wing increases the height of the existing street wall by only 4'-0", which closely matches the existing parapet height, before a 15'-0" setback above the sixth floor, and the enlargement of the Garage Building is within zoning district parameters except for the portion which increases the degree of non-compliance as to rear yard; and

WHEREAS, accordingly, the applicant notes that the relocation of the floor area from the interior of the site to the exterior wings will provide additional open space and, because the new floors are almost all set back, there is no significant effect on the building's scale; and

WHEREAS, further, the applicant notes that the proposal reflects the conversion of an existing building, with transient sleeping accommodations to another use with transient sleeping accommodations; and

WHEREAS, as to traffic circulation, the applicant proposes to locate the hotel entrance on West 16th Street, directly adjacent to the Maritime Hotel and across the street from the Terminal Building's loading bays in an effort to be more compatible with nearby uses, which are characterized by predominantly commercial uses to the site's south and west and predominantly residential and institutional uses to the north and east of the site; and

WHEREAS, as noted below, the applicant also agrees to provide a traffic attendant during certain hours, daily; and

WHEREAS, as to the accessory uses on the site, the applicant has agreed to limit the uses in the cellar to (1) uses accessory to the transient hotel (Use Group 5); (2) cooking facilities for the accessory restaurant(s); (3) storage space accessory to the first floor retail use (Use Group 6); and (4) a

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PCE; and

WHEREAS, the applicant also agreed to limit the retail space, other than potential cellar storage space, to the first floor and to a floor area of 10,000 sq. ft. per establishment; and

WHEREAS, as to the demolition of the center portion of the building, the applicant notes that the creation of an interior courtyard reduces the degree of non-compliance as to rear yard for the second through fifth floors and increases access to light and air for the interior of the block; and

WHEREAS, at hearing, the Board inquired about the use of the pool area and the proposed screening and buffering around it; and

WHEREAS, the applicant responded that the pool area is approximately 2,300 sq. ft., would be limited in occupancy, and that opaque screening and a sound buffer with a height of 8'-0" would be provided around it; and

WHEREAS, the applicant agrees to the following requests of the Community Board and City Council Speaker, some of which were noted above: (1) to provide a 15'-0" setback, rather than a 10'-0" setback above the sixth floor of the West 16th Street Wing; (2) to provide a dedicated employee (separate from the doorman) to coordinate hotel traffic in front of the West 16th Street Wing between the hours of 5:00 p.m. and 1:00 a.m., daily; and (3) to prohibit a night club or other Use Group 10 use; and

WHEREAS, the Board notes that an agreement to design the building to conform to the standard for LEED certification may be made by the parties, but is beyond its purview; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby conforming uses and that the changes to the existing building envelope are compatible with the surrounding area; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board notes that the applicant initially stated that a 6.2 FAR mixed-use transient hotel/residential apartment hotel building was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site and the existing building that require a portion of the building to be demolished and a new window configuration to be installed, which still results in inefficient and irregular floorplates, thus restricting the allowable floor area within the permitted building envelope, but disagrees that the initially proposed 6.2 FAR was required to make the building feasible; and

WHEREAS, accordingly, the applicant revised the proposal to eliminate the residential use, which had generated a number of additional waiver requests, noted above; and

WHEREAS, as noted, the applicant also eliminated the proposed eighth and ninth floors on the West 16th Street Wing and provided a 12'-8" setback for the proposed twelfth floor of the West 17th Street Wing, in order to reduce the FAR to 5.95, to reduce the height and setback waivers, and to reflect a more

appropriate distribution of floor area on the site; and

WHEREAS, the Board notes that the current proposal requires fewer waivers than the original proposal and although it maintains the existing non-compliance as to lot coverage for the first floor and increases the rear yard waiver at the Garage Building, it provides greater access to light and air at the center of the site through the introduction of the courtyard between the two wings; and

WHEREAS, accordingly, the Board finds that the current 5.95 FAR proposal is the minimum necessary to offset the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.2 and 617.6 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA060M, dated January 31, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an R8B zoning district, the modification of an existing community facility building and its conversion into a transient hotel (Use Group 5) with 316 rooms, accessory hotel use (Use Group 5), retail use (Use Group 6), and a physical culture establishment, which does not conform with use or comply with height, setback, and rear yard equivalent regulations and is contrary to ZR §§ 22-00, 23-44, 23-633, and 23-633(b), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2007"—twenty-one (21) sheets and "Received July 23, 2007"—two (2) sheets; and *on further condition*:

MINUTES

THAT the following shall be the bulk parameters of the proposed building: seven stories, a wall height of 83.5 feet, and a total height of 97.5 feet for the West 16th Street Wing; three stories and a total height of 45.5 feet for the Garage Building; 12 stories, a wall height of 135.67 feet, and a total height of 150.67 feet for the West 17th Street Wing; and a total floor area of 150,646 sq. ft. (5.95 FAR);

THAT the use of the cellar shall be limited to one or more of the following: (1) uses accessory to the hotel (Use Group 5); (2) cooking facilities for the accessory restaurant(s); (3) storage space accessory to the first floor retail use (Use Group 6); and (4) a PCE;

THAT no retail establishment shall have a floor area in excess of 10,000 sq. ft. on the first floor, as per the BSA-approved plans;

THAT the east-west dimension of the elevator bulkhead on the West 16th Street frontage shall not exceed 30 feet, above a height of 107.5 feet and exclusive of the screen wall, as per the BSA-approved plans;

THAT the applicant shall provide a dedicated employee (separate from the doorman) to coordinate hotel traffic in front of the building on West 16th Street between the hours of 5:00 p.m. and 1:00 a.m., daily;

THAT a nightclub or other Use Group 10 use is prohibited;

THAT opaque screening of a height of eight feet shall be provided around the courtyard pool area;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT prior to the establishment of a PCE, a DOI application and proposed plans must be submitted to the Board for approval;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2007.

117-07-BZ
CEQR #06-BSA-082M

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Rosebud Associates, LLC, owner.

SUBJECT – Application May 10, 2007 – Special Permit (§73-36) to allow the operation of the proposed PCE on a portion of the first floor and the second floor in vacant space in an existing 21-story mixed-use building. The Premises is located in a C1-9A "TA" zoning district. The proposal is

contrary to section 32-00.

PREMISES AFFECTED – 222 East 34th Street, south side of East 34th Street, between Second and Third Avenues, Block 914, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen May.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 10, 2007, acting on Department of Buildings Application No. 104741549, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted as-of-right in C1-9A zoning district. This use is contrary to Section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9A zoning district within Special Transit Land Use “TA” Zoning District, the establishment of a physical culture establishment (PCE) in a portion of first and all of the second floor of an existing 21-story mixed use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, and then to decision on July 24, 2007; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of East 34th Street, between Second and Third Avenues; and

WHEREAS, the site is occupied by a 21-story mixed-use commercial and residential building; and

WHEREAS, the PCE will be located in a currently vacant part of the commercial portion of the building; and

WHEREAS, the PCE will occupy a total of 26,193 sq. ft. of floor area, which includes 4,444 sq. ft. on the first floor and 21,749 sq. ft. on the second floor; and

WHEREAS, the applicant represents that the PCE will offer classes and equipment for physical improvement, personal training, strength training, weight training, group fitness programs, and cardiovascular programs, with locker rooms, steam and sauna rooms, a spa, kids’ club and lounge/juice bar; and

WHEREAS, the PCE will be operated by Club H. NY, LLC; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:00 a.m. to 11:00 p.m.; Friday

MINUTES

5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing the Board expressed concern about the location of the PCE in proximity to the residential portion of the building; and

WHEREAS, applicant represented that it has retained an acoustic consultant to ensure that there is not noise impact on residential units and has agreed to implement the consultant's recommendations; and

WHEREAS, additionally, applicant submitted a copy of its lease, which requires the PCE to provide soundproofing; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA082M dated May 2, 2007; and

WHEREAS, the EAS documents show that the continued operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the establishment of a physical culture establishment on portions of the first and second floors of a building within a commercial mall complex, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 10, 2007"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 24, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:00 a.m. to 11:00 p.m.; Friday 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT measures are implemented to ensure there is no noise impact from the PCE in residential units in the building;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2007.

25-06-BZ

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 and §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

MINUTES

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman, Nick Recchia and Robert Pauls.

For Opposition: Zipporah Sokolow Friedman.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (§23-141); provides less than the minimum required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

306-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (§72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (§42-00), floor area and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), and front wall (§24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for continued hearing.

319-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 211 Service LLC., owner.

SUBJECT – Application December 8, 2006 – Special Permit pursuant to §73-49 to allow seventy-five (75) accessory parking spaces for an automotive service establishment (UG 16) on the rooftop of an existing building. M1-1 district.

PREMISES AFFECTED – 211/283 63rd Street, located on the north side of 63rd Street, between 2nd and 3rd Avenues, Block 5798, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

325-06-BZ

APPLICANT – Eric Palatnik, P.C., for Escava Brothers, owners; Ludlow Fitness, lessee.

SUBJECT – Application December 15, 2006 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment to be located on the second floor of the building under construction. The proposal is contrary to §32-00. C6-1 district.

PREMISES AFFECTED – 100 Delancey Street, between Ludlow Street and Essex Street, Block 410, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 58th and Lex Associates, owner; Manhattan Sports Performance, LLC, lessee.

SUBJECT – Application December 20, 2006 – Special Permit (§73-36) to legalize the existing PCE located at the sixth floor in a fourteen-story plus penthouse commercial building. The proposal is contrary to §32-10. C5-2 district.

PREMISES AFFECTED – 133 East 58th Street, between Lexington and Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (23-141); perimeter wall height (23-361) and rear yard (23-47) in an R3-2 zoning district.

MINUTES

PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

53-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19th Street, Block 888, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: K. Fisher, Robert Pauls and Mr. Ferrero.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

66-07-BZ

APPLICANT – Eric Palatnik, P.C., for High Definition Fitness, Inc., owner.

SUBJECT – Application – Special Permit (§73-36) to allow a PCE on the third floor of a three-story building. The proposal is contrary to §42-31. M1-1 district.

PREMISES AFFECTED – 3038 Atlantic Avenue, between Essex and Sheperd Avenues, Block 3972, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

71-07-BZ

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR §11-411 and §73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in anC1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21st Street, south side 21st Street blockfront between Broadway and 33rd Avenue, Block 555, Lot 16, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

98-07-BZ

APPLICANT – Eric Palatnik, P.C., for Yuri Gokhberg, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); rear yard (§23-47) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 67 Amherst Street, north of Hampton Avenue, south of Shore Boulevard, Block 8727, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

99-07-BZ

APPLICANT – Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

COMMUNITY BOARD#15BK

APPEARANCES –

For Applicant: Eric Palatnik and Serge Mozer.

For Opposition: Judy Baron and Dr. Len Flug.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for a continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 4:00 P.M.

BULLETIN

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August 16, 2007

DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

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Commissioners

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DOCKETS

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185-07-BZ

36 Fountain Avenue, West side, between Atlantic Avenue and Wells Street., Block 4154, Lot(s) 62, Borough of **Brooklyn, Community Board: 5**. Under §72-21 – To permit the proposed three family residential development (UG2) within the underlying M1-1 ZD.

186-07-A

122-02 Liberty Avenue, Liberty Avenue Southside 122-123 Street, Block 9576, Lot(s) 1, Borough of **Queens, Community Board: 10**. Interpretative Appeals – Former movie theatre converted into 3 (three) stores with an unenclosed cockloft. Recommend an automatic wet sprinkler system throughout premise

187-07-BZ

4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue, Block 5408, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Under §72-01 & §72-21 – To increase the size of the zoning lot and enlarge the structure contrary to previous approval. Increase the number of off Stret parking spaces.

188-07-BZ

301 Park Avenue, Entire block bounded by Park & Lexington Avenues and East 49th & 50th Streets., Block 1304, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. (SPECIAL PERMIT) §73-03 & §73-36 – To allow a Physical Culture Establishment in portion of an existing building(19th floor & p/o lobby level) in a C5-2.5/C5-3/C6-6 ZD.

189-07-BZ

40-55 College Point Boulevard, East side of College Point Boulevard between the LIRR right-of-way and 41st Avenue., Block 5037, Lot(s) 2, Borough of **Queens, Community Board: 7**. Under §72-21 – To permit the ground floor commercial use of the proposed mixed use development, which is located in an R6 district.

190-07-A

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191-07-BZ

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192-07-A

3546 Decatur Avenue, Intersection of the east side of Decatur Avenue and the bed of East 211th Street., Block 3356, Lot(s) 190, Borough of **Bronx, Community Board: 7**. General City Law §35, Article 3 – To permit construction of a building in the bed of a final mapped street.

193-07-BZ

3591 Bedford Avenue, Location on the eastern side of Bedford Avenue between Avenue N and Avcenue O., Block 7679, Lot(s) 17, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) §73-622 – To allow the enlargement of a single family residence.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 11, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 11, 2007, at 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

997-84-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for 222 Union Associates, owner;
SUBJECT – Application March 2, 2007 – Extension of Term/Amendment/Waiver for a special permit which expired on September 10, 2005, to revise the BSA plans to reflect existing conditions utilizing the Board’s formula for attended parking of one space per 200 square feet, and the legalization of the existing automobile lifts within the parking garage.
PREMISES AFFECTED – 800 Union Street, southside of Union Street, between 6th and 7th Avenues, Block 957, Lot 29, Borough of Brooklyn.
COMMUNITY BOARD #6BK

244-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Parkwood Realty Assoc., LLC, owner; AGT Crunch New York, lessee.
SUBJECT – Application July 6, 2007 – Extension of Term/Time/Amendment/ Waiver for a Physical Cultural Establishment "Crunch Fitness" filed pursuant to §§ 73-11 and 73-36 to reopen the resolution for a special permit for a physical culture establishment "Crunch Fitness" adopted November 4, 1998, amended December 21, 1999, and corrected January 20, 2000: for a waiver for an extension of term which expires November 4, 2008; for the extension of time to obtain the Certificate of Occupancy; and for an amendment to the Resolution for an enlargement of the total PCE floor area within an existing two story commercial building, which the PCE will fully occupy, located in a C2-5/R-8B zoning district.
PREMISES AFFECTED – 162 West 83rd Street, south side of West 83rd Street, between Columbus and Amsterdam Avenues, Block 1213, Lot 58, Borough of Manhattan.
COMMUNITY BOARD #7M

APPEALS CALENDAR

73-07-A

APPLICANT– Fire Department of The City of New York
OWNER – L. W. Equity Associates Incorporated
LESSEE – Fabco Shoe Store
SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.
PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.
COMMUNITY BOARD #11BK

138-07-A

APPLICANT – New York City Department of Buildings.
OWNER: 614 NYC Partners, Incorporated
SUBJECT – Application May 24, 2007 – Appeal seeking to revoke Certificate of Occupancy No. 104114487 that allowed the conversion of single room occupancy units (SRO) to Class A apartments without obtaining a Certificate of No Harassment from NYC Housing Preservation and Development (HPD). R8 Zoning District.
PREMISES AFFECTED – 614 West 138th Street, West 138th Street, east of Riverside Drive and west of Broadway, Block 2086, Lot 141, Borough of Manhattan.
COMMUNITY BOARD #7M

SEPTEMBER 11, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 11, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

58-07-BZ

APPLICANT – Rex Carner c/o Carner Associates, for Mr. Vito Savino, owner.
SUBJECT – Application March 5, 2007 – Variance (72-21) to permit a new two-family dwelling on a vacant lot. The Premises is located in an R3A zoning district. The proposal is contrary to lot area (23-32), residential FAR (23-141), and parking (25-21).
PREMISES AFFECTED – 18-02 Clintonville Street, North west corner of 18 Avenue and Clintonville Street. Block 4731, Lot 9, Borough of Queens.
COMMUNITY BOARD # 7Q

CALENDAR

88-07-BZ

APPLICANT – Eric Palatnik, P.C., for Lisa Roz and Ronnie Roz, owners.

SUBJECT – Application April 19, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (23-141(b)); side yard (23-461(a)) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1633 East 29th Street, eastern border of 29th Street, south of Avenue P and North of Quentin Road, Block 6792, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

144-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuta Shlesinger, owner.

SUBJECT – Application May 30, 2007 – Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage, (23-141) and side yards (23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 3810 Bedford Avenue, southwest corner of Bedford Avenue and Quentin Road, Block 6807, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, AUGUST 7, 2007 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

247-85-BZ

APPLICANT – Francis R. Angelino, Esq., for Herald Towers, LLC, owner; TSI Herald, Inc., lessee.

SUBJECT – Application January 8, 2007 – Extension of Term/Waiver – Reopening of a special permit for a Physical Culture Establishment located in an C5-3, C6-6(MID) zoning district.

PREMISES AFFECTED – 40/60 West 34th Street, a/k/a 1282/130 Broadway, southeast corner of West 34th Street and Broadway, Block 835, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on November 19, 2005; and

WHEREAS, a public hearing was held on this application on July 24, 2007 after due notice by publication in *The City Record*, and then to decision on August 7, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject premises is located on the southeast corner of West 34th Street and Broadway; and

WHEREAS, the site is located partially within a C5-3 zoning district and partially within a C6-6 zoning district, within the Special Midtown District, and is occupied by a 27-story hotel; and

WHEREAS, the PCE occupies a total of approximately 13,785 sq. ft. of floor area on portions of the 24th, 25th, and 26th floors; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, on November 19, 1985, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, for the subject PCE for a ten-year term; and

WHEREAS, the grant was subsequently amended and extended for a term of ten years; and

WHEREAS, the instant application seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant does not propose any other changes; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 19, 1985, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant to expire on November 19, 2015; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 8, 2007” –(4) sheets; and; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on November 19, 2015;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (Alt. 884/85)

Adopted by the Board of Standards and Appeals, August 7, 2007.

81-93-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2255 Bedford Development Assoc., LP, owner.

SUBJECT – Application November 30, 2006 – Amendment of a previous resolution to permit conversion of portions of the cellar to artist studio space and portions of the first floor to residential apartments within a building that the Board granted the re-establishment of residential use on the upper floors and the approval of a childcare center on portions of the cellar and the entire ground floor of a building located in a C8-2 zoning district.

PREMISES AFFECTED – 2255 Bedford Avenue, east side of Bedford Avenue 34’ north of intersection with Snyder Avenue, Block 5107, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to an existing variance, which allowed for the re-establishment of residential use and the establishment of a child care use in an existing six-story building in a C8-2 zoning district; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2007, and then to decision on August 7, 2007; and

WHEREAS, Community Board 17, Brooklyn, recommended disapproval of an earlier iteration of this application which proposed the conversion of the cellar to artists' studio space, citing concerns about the safety of such use in the cellar; and

WHEREAS, the site is located on the east side of Bedford Avenue, 34 feet north of the intersection with Snyder Avenue, within a C8-2 zoning district; and

WHEREAS, the subject site is occupied by a six-story building with a floor area of 42,139 sq. ft.; and

WHEREAS, on April 26, 1994, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the re-establishment of a non-conforming residential use (Use Group 2) on the second through sixth floors of the existing building, and the establishment of a child care use (Use Group 3) on the first floor and in portions of the cellar; and

WHEREAS, the grant was subsequently amended by letter to permit a change in use of the cellar to storage space and a change in use of the first floor to retail (Use Group 6), a conforming use, in the front portion and storage space in the rear portion; and

WHEREAS, in an earlier iteration of this proposal, the applicant proposed (1) to convert the rear portion of the first floor into five additional apartments (increasing the total number of units from 45 to 50), and (2) to convert the rear portion of the cellar from a storage area into commercial studio space for artists; and

WHEREAS, at hearing, the Board expressed concern about the conversion of the cellar to artists' studios and noted that this use would be permitted as of right on the first floor; and

WHEREAS, in response to the Board's concerns and the concerns of the Community Board, the applicant revised the plans to eliminate the conversion of the cellar to artists' studios; and

WHEREAS, the revised plans provide for (1) the noted residential conversion of the first floor and (2) the conversion of portions of the cellar to residential storage and a meeting room; and

WHEREAS, as to the residential conversion of the first floor, the Board notes that the building was historically occupied by residential use, but that, prior to the 1994 grant, it had been abandoned and the non-conforming use was discontinued for a period of more than two years; and

WHEREAS, accordingly, the Board notes that the proposed residential use on the first floor is appropriate and

consonant with the intended use of the building; and

WHEREAS, the Board observes that the proposed amendment to convert 4,823 sq. ft. of floor area to residential use is modest and that no changes to the building envelope are proposed; and

WHEREAS, accordingly, the Board agrees that all of the requested changes are within the scope of the original grant and has determined that none of the requested changes affects the required findings; and

WHEREAS, based upon its review of the record, the Board finds that the proposed amendments are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 26, 1994, so that as amended this portion of the resolution shall read: "to permit the conversion of a portion of the first floor of the existing building from retail use to residential use and to permit the noted modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked "Received July 6, 2007"- (2) sheets; and *on further condition*:

THAT there shall be no habitable space in the cellar;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from the prior resolution NOT specifically waived by the Board shall remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 302242384)

Adopted by the Board of Standards and Appeals, August 7, 2007.

102-95-BZ, Vol. IV

APPLICANT – The Law Office of Fredrick A. Becker, for The Argo Corporation as agent for 50 West 17 Realty Company, owner; Renegades Associate d/b/a Splash Bar, lessee.

SUBJECT – Application May 8, 2007 – Extension of Term of a special permit (§73-244) for a previously granted UG12 eating and drinking establishment with dancing (Splash Bar) for a term of three years which expired on March 5, 2007 in a C6-4A zoning district.

PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

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ACTION OF THE BOARD – Application granted on condition.

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term for a previously granted special permit for an eating and drinking establishment that expired on March 5, 2007; and

WHEREAS, on April 9, 2007, the Manhattan Borough Commissioner of the Department of Buildings, acting on Application No. 104718496, issued objections, which stated:

Proposed use of eating and drinking establishment with entertainment and a capacity of more than 200 persons, or establishments of any capacity with dancing, in Commercial district C6-4A at first floor, is contrary to ZR 32-21 (uses permitted as of right).

It shall be obtained by a special permit of the BSA in accordance with section 73-244; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2007, and then to decision on August 7, 2007; and

WHEREAS, the subject premises is located on the south side of West 17th Street between Fifth and Sixth Avenues, and is improved upon with a 12-story structure that contains the subject eating and drinking establishment use on the cellar and first floor levels; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, on March 5, 1996, the Board granted an application under the subject calendar number, to permit the conversion of an existing eating and drinking establishment (Use Group 6) to an eating and drinking establishment with entertainment and a capacity of more than 200 persons, with dancing (Use Group 12), in the first floor and cellar of the 12-story building, for a term of two years; and

WHEREAS, the Board has subsequently granted other applications for extensions of the term of the variance as well as minor amendments to the resolution, most recently on February 15, 2005; and

WHEREAS, the Board has reviewed the record and evaluated the representations of the applicant, and finds that the requested extension and amendment are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, so that as amended this portion of the resolution shall read: “To extend the term of the variance for an additional three (3) years from March 5, 2007, to expire on March 5, 2010, *on condition:*

THAT the term of this grant is from March 5, 2007 to March 5, 2010;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there will be no queuing of patrons on the sidewalk abutting the premises, or anywhere else outside of the building;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the internal layout of the premises, all exiting requirements, and Local Law 58/87 compliance, shall be as reviewed and approved by the Department of Buildings;

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. 104718496)

Adopted by the Board of Standards and Appeals, August 7, 2007.

242-02-BZ

APPLICANT – Joseph Fullam, for Helen Fullam, owner.

SUBJECT – Application June 4, 2007 – Extension of Time to complete construction of a previously granted Variance (§72-21) in July 22, 2003 to construct a two family residence in an R3X/SR zoning district which expires on July 27, 2007.

PREMISES AFFECTED – 1 North Railroad Street, Annadale, west side of North Railroad, between Belfield Avenue and Burchard Court, Block 6274, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Fullam.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a two-family home in an R3X zoning district within the Special South Richmond Development District; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, and then to decision on August 7, 2007; and; and

WHEREAS, the site is located on the north side of North Railroad Street between Belfield Avenue and Burchard Court; and

WHEREAS, the site is located in a R3X zoning district within the Special South Richmond Development District and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 2003 when, under the instant Calendar Number, the Board permitted, pursuant to Z.R. § 72-

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21, the construction of a two-family residence that does not comply with requirements for lot area per dwelling unit, front yards and lot area for two-family occupancy; and

WHEREAS, the applicant now requests an extension of time to complete construction, which expired on July 22, 2007; and

WHEREAS, commencement of construction has been delayed pending completion of a sewer construction project that will serve the premise; and

WHEREAS, applicant has presented evidence that construction of the sewer project would begin in June/July 2007; and

WHEREAS, the Board may permit an extension of time to complete construction under a previously granted variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 July 22, 2003, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for four years until July 22, 2011, *on condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 500866020)

Adopted by the Board of Standards and Appeals, August 7, 2007.

284-05-BZ

APPLICANT – Alfonso Duarte for Constantine Zahria, owner.

SUBJECT – Application September 9, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow a four-story industrial building with rooftop parking in an M1-1 district.

PREMISES AFFECTED – 34-29 37th Street, East side 290.28' south of 37th Avenue, Block 645, Lot 15, Borough of Queens.

COMMUNITY BOARD # 1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 1, 2006, acting on Department of Buildings Application No. 402034776, reads in pertinent part:

1. Floor area ratio (FAR) exceeds that permitted by Section 43-12 Z.R.
2. Comply with permitted obstructions in required yards as per Section 43-23 Z.R.
3. Provide required rear yard as per Section 43-26 Z.R.
4. Comply with requirements for maximum heights of front wall and required front setback as per Section 43-43 Z.R.
5. Comply with required off-street parking spaces as per Section 44-21 Z.R.
6. Off-street accessory parking spaces located on roof above a story other than a basement is contrary to Section 44-11 Z.R.; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the enlargement of an existing one-story building to be occupied by retail or service use on the first floor (Use Group 6, 7, or 8) and manufacturing use (Use 17B) on the upper floors, which does not comply with FAR, rear yard, height and setback, and parking regulations, and is contrary to ZR §§ 43-12, 43-23, 43-26, 43-43, 44-21, and 44-11; and

WHEREAS, the variance application was filed on September 9, 2005; and

WHEREAS, on November 7, 2005, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, on April 7, 2006, the applicant made an incomplete submission, without the requested air quality analysis or a sufficient Statement of Facts; and

WHEREAS, on May 18, 2006, Community Board 1, Queens, voted to disapprove the application, citing concerns about roof-top parking and potential air quality impacts on adjacent residential uses; and

WHEREAS, on August 1, 2006, the applicant modified the proposal to include a rear yard above a height of 23 feet; retail use, rather than manufacturing, on the first floor; and revisions to the EAS; and

WHEREAS, on September 21, 2006, Board staff issued a second Notice of Objections, which reiterated the request for an air quality analysis, among other concerns; and

WHEREAS, the applicant failed to cure the deficiencies of the application; and

WHEREAS, on February 28, 2007, Board staff issued a dismissal warning letter; and

WHEREAS, on May 24, 2007, Board staff issued a second dismissal warning letter; and

WHEREAS, on July 10, 2007, the Board placed the application on the dismissal calendar for August 7, 2007; and

WHEREAS, the applicant did not appear at the August 7, 2007 hearing; and

WHEREAS, accordingly, because of the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 284-05-BZ is hereby dismissed for lack of prosecution.

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Adopted by the Board of Standards and Appeals,
August 7, 2007.

287-06-BZ

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT – Application October 27, 2006 – To consider dismissal for lack of prosecution – proposed bulk variance to legalize a recently developed residential/community facility building with two non-complying side yards in an R5 dis.

PREMISES AFFECTED – 32-12 23rd Street, 33rd Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application dismissed for lack of prosecution.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the instant application seeks the same relief, based on essentially the same facts and sought under the same provision of the Zoning Resolution, as a prior application, BSA Cal. No. 380-04-BZ, filed by the applicant and subsequently withdrawn on the date set for decision by the Board; and

THE PRIOR APPLICATION

WHEREAS, a decision of the Queens Borough Commissioner dated November 24, 2004, acting on Department of Buildings Application No. 401515017, reads:

“Proposed conversion of one dwelling unit in a new building previously approved exclusively for residences to a community facility use in an R5 zone without two side yards complying with Section 24-35 of the Zoning Resolution is not permitted”; and

WHEREAS, acting on the November 24, 2004 decision of the Queens Borough Commissioner, the applicant filed an application under BSA Calendar No. 380-04-BZ pursuant to Z.R. § 72-21, to permit, on a lot within an R5 zoning district, the legalization of a mixed-use two-family/medical office building that does not provide the required side yards, contrary to Z.R. § 24-35; and

WHEREAS, on the date on which the decision by the Board was scheduled, the applicant appeared, requested, and the Board granted, permission to withdrew BSA Cal. No. 380-04-BZ, without prejudice ; and

THE INSTANT APPLICATION

WHEREAS, a second decision of the Queens Borough Commissioner, also with respect to the Premises, dated September 16, 2006, acting on Department of Buildings Application No. 401515017, states:

“Proposed conversion of one dwelling unit in a new

building previously approved exclusively for residences to a community facility use in an R5 zone without two side yards complying with Section 24-35 of the Zoning Resolution is not permitted”; and

WHEREAS, on September 29, 2006, the Queens Borough Superintendent denied reconsideration of the second decision; and

WHEREAS, acting on the September 29, 2006 denial of reconsideration of the Queens Borough Superintendent, the applicant filed the instant application with the Board on October 27, 2006; and

WHEREAS, like BSA Cal. No. 380-04-BZ, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, the conversion of the first floor of an existing building to a community facility use, which does not comply with the zoning requirements for side yards, contrary to Z.R. § 24-35; and

WHEREAS, the instant application seeks the same relief, based on essentially the same facts and arguments, as the application made under the prior application, which was voluntarily withdrawn by the applicant on the decision date; and

WHEREAS, on March 8, 2007, after consultation with the Board’s staff, applicant filed a revised Statement of Facts and Findings with the Board; and

WHEREAS, after reviewing the Applicant’s revised Statement of Facts and Findings, by a letter dated April 4, 2007, the Board advised the applicant that the instant application had been improperly filed on the BZ calendar and instructed applicant to file for a rehearing on the SOC calendar under Cal. No. 380-04-BZ; and

WHEREAS, applicant did not respond in a timely manner to the Board’s letter of April 4, 2007; and

WHEREAS, by a Notice of Hearing Dated July 10, 2007, the application was placed on the SOC calendar to consider dismissal for lack of prosecution on August 7, 2007; and

WHEREAS, by a letter dated August 3, 2007, applicant questioned the Board’s authority under its Rules of Practice and Procedure (Rules) to require the applicant to appear on the SOC calendar to request a rehearing; and

WHEREAS, the scheduled public hearing was held on this application on August 7, 2007 after due publication in *The City Record*, and at applicant’s request on to decision at the close of the August 7, 2007 hearing; and

DISCUSSION

WHEREAS, the April 4, 2007 letter to the applicant directed the applicant that pursuant to § 1-10(e) of the Board’s Rules it was required to refile its application under the prior calendar number on the Special Order Calendar and request a rehearing; and

WHEREAS, §1-10(e), titled “Request for Rehearing,” requires that a request for rehearing “shall be made in writing on a Special Order Calendar application form reciting the reasons for the request,” and that if the request for rehearing is granted by the Board, “the case shall be placed on the appropriate docket and calendared for rehearing”; and

WHEREAS, applicant argues that § 1-10(e) governs only cases in which the initial application has been denied by the Board; and

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WHEREAS, unlike § 1-10(d) of the Board's Rules, which governs requests for re-argument, § 1-10(e), here applied by the board, does not limit its applicability only to applications that have been previously denied; and

WHEREAS, applicant further argues that the Board's requirement that the request for rehearing be heard on the Special Order Calendar contradicts § 1-10(b) of the Board's Rules; and

WHEREAS, § 1-10(b) of the Board's Rules governs only the circumstances under which the Board may dismiss a case with or without prejudice, depending on the circumstances of the application and does not govern procedures for requesting a rehearing; and

WHEREAS, applicant argues that it is the Board's "longstanding practice" to apply the provision of the Rules that govern the procedure to request rehearings only to applications that have been denied; and

WHEREAS, in support of the argument, applicant cites four (4) cases in which the Board granted a rehearing after denial of an application; and

WHEREAS, the board does not agree that its disposition of four applications constitutes a "longstanding practice" or "overwhelming precedent" as applicant states in its letter of August 3, 2007; and

WHEREAS, the Board's resolution in none of the cases cited by applicant contains language that would limit the Board's use of § 1-10(e) only to applications that have been denied; and

WHEREAS, the applicant's citation of four applications in which an application for rehearing was granted for applications that had been denied does not establish that the Board has not – or can not – require an application for rehearing for an application that has been withdrawn; and

WHEREAS, furthermore, the resolution in BSA Cal. No. 146-03-BZ/139-02-A, cited by applicant, explicitly underscores "the Board's authority to direct its own process"; and

WHEREAS, that resolution is consonant with the Board's broad authority as an administrative agency to adopt, interpret and administer its own Rules, and to control its own procedures and calendar; and

WHEREAS, the procedure required by the Board's rules to request a rehearing for an application previously withdrawn by the applicant is not unreasonably burdensome, time-consuming or costly for applicants who have withdrawn applications immediately prior to decision; and

WHEREAS, the Board's reasonable application of its own Rules permits the Board to operate efficiently, and prevent applicants from unfairly taking "a second bite of the apple" by withdrawing and refiling non-meritorious applications; and

WHEREAS, the Board's interpretation of its Rules governing applications for rehearings reasonably protects the Board from rehearing non-meritorious applications on the merits, promotes efficiency, and prevents abuse of process by applicants; and

WHEREAS, the applicant has, contrary to the Board's direction, refused to make any substantive argument in support why the Board should give further consideration to the application that was withdrawn on the date set for decision; and

WHEREAS, accordingly, because of the applicant's lack

of good faith prosecution of this application and applicant's refusal to comply with the Board's Rules of Practice and Procedure, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 287-06-BZ is hereby dismissed for lack of prosecution, with prejudice.

Adopted by the Board of Standards and Appeals, August 7, 2007.

517-68-BZ

APPLICANT – Alfonso Duarte, for 1667 Rental Depot Incorporated, owner.

SUBJECT – Application November 15, 2006 – Extension of Term/Amendment/Waiver of a variance previously granted pursuant to §72-21 permitting in an R3-2 district open automobile sales (UG 16A) with accessory office and automobile repairs on cars for sale. The application seeks to legalize the rental of automobiles and trucks (UG 8C). The term of the variance expired on October 7, 2005.

PREMISES AFFECTED – 1667 East Gun Hill Road, East side 175' south of Tiemann Avenue, Block 4802, Lot 21, Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10:00 A.M., for continued hearing.

558-71-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for George Feig, owner.

SUBJECT – Application February 20, 2007 – Amendment to permit the legalization of the change in use from the previously approved greenhouse and nursery establishment with accessory uses (UG6) to an eating and drinking establishment (UG6) located in a R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, north of Rockland Avenue, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied

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space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0' east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

APPEARANCES –

For Applicant: Alan Sigman.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for continued hearing.

297-99-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Co., LLC, owner; Exxon Mobil Corp., lessee.

SUBJECT – Application May 29, 2007 – Extension of Time to obtain a Certificate of Occupancy/Waiver of the rules for an existing gasoline service station (Mobil Station) which expired on September 19, 2004 in a C2-2/R6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Off Calendar.

8-05-BZ

APPLICANT – Sheldon Lobel, P.C., for James Pi, owner.

SUBJECT – Application January 18, 2005 – To consider dismissal for lack of prosecution – propose use, bulk and parking variance to allow a 17 story mixed-use building in R6/C1-2 and R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, a/k/a 51-35 Reeder Street, entire frontage on Queens Boulevard between Reeder Street and Broadway, Block 1549, 41 (a/k/a 41 & 28), Borough of Queens.

COMMUNITY BOARD # 4Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 10 A.M., for continued hearing.

309-05-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Pafos Realty Corporation, owner.

SUBJECT – Application October 17, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow.

PREMISES AFFECTED – 53-03 Broadway, North side of Broadway on the corner of Broadway and 53rd Place, Block 1155, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

77-07-A

APPLICANT – Burgher Avenue Property Management LLC, owner

SUBJECT – Application April 9, 2007 – Proposed construction of a one story commercial building not fronting on a mapped street contrary to Article 3, §36 of the General City Law. C2-1 Zoning District.

PREMISES AFFECTED – 32 Adele Street, between Burgher and Evergreen Avenue, Block 3329, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Anthony Tucci.

ACTION OF THE BOARD – Appeal granted on condition. **THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 13, 2007, acting on Department of Buildings Application No. 500851697, reads in pertinent part:

“No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map and such a special permit of the Board of Standards and Appeals is required”; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, the proposal is for the construction of a one-story commercial structure located in a C2-1 zoning district which does not front a mapped street; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, by letter dated June 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated March 13, 2007, acting on Department of Buildings Application No. 500851697, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited

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to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 18, 2007" -(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the lot subdivision, including the creation of Lot 63, is to be as approved by DOB; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2007.

82-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Nadine & Edward Frerks, owner.

SUBJECT – Application April 17, 2007 – Proposal to reconstruct and enlarge an existing single family dwelling and upgrade an existing private disposal system partially located within the bed of a mapped street (12th Avenue) is contrary to General City Law §35 and the Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 71 Bedford Avenue, Bedford Avenue and mapped 12th Avenue, 88.81' east of Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 402558139, reads in pertinent part:

"The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35 and

The proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35 and Department of Buildings Policy"; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication

in the *City Record*, and then to decision on that same date; and
WHEREAS, by letter dated April 23, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated June 5, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated June 21, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 402558139, 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 April 17, 2007"-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2007.

84-07-A & 85-07-A

APPLICANT – Law Office of Anthony J. Tucci, for Brook Property Management, LLC, owner.

SUBJECT – Application April 18, 2007 – Proposal to build two, semi- attached, one family homes which does not front on a mapped street contrary to Article 3, §36 of the General City Law and NYC Building Code §27-291. R3-1 Zoning District.

PREMISES AFFECTED –12 & 14 Brook Avenue, near Hylan Boulevard, Block 4721, Lots 45 & 46, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Anthony Tucci.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 30, 2007, acting on Department of Buildings Application Nos. 500863283 & 500863292, reads in pertinent part:

“The street giving access to the proposed building is not duly placed on the official map of the City of New York. Therefore refer to the Board of Standards & Appeals for Approval.

Proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space”; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in the *City Record*, and then to decision on August 7, 2007; and

WHEREAS, by letter dated June 11, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated March 30, 2007, acting on Department of Buildings Application Nos. 500863283 & 500863292, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 18, 2007” -(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2007.

87-07-A

APPLICANT – Robert C. Miller, for Breezy Point Cooperative, Inc., owner; James Naus, lessee.

SUBJECT – Application April 19, 2007 – Proposal to reconstruct and enlarge an existing one family home and upgrade of an existing private disposal system within the bed of mapped street, (Bayside Drive) is contrary to General City Law Section 35 and the Department of

Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 347 Roxbury Avenue, northwest of Seabreeze Avenue, Block 16350, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 5, 2007, acting on Department of Buildings Application No. 402439492, reads in pertinent part:

“The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy”; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated April 27, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated June 5, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated June 21, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 5, 2007, acting on Department of Buildings Application No. 402439492, 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 August 7, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2007.

70-06-A

APPLICANT – Eric Palatnik, P.C., for James Pullano, owner.

SUBJECT – Application April 19, 2006 – Proposed construction of a two- story, three family dwelling located within the bed of mapped street (Zev Place) is contrary to General City Law Section 35. Premises is located within an R3-2 Zoning District.

PREMISES AFFECTED – 4 Rockwell Avenue, west of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lot 1(tent), Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for continued hearing.

170-06-A & 171-06-A

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family

dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 10 A.M., for continued hearing.

326-06-A

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10' west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: David L. Businelli.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to September 18, 2007, at 10 A.M., for continued hearing.

153-07-BZY

APPLICANT – Mitchell A. Korbey, Esq., for 20 Bayard Views, LLC, owner.

SUBJECT – Application June 8, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2 /R6B & M1-2 /R6A.
PREMISES AFFECTED – 20 Bayard Street, a/k/a 27-35 Richardson Street, a/k/a 17 Richardson Street, Bayard Street between Union Avenue and Lorimer Street, Block 2721, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jennifer Dickson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

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ACTION OF THE BOARD – Laid over to September 18, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

spaces. The project site is located within an R7-1/C1-2 zoning district.

PREMISES AFFECTED – 108-20 71st Avenue, northeast corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, decision of the Queens Borough Commissioner, dated July 6, 2007, acting on Department of Buildings Application No. 402256269, reads in pertinent part:

- “1. Residential floor area is in excess of the maximum permitted for the C1-2/R7-1 zoning districts by sections 23-142 and 35-22.
2. Open space is less than the open space required by the section 23-142, 35-22, and 35-33”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C1-2 (R7-1) zoning district and partially within an R7-1 zoning district, a proposed 16-story residential building with 102 dwelling units (4.11 FAR), a community facility (0.09 FAR), commercial use (0.59 FAR), a total FAR of 4.79, and 126 parking spaces, which does not comply with residential floor area and open space regulations, and is contrary to ZR §§ 23-142, 35-22, and 35-33; and

WHEREAS, a public hearing was held on this application on November 21, 2006, after due notice by publication in the *City Record*, with continued hearings on March 6, 2007, June 12, 2007, and July 17, 2007, and then to decision on August 7, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends approval of the application on condition that the owner be responsive to community concerns during the construction process and that the supermarket remain open for business during construction; and

WHEREAS, the Queens Borough President recommends approval of the application, citing the same conditions as the Community Board; and

WHEREAS, certain neighbors provided testimony in opposition to the application, citing concerns about traffic congestion, the scale of the building, the strain on local resources, such as schools, the absence of unique site conditions, and the potential for damage to adjacent structures during construction; and

WHEREAS, the subject premises is located on the northwest corner of Queens Boulevard and 71st Road, with additional frontage on 71st Avenue; and

WHEREAS, the site is irregularly-shaped, with 87.5 feet

REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 7, 2007

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

75-06-BZ

CEQR #06-BSA-078Q

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.

SUBJECT – Application April 25, 2006 – Zoning variance pursuant to §72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§23-142 and §35-22), open space ratio (§23-142, §35-22 and §35-33) and sky exposure plane (§23-632) regulations. The proposed building would include 136 dwelling units and 146 parking

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of frontage on 71st Avenue, 191.45 feet of frontage on Queens Boulevard, 91.36 feet of frontage on 71st Road, and a lot area of approximately 27,002 sq. ft.; and

WHEREAS, a small triangular portion of the site along 71st Avenue is within an R7-1 zoning district and the remainder of the site is within a C1-2 (R7-1) zoning district; and

WHEREAS, the site is currently occupied by a one-story commercial building with a supermarket and other retail uses, the majority of which will remain; and

WHEREAS, the applicant initially proposed a 21-story building with a height of 215.04 feet, a floor area of 167,486 sq. ft. (6.20 FAR), 136 residential units, and 146 parking spaces; and

WHEREAS, the original proposal required the requested waivers noted above as well as a waiver for encroachment into the sky exposure plane because the height and setback requirements were not met; and

WHEREAS, the applicant now proposes a 16-story residential building with 102 dwelling units, 111,109 sq. ft. of residential floor area (4.11 FAR), 2,313 sq. ft. of community facility floor area (0.09 FAR), 16,065 sq. ft. of commercial floor area (0.59 FAR), a total floor area of 129,487 sq. ft. (4.79 FAR), and 126 parking spaces; and

WHEREAS, the maximum permitted floor area is 129,610 sq. ft. (4.80 FAR), for a building with a larger portion of community facility use, and the maximum permitted residential floor area is 92,077 sq. ft. (3.44 FAR); and

WHEREAS, additionally, the applicant proposes to provide 16,893 sq. ft. of open space (24,444 sq. ft. is the minimum required); and

WHEREAS, the applicant proposes to provide attended parking in the cellar and sub-cellar; and

WHEREAS, as noted, the applicant proposes to maintain the majority of the existing one-story commercial building for commercial use and to add a community facility use and a residential entrance on the 71st Avenue frontage; and

WHEREAS, the second through sixteenth floors will be occupied with residential units; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: (1) the site is irregularly-shaped; (2) the site is directly adjacent to the 71st Avenue subway entrance and subway tunnel on Queens Boulevard; and (3) the soil composition is poor; and

WHEREAS, as to the site's shape, the applicant states that the site is irregular with frontage on three streets and has six corners (some on the interior portions of the site and some at the exterior) with varying angles; and

WHEREAS, the applicant represents that because the site is irregularly-shaped and has a higher percentage of perimeter wall area than a standard rectangular site, there is difficulty in providing the required open space and there are premium construction costs; and

WHEREAS, the applicant represents that the condition of an irregularly-shaped site with as many angles is unique and that there are none like it within a 400-ft. radius; and

WHEREAS, as to the proximity of the subway, the applicant states that (1) the subway tunnel runs underground

adjacent to the site and (2) an entrance to the subway stop is adjacent to the site; and

WHEREAS, the applicant represents that because the subway tunnel and the mezzanine for the subway station are at a shallow depth, the foundation and underpinning system must be carefully designed to avoid putting stress on them during and after construction; and

WHEREAS, additionally, the foundation system and construction must be designed in consultation with and approved by the Metropolitan Transit Authority (MTA); and

WHEREAS, as to the soil conditions, the applicant represents that the soil has been detected to be unusually porous and sandy in nature; and

WHEREAS, the applicant submitted boring tests which support the representation that the soil condition is poor and that a water infiltration system may need to be implemented in the cellar; and

WHEREAS, the applicant represents that other recent developments in the area around the site have not encountered such poor sub-surface conditions; and

WHEREAS, the applicant submitted a geotechnical study reflecting the noted sub-surface conditions; and

WHEREAS, the applicant represents that the presence of the subway tunnel and station and the poor soil conditions require additional construction costs due to the need for complicated construction methods, including a pile foundation; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) a complying 4.8 FAR 21-story mixed-use community facility/commercial/residential scenario, which maximized the FAR available on the site by providing more community facility space, and (2) the original non-complying 6.2 FAR 21-story mixed-use scenario; and

WHEREAS, the applicant concluded that a complying scenario would not result in a reasonable return primarily because the construction costs related to the soil conditions and the subway would be prohibitively high and could not be supported by a reduced amount of residential space; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that Queens Boulevard is characterized by multiple dwelling buildings and commercial uses and that 71st Avenue and 71st Road are characterized by multiple dwelling buildings and community facility use; and

WHEREAS, the Board notes that the proposed total floor

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area and FAR are within the zoning district parameters for floor area and that the applicant could develop a community facility with an FAR of 4.80 or another 4.80 FAR building, with a different proportion of community facility, commercial, and residential uses, as of right; and

WHEREAS, accordingly, other than the open space waiver, the proposed building could be constructed as of right if occupied by a modified allocation of uses; and

WHEREAS, the applicant asserts that the proposed residential use, although in excess of the permitted residential FAR, would generate less traffic than a new as of right commercial or community facility use at the site; and

WHEREAS, as to residential bulk, the applicant represents that there are a number of residential buildings of comparable height along Queens Boulevard, including one with 31 stories (three blocks away), one with 21 stories (diagonally across the street), and one with 18 stories (diagonally across the street); and

WHEREAS, in support of this representation, the applicant submitted an aerial photograph of the area which identified four buildings within six blocks of the site on Queens Boulevard with at least 18 stories and five with 14 stories; and

WHEREAS, additionally, the applicant proposes to provide an open space on the roof and a large common terrace over the one-story base of the building to compensate for any loss of open space at grade; and

WHEREAS, in response to the Community Board and the Borough President, the applicant has agreed to keep the existing supermarket open during construction and to provide a construction schedule, noting all required approvals; and

WHEREAS, additionally, the applicant provided an analysis for the school seat requirements for the proposed 102 dwelling units in two income brackets which reflects that the need generated by the building is well below any threshold that would require additional analysis; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board does not regard these conditions to be a self-created hardship; and

WHEREAS, the Board notes that the applicant initially claimed that additional floor area and an encroachment into the sky exposure plane was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require a residential floor area and open space waiver, but disagrees that 6.2 FAR or height and setback waivers are needed to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to eliminate the sky exposure plane encroachment and to reduce the degree of floor area and FAR waiver, and to reflect the 4.79 FAR distributed appropriately on the site; and

WHEREAS, the Board notes that the applicant has reduced the number of residential units from the initially

proposed 136 (the maximum permitted at the site), and increased the size of some units so that the proposal does not exceed the maximum permitted density; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Part 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA078Q, dated September 28, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C1-2 (R7-1) zoning district and partially within an R7-1 zoning district, a proposed 16-story residential building with 102 units, a community facility, commercial use, and 126 parking spaces, which does not comply with residential floor area and open space regulations, and is contrary to ZR §§ 23-142, 35-22, and 35-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 2, 2007" - ten (10) sheets and "Received August 6, 2007" - four (4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 16 stories, 102 dwelling units, a total height of 178.22 feet, a residential floor area of 111,109 sq. ft. (4.11 FAR), a total floor area of 129,487 sq. ft. (4.79 FAR), an open space of 16,893 sq. ft., and 126 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;
THAT all parking shall be attended parking;

MINUTES

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2007.

126-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Hafif, owner.

SUBJECT – Application June 14, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (§23-141); less than the required side yards (§23-461) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1762 East 23rd Street, East 23rd Street, between Quentin Road and Avenue R, Block 6805, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 16, 2006, acting on Department of Buildings Application No. 302053024, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and is contrary to section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of section 23-461 of the Zoning Resolution.
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of section 23-47 of the Zoning Resolution”;

WHEREAS, this is an application under ZR § 73-622 to

permit, in an R3-2 zoning district, the proposed enlargement of a single-family residence, which does not comply with the zoning requirements for floor area, floor area ratio, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, and then to decision on August 7, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Quentin Road and Avenue R; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a 2,622 sq. ft. (0.52 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,622 sq. ft. (0.52 FAR) to 4,170 sq. ft. (0.83 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.5 FAR); and

WEREAS, the proposed enlargement will increase lot coverage from 26% to 38% (a maximum of 35% is permitted); and

WHEREAS, the proposed enlargement will reduce the size of one side yard from 16’-9” to 10’-11” and maintain the existing non-complying side yard of 4’-1” (side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement calls for a rear yard of 20’-3” (30’-0” is required); and

WHEREAS, the Board notes that the enlargement will consist of extensions at both the first and second stories; 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, 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 the City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for floor

MINUTES

area, FAR, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 1, 2007"-(9) sheets and "July 31, 2007"-(2) sheets; and *on further condition*:

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,170 sq. ft., a total FAR of 0.83, side yards of 10'-11" and 4'-1", and rear yard of 20'-3", as illustrated on the BSA-approved plans;

THAT the garage, porch and bay window at front of second floor shall be approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted. (DOB Application No. 302053024)

Adopted by the Board of Standards and Appeals, August 7, 2007.

378-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for deferred decision.

426-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Expert Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a two-level enlargement of an existing one-story commercial building contrary to FAR regulations (§43-12). M1-1 district.

PREMISES AFFECTED – 57-02/08 39th Avenue and 39-02 58th Street, Block 1228, Lots 48, 52, 57, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most and Jerry Pi.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for continued hearing.

116-06-BZ

APPLICANT – Harold Weinberg, P.E., for David Nikchemny, owner.

SUBJECT – Application June 8, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§34-47) in an R3-1 zoning district.

PREMISES AFFECTED – 172 Norfolk Street, west side, 200' north of Oriental Boulevard and Shore Boulevards, Block 8756, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for decision, hearing closed.

227-06-BZ

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot 90, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik, Mark Lipton and Charles Bontempo.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for continued hearing.

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

MINUTES

For Applicant: Lyra Altman and David Shteierman.
For Objection: Jack Cooperman and Sol Mermelstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to
September 11, 2007, at 1:30 P.M., for decision, hearing
closed.

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz,
owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-
21) to permit the proposed two-story addition to the rear of
the three-story structure which is currently under
construction and to allow for the inclusion of a Use Group 4
synagogue at the premises. The premises is located in an R5
(Borough Park) zoning district. The proposal is contrary to
floor area (§24-162a), side yards (§24-35), and the number
of stories (§24-33).

PREMISES AFFECTED – 1847 60th Street, north side of
60th Street, between 18th Avenue and 19th Avenue, Block
5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to
September 18, 2007, at 1:30 P.M., for continued hearing.

315-06-BZ

APPLICANT – Eric Palatnik, P.C., for Merkaz, The Center,
Inc., owner.

SUBJECT – Application December 6, 2006 – Variance
(§72-21) to permit the proposed three-story religious-based
pre-school, which will include an accessory synagogue. The
premises is located within two zoning districts, an R5B and
R2, with the vast majority (95%) resting within the R5B
district. The proposal is contrary to §§24-11, 24-34, 24-35,
24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between
Avenues L and M, Block 7638, Lot 24, Borough of
Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Councilman Deblasio, Rabbi
David Goldwasser, Jacob Felman, Lea Bruder, Miraim
Lefkoartz, Gil Ben-Ari, Rabbi Moshe Fetman, Rickie
Weingarten, Chaim Cohen, Zui Borsstein, Joby Fisher, Arie
Blum, Ivonne Alfandary, Shmiel Deutsch, Jon Lefkowitz,
Sara Ovitsh, Amanda Schiff, Tammy Fetman, and Yaeot
Fetman.

For Opposition: Inna Kogan and Mikhail Charny.

ACTION OF THE BOARD – Laid over to
September 25, 2007, at 1:30 P.M., for continued hearing.

16-07-BZ

APPLICANT – Juan D. Reyes, III, for Daytop Village,
Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit
(§73-44) to permit a reduction in required parking for a
Use Group 4A ambulatory and diagnostic treatment center
located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue,
Halperin Avenue between Blandell Avenue and
Williamsburg Road, Block 4074, Lot 11, Borough of
Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Juan D. Reyes, III, Amy Sliorra, John
Strauss and Steve Winston.

For Opposition: Carl Anderson, Marianne LaCrole, Edwin
Cruz, Anthony LaCrole, Marie A. LaCrole.

ACTION OF THE BOARD – Laid over to
September 18 2007, at 1:30 P.M., for continued hearing.

33-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for
Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (§72-
21) to permit the conversion of the upper four floors of an
existing five-story manufacturing building for residential
use. The Premises is located in a M1-1 zoning district. The
proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of
Carroll Street, 200' east of intersection with Van Brunt
Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to
September 11, 2007, at 1:30 P. M., for conintued hearing.

69-07-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLP,
for 240 West Broadway, LLC, owner.

SUBJECT – Application March 23, 2007 – Variance (§72-
21) to allow a nine (9) story residential building containing
seven (7) dwelling units; contrary to use regulations (§42-
10). M1-5 district (Area B-1 of Special TriBeca Mixed Use
District).

PREMISES AFFECTED – 240 West Broadway, northwest
corner of the intersection of North Moore Street and West
Broadway, Block 190, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal and Jan Morse.

For Opposition: Leo Weinberg, Jack Lester, Charles
Harris, Joel Perlman and Lee G. Dary.

MINUTES

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for continued hearing.

112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalmam, owners.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to permit the construction of a synagogue. The Premises is located in an R2 zoning district. The proposal is contrary to floor area ratio and lot coverage (§24-11), side yards (§24-35), rear yard (§24-36), wall height (§24-521) and parking (§25-31).

PREMISES AFFECTED – 1089-1093 East 21st Street, East 21st Street between Avenue I and Avenue J, Block 7585, Lots 21 & 22 (Tent. 21), Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman, Jack Kluger and Rabbi Frankel.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

126-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Massachusetts Mutual Life Insurance Co., owner; AGT Crunch New York, LLC, lessee.

SUBJECT – Application May 17, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on a portion of the ground floor, second floor mezzanine, and on part of the second floor in a 43-story residential building. The proposal is contrary to §32-00. C6-4 zoning district.

PREMISES AFFECTED – 555 West 42nd Street, north side of West 42nd Street, at 11th Avenue, Block 1071, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

128-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sharon Perlstein and Sheldon Perlstein, owners.

SUBJECT – Application May 18, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); less than the minimum side yards (§23-461 and §23-48) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1382 East 26th Street, west side of East 26th Street, between Avenue M and Avenue N, Block

7661, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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August 23, 2007

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DOCKETS

New Case Filed Up to August 14, 2007

194-07-A

1447 Rosedale Avenue, At the intersection of Cross Bronx Expressway Service Road N and Rosedale Avenue., Block 3895, Lot(s) 77, Borough of **Bronx, Community Board: 9**. Appeals –To rescind a Stop Work Order issued by DOB and re-instate DOB permit # 201109549-01-NB on the grounds that the owners have acquired a vested right to complete construction and obtain a C of O.

195-07-BZ

8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot(s) 62 & 64, Borough of **Manhattan, Community Board: 2**. Under §72-21 – Proposal is to have (UG5) and (UG6) eating and drinking establishment below level of second story in cellar, subcellar and ground floor.

196-07-A

9 Federal Place, West of Federal Place 195.91' south of the corner of Richmond Terrace and Federal Place., Block 1272, Lot(s) 72, Borough of **Staten Island, Community Board: 1**. General City Law §36 – Proposed attached houses not having a least 8% of the total perimeter fronting directly on a legally mapped street.

197-07-A

11 Federal Place, West of Federal Place 195.91' south of the corner of Richmond Terrace and Federal Place., Block 1272, Lot(s) 76, Borough of **Staten Island, Community Board: 1**. General City Law §36 – Proposed attached houses not having at least 8% of the total perimeter fronting directly on a legally mapped street.

198-07-A

15 Federal Place, West of Federal Place 195.91' south of the corner of Richmond Terrace and Federal Place., Block 1272, Lot(s) 77, Borough of **Staten Island, Community Board: 1**. General City Law §36 – Proposed attached houses not having at least 8% of the total perimeter fronting directly on a legally mapped street.

199-07-A

17 Federal Place, West of Federal Place 195.91' south of the corner of Richmond Terrace and Federal Place., Block 1272, Lot(s) 79, Borough of **Staten Island, Community Board: 1**. General City Law §36 – Proposed attached houses not having a least 8% of the total perimeter fronting directly on a legally mapped street.

200-07-BZ

3333 Hylan Boulevard, North west side of Hylan Boulevard, 0' East of Spratt., Block 4987, Lot(s) 1, Borough of **Staten Island, Community Board: 3**. (SPECIAL PERMIT) – Extension for the proposed conversion of existing one story eating and drinking establishment (UG6) in residential district, with 44 off Street parking spaces for medical offices and construction of new second story medical offices (UG4).

201-07-BZ

2317 Ralph Avenue, Southwest corner of Ralph Avenue and Avenue M., Block 8364, Lot(s) 34, Borough of **Brooklyn, Community Board: 18**. Under §72-21 – To allow a bank (UG6) in an R3-2 district, which is contrary to ZR §22-00.

202-07-BZ

2160-2170 McDonald Avenue, West side of McDonald Avenue, 40' north of Avenue T., Block 7087, Lot(s) 34, Borough of **Brooklyn, Community Board: 11**. (SPECIAL PERMIT) §73-19 – To allow a school, (UG3) in an M1-1 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 18, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 18, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

515-89-BZ, Vol. III

APPLICANT – Sheldon Lobel, P.C., for 50 East 78th Street, L.P., owner.

SUBJECT – Application July 20, 2007 – Extension of Term of a Special Permit for a (UG6) commercial art gallery in the basement portion of a residential building which expires on October 16, 2007 in an R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 78th Street, East 78th Street, between Madison Avenue and Park Avenue, Block 1392, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

63-07-A

APPLICANT – Moshe M. Friedman, P.E., for Constantine Ganginis, owner.

SUBJECT – Application March 12, 2007 – Proposed construction of a three family dwelling located within the bed of a mapped street (50th Street) which is contrary to General City Law Section 35. R5 Zoning district.

PREMISES AFFECTED – 49-23 28th Avenue, a/k/a Vandeventer Avenue aka 25-98 50th Street aka Old Bowery Bay Road, northwest corner of 28th Avenue and 50th Street in the bed of 50th Street, Block 745, Lot 81, Borough of Queens.

COMMUNITY BOARD #1Q

SEPTEMBER 18, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 18, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

134-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under §72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking

spaces. Proposal is contrary to regulations for use (§22-12), floor area and FAR (§23-141), open space (§23-141), front yard (§23-45), height and setback (§23-631) and maximum number of dwelling units (§23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

COMMUNITY BOARD # 11Q

297-96-BZ & 298-06-A

APPLICANT – Glen V. Cutrona, AIA, for John Massamillo, owner.

SUBJECT – Application November 13, 2006 – Variance under (§72-21) to allow a proposed four (4) story residential building with ground and cellar level retail use to violate applicable lot coverage (§23-145) and rear yard requirements (§23-47). C4-2 district (Special Hillside Preservation District); building is located within the bed of a mapped street, contrary to GCL §35.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

COMMUNITY BOARD #1SI

135-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Ester Loewy, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 920 East 24th Street. West side of East 24th Street, 140' north of Avenue L, Block 7587, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

136-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Leora Fenster, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1275 East 23rd Street. East side of East 23rd Street, 160' north of Avenue M, Block 7641, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #14BK

164-07-BZ

CALENDAR

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Rouse SI Shopping Center, LLC, owner; ME Clinic Two LLC, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to allow a Physical Culture Establishment that will occupy one storefront within a multiple-store mall containing retail stores and eating and drinking establishments (Use Group 6). The proposal is contrary to §32-10. C4-1 district.

PREMISES AFFECTED – (280 Marsh Avenue) The Crossings @ Staten Island Mall, north of Platimum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.

COMMUNITY BOARD # 2SI

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, AUGUST 14, 2007 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

391-04-BZ Vol. III

APPLICANT – Moshe M. Friedman, for Mellech Fastag,
owner.

SUBJECT – Application May 29, 2007 – Amendment to a
Special Permit (§73-622) for a single family residence for an
enlargement to second floor in an R-2 zoning district.

PREMISES AFFECTED – 2610 Avenue L, south side of
Avenue L, 60' east of the intersection of Avenue L and East
26th Street, Block 7644, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosef Gottdiener.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown
and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an
amendment to a special permit, which allowed for the
enlargement of an existing single-family home in an R2 zoning
district; and

WHEREAS, a public hearing was held on this
application on July 17, 2007, after due notice by publication in
The City Record, and then to decision on August 14, 2007; and

WHEREAS, the site is located on the south side of
Avenue L, between East 26th Street and East 27th Street, within
an R2 zoning district; and

WHEREAS, the subject site is occupied by a three-story
single-family home with a floor area of 3,767.68 sq. ft.; and

WHEREAS, on May 17, 2005, under the subject
calendar number, the Board granted a special permit, pursuant
to ZR § 73-622, to permit the enlargement of an existing single-
family home, which resulted in non-compliance as to floor area
and open space ratio; and

WHEREAS, the approved floor area was 3,918 sq. ft.
(0.98 FAR); and

WHEREAS, on September 17, 2005, the grant was
amended to permit a different distribution of floor area and a
slight reduction to what was approved; and

WHEREAS, specifically, the revised plans provided for
additional floor area on the first floor and a reduction in the
approved floor area on the second floor; and

WHEREAS, the changes resulted in a reduction in the
approved FAR from 0.98 to 0.94; and

WHEREAS, the applicant enlarged the home, pursuant to
the amended plans, but now requests to make an additional
modification; and

WHEREAS, specifically, the applicant proposes to
enlarge the second floor from the existing 1,076.63 sq. ft. to
1,362.63 sq. ft. in order to accommodate a larger bathroom
with improved accessibility; and

WHEREAS, the applicant represents that no other
changes are proposed; and

WHEREAS, however, the applicant notes that the attic
floor area was originally calculated as 818.18 sq. ft., but has
been recalculated to reflect 686.10 sq. ft.; and

WHEREAS, the applicant represents that there have not
been any changes to the attic but that certain spaces which had
a height of less than eight feet were originally included in the
floor area calculations in the prior iterations and have now been
eliminated; and

WHEREAS, the applicant represents that the Department
of Buildings has approved the revised attic floor area
calculation; and

WHEREAS, the noted enlargement to the second floor
and recalculation of the attic floor area results in an increase in
the total floor area from 3,767.68 sq. ft. (0.94 FAR) to 3,921.6
sq. ft. (0.98 FAR); and

WHEREAS, additionally, the applicant proposes to
maintain the existing amount of open space, but because there
is an increase in floor area and the required open space is
calculated as a percentage of that number, the open space is
reduced from 56.46 percent to 54.24 percent; and

WHEREAS, the Board notes that the proposed change is
confined to the rear of the home and that the resulting 0.98
FAR does not exceed what was originally proposed; and

WHEREAS, accordingly, the Board agrees that the
requested change is within the scope of the original grant and
has determined that it does not affect the required special
permit findings; and

WHEREAS, based upon its review of the record, the
Board finds that the proposed amendments are appropriate,
with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and
Appeals reopens and amends the resolution, said resolution
having been adopted on May 17, 2005, so that as amended this
portion of the resolution shall read: “to permit the enlargement
of the second floor of the existing home and to permit the noted
modifications to the BSA-approved plans *on condition* that all
work and site conditions shall comply with drawings marked
“Received May 29, 2007”– (11) sheets; and *on further
condition*:

THAT the parameters of the proposed building are as
follows: a floor area of 3,921 sq. ft. (0.98 FAR) and an open
space of 54.24 percent, as illustrated on the BSA-approved
plans

THAT there shall be no habitable space in the cellar;

THAT the above condition shall appear on the Certificate
of Occupancy;

THAT all conditions from the prior resolution not
specifically waived by the Board shall remain in effect; and

THAT the Department of Buildings must ensure

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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. 301874032)

Adopted by the Board of Standards and Appeals, August 14, 2007.

309-05-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Pafos Realty Corporation, owner.

SUBJECT – Application October 17, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow.

PREMISES AFFECTED – 53-03 Broadway, North side of Broadway on the corner of Broadway and 53rd Place, Block 1155, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed for lack of prosecution.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 30, 2007, acting on Department of Buildings Application No. 402116884, reads in pertinent part:

1. Proposed mixed use building does not comply with bulk regulations for a C1-2 in R5 district. FAR exceeds that permitted in a C1-2 in R5 zoning district and is contrary to 35-31 Z.R., 23-00 Z.R. and 33-00 Z.R.
2. Proposed building height does not comply with 35-61 Z.R. Maximum height of walls and required setbacks.
3. Density is contrary to 23-22 Z.R. Proposed number of dwelling units exceeds maximum permitted.
4. Proposed accessory parking spaces are non-compliant with 36-21 Z.R.
5. Proposed building does not comply with 35-22 Z.R. and 35-33 Z.R. minimum required open space.
6. Proposed building does not comply with 35-22 Z.R. and 35-33 Z.R. maximum permitted lot coverage.
7. Special permit from BSA required for reduction of parking spaces for commercial offices (UG 6) for parking requirement category B1 as per 73-44 Z.R.; and

WHEREAS, this is an application under ZR §§ 72-21 and 73-44, to permit, on a site within a C1-2 (R5) zoning district, the construction of a six-story mixed-use commercial/community facility/residential building, which

does not comply with FAR, height, setback, residential density, parking, open space, and lot coverage regulations, and is contrary to ZR §§ 35-31, 23-00, 33-00, 35-61, 23-22, 36-21, 35-22, and 35-33; and

WHEREAS, the variance application was filed on October 17, 2005; and

WHEREAS, on November 22, 2005, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, on June 23, 2006, the applicant made an incomplete submission; and

WHEREAS, on October 18, 2006, the applicant requested additional time to revise the application; and

WHEREAS, on December 18, 2006, the applicant made a second request for additional time to revise the application; and

WHEREAS, the Board did not receive a revised application; and

WHEREAS, on May 24, 2007, Board staff issued a Dismissal Warning Letter requesting all materials for the revised proposal; and

WHEREAS, the Board did not receive a revised application; and

WHEREAS, on July 10, 2007, the Board placed the application on the dismissal calendar for August 7, 2007; and

WHEREAS, the applicant appeared at the August 7, 2007 hearing and stated that the application had been revised and that it would be submitted to the Board; and

WHEREAS, at hearing, the Board informed the applicant that the application would be placed on the August 14, 2007 dismissal calendar and that if a satisfactory revised application was not received by August 13, 2007, the Board would dismiss it; and

WHEREAS, on August 13, 2007, the applicant made a submission, which did not address all of the deficiencies of the application, including the absence of a financial analysis, cost estimates, and a complete structural engineering report; and

WHEREAS, the applicant did not appear at the August 14, 2007 hearing; and

WHEREAS, accordingly, because of the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 309-05-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, August 14, 2007.

80-54-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates LLC, owner.

SUBJECT – Application July 2, 2007 – ZR §11-411 for the Extension of Term of a previously granted variance which, which expired on July 2, 2006, to permit commercial uses on the first floor and cellar of an existing residential building located in an R8B zoning district; the Extension of Time to obtain a Certificate of Occupancy which expired on April 24, 2002 and a Waiver of the rules.

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PREMISES AFFECTED – 150 East 39th Street, Located on south side of 39th Street between Third and Lexington Avenues, Block 894, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

61-07-A

APPLICANT – Alfonso Duarte.

OWNER – Felix Bello.

SUBJECT – Application March 9, 2007 – Proposed legalization of an existing retail establishment located within the bed of mapped street is contrary to General City Law Section 35. C1-4 /R6B Zoning District.

PREMISES AFFECTED – 102-07 Roosevelt Avenue, in bed of mapped Street (102nd Street), Block 1770, Lot 49, Borough of Queens.

COMMUNITY BOARD # 3Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 26, 2007, acting on Department of Buildings Application No. 402213074, which reads in pertinent part:

“Proposed alteration to existing building located in the bed of a mapped street is contrary to Section 35 GCL”; and

WHEREAS, a public hearing was held on this application on August 14, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, by letter dated May 10, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated May 3, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated June 29, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 26, 2007, acting on Department of Buildings Application No. 402213074, 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 July 31, 2007”-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT prior to the issuance of a Certificate of Occupancy, the Department of Buildings shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2007.

73-07-A

APPLICANT – Fire Department of The City of New York

OWNER – L. W. Equity Associates Incorporated

LESSEE – Fabco Shoe Store

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SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.

PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: DCI Anthony Scaduto, Fire Department and O. Allen.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for postponed hearing.

140-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP.

OWNER – Breezy Point Cooperative, Incorporated.

LESSEE – Thomas Carroll.

SUBJECT – Application May 25, 2007 – Appeals seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 Zoning district.

PREMISES AFFECTED – 607 Bayside Drive, North west intersection of Bayside Drive and zoning street know as Service Lane, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for postponed hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

152-06-BZ

CEQR #07-BSA-003K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 19, 2006, acting on Department of Buildings Application No. 500837810, reads in pertinent part:

“ZR 22-14

Use Group 4–A Community facilities –
***Ambulatory diagnostic or treatment health care facilities.

***Not permitted in R1 or R2 Districts and, in R3A, R3X, R3-1, R4A, R4B or R4-1 Districts, limited to a maximum of 1,500 square feet of *floor area*. Application does not comply with such”;
and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district, the construction of a two-story building with a cellar to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 14 parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and with continued hearings on May 15, 2007, June 12, 2007, and July 17, 2007, and then to decision on August 14, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 14, 2007
1:30 P.M.**

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WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and
WHEREAS, Councilmember Oddo recommends disapproval of this application based on concerns about traffic and parking; and

WHEREAS, Borough President Molinaro recommends disapproval of this application, based on concerns about traffic and effects on neighborhood character; and

WHEREAS, the New York City Fire Department (FDNY) recommends disapproval of this application, citing, *inter alia*, concerns about the potential impact the proposed use would have on traffic and emergency response by FDNY vehicles; and

WHEREAS, the subject site is located on the west side of Seldin Avenue, between Roman Avenue and Lamberts Lane, within an R3X zoning district ; and

WHEREAS, the site has a lot area of 9,876 sq. ft. and is currently improved upon by a single-family home with a floor area of 1,378 sq. ft., which would be demolished as part of the proposed construction; and

WHEREAS, the proposed facility would contain 5,565 sq. ft. of floor area (0.56 FAR); and

WHEREAS, accordingly, 14 parking spaces will be provided (14 parking spaces are required); and

WHEREAS, the applicant represents that the facility will provide Use Group 4 ambulatory diagnostic and treatment health care services related to the practice of orthopedics, including arthroscopic procedures; and

WHEREAS, a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use is available as-of-right, and

WHEREAS, the special permit pursuant to Z.R. § 73-125 would allow an increase in the floor area of the ambulatory diagnostic/treatment health care facility use from 1,500 sq. ft. up to a maximum of 1.0 FAR (9,876 sq. ft.) on the site; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with zoning in all other respects; and

WHEREAS, approximately eight (8) persons would work at the proposed facility, which would have operating hours of 8 a.m. to 5 p.m. Monday through Friday; and

WHEREAS, the applicant, based on concerns expressed by the board at hearing, changed the roofline of the building to minimize its visual impact; and

WHEREAS, with respect to concerns about traffic, the applicant submitted a traffic analysis based on actual projected operation of the proposed ambulatory diagnostic/treatment health care facility with two doctors that showed that actual traffic from the proposed ambulatory diagnostic/treatment health care facility and incremental traffic generated by the special permit would not exceed City Environmental Quality Review (CEQR) screening levels; and

WHEREAS, at the Board's request, the applicant analyzed a generic Use Group 4 diagnostic/treatment health care facility, which analysis projected both the total traffic increase from the proposed ambulatory diagnostic/treatment

health care facility and the incremental traffic increase from the special permit; and

WHEREAS, FDNY requested a full traffic study; and

WHEREAS, however, the applicant's additional traffic analyses demonstrate that neither the incremental nor the actual traffic generated by the proposed ambulatory diagnostic/treatment health care facility would generate enough peak-hour trips to create a significant impact at any intersection; and

WHEREAS, the trip generation levels demonstrated for the proposed building are well below threshold levels under City Environmental Quality Review that would require further analysis to determine whether they might result in significant adverse impacts on traffic; and

WHEREAS, pursuant to CEQR procedures, no further traffic analysis is required; and

WHEREAS, while the Board recognizes that traffic in the area of the proposed diagnostic/treatment health care facility is heavy, any additional traffic generated would be minimal and does not warrant further study; and

WHEREAS, the Board notes that the applicant is providing all of the required parking; and

WHEREAS, in response to assertions of opposition the project within the neighborhood expressed at hearing, the applicant provided evidence in the form of letters and other documentation to demonstrate support for the project by neighbors; and

WHEREAS, approximately 70% of the zoning lot will remain as open space (including landscaping and parking areas); and

WHEREAS, accordingly, the Board finds that the amount of open area and its distribution on the lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, the facility will not interfere with any pending public improvement project; and

WHEREAS, the facility will have a floor area of less than 10,000 square feet; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-125 and 73-03; and

WHEREAS, the project is classified as Unlisted pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA003R, dated November 20, 2006; and

WHEREAS, the EAS documents that the operation of the facility would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

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Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, a trip generation analysis dated July 16, 2007 determined that the proposed action would generate less than fifty (50) new vehicle trips in any peak hour (below the CEQR Technical Manual threshold for conducting a detailed analysis of traffic impacts) and therefore the proposed action would not have any potentially significant adverse impacts related to traffic and parking; and

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district, construction of a one-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 14 parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 31, 2007"—eleven (11) sheets; and *on further condition*:

THAT there shall be no change in use of the facility without prior application to and approval from the Board;

THAT landscaping shall be provided and maintained, as per the approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the parameters of the building shall be as follows: 5,565 sq. ft. of floor area and 14 parking spaces, as per the approved plans;

THAT the curb cut shall be approved by DOT and/or New York City Transit, as required, prior to the issuance of any permits;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2007.

301-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111' north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 3, 2006, acting on Department of Buildings Application No. 302140662, reads in pertinent part:

“Proposed two-family dwelling does not provide the required side yard in an R5 zoning district and must be referred to the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story two-family home that does not provide the required side yard and is contrary to ZR § 23-49; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, with continued hearings on May 8, 2007, June 12, 2007, and July 17, 2007, and then to decision on August 14, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application, citing concerns about potential effects on adjacent properties; and

WHEREAS, the site is located on the west side of Fountain Avenue, between Glenmore Avenue and Liberty Avenue, in an R5 zoning district; and

WHEREAS, the site has a width of approximately 17.83 feet, a depth of approximately 100 feet, and a total lot area of approximately 1,783 sq. ft.; and

WHEREAS, the applicant represents that the site has existed in its current configuration since before December 15, 1961; and

WHEREAS, the site is currently vacant; records indicate that there was formerly an attached residential building at the

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site, which was demolished in 2002 due to public safety concerns; and

WHEREAS, the applicant represents that the prior building was a two-story attached residential building; and

WHEREAS, the applicant proposes to construct a three-story two-family home with two off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 2,193 sq. ft. of floor area (1.22 FAR), open space of 1,051 sq. ft., a wall height of 29'-0", a total height of 32'-0", a front yard of 20'-0", a rear yard of 38'-0", and two parking spaces; and

WHEREAS, however, the applicant does not propose to provide any side yards (one side yard with a width of 8'-0" is the minimum required); and

WHEREAS, the applicant states that side yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject lot is narrow; and

WHEREAS, the applicant represents that the subject lot is one of only approximately three vacant lots with a width of 18 feet or less within a 400-ft. radius; and

WHEREAS, the applicant represents that there are additional lots of comparable size within the radius, but they are either developed with attached buildings, which do not provide side yards, or have been combined into a larger site, which only requires one side yard at the end of the development as opposed to one for each lot; and

WHEREAS, the applicant has submitted a 400-ft. radius diagram that supports these assertions; and

WHEREAS, the applicant represents that the requested side yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 17.83 feet cannot feasibly accommodate as of right development; and

WHEREAS, the applicant states that the building would have an exterior width of only 9.83 feet if side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable side yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that the

total height is two feet lower than that of the new three-story attached two-family dwellings to the north of the site; and

WHEREAS, the applicant states that there is a context for attached and semi-detached buildings in the surrounding area; and

WHEREAS, as noted, the applicant represents that a large number of the buildings in the surrounding area are attached and do not provide side yards; and

WHEREAS, further, the applicant notes that the adjacent building to the south has a lot line wall without windows, which the proposed building will utilize; and

WHEREAS, the applicant notes that the nine lots to the north of the site are occupied by a series of attached three-story two-family residential buildings and that a single side yard with a width of 8'-0" is provided along the property line of the end building, adjacent to the subject site; and

WHEREAS, the Board agrees that the location of the home on the lot and the non-complying side yard is compatible with the neighborhood context; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R5 zoning district regulations except for the required side yard; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story two-family home that does not provide the required side yard and is contrary to ZR § 23-49; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 19, 2007" – (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 2,193 sq. ft. of floor area (1.22 FAR), an open space of 1,051 sq. ft., three stories, a wall height of 29'-0", a total height of 32'-0", a front yard of 20'-0", a rear yard of 38'-0", and two parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other

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jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2007.

46-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Moishe Bergman, owner.

SUBJECT – Application February 15, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1328 East 23rd Street, located on the west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 13, 2007, acting on Department of Buildings Application No. 302280065, reads in pertinent part:

- “1. Floor area is contrary to ZR 23-141a
2. Open space ratio is contrary to ZR 23-141a
3. Side yard requirements are contrary to ZR 23-461a
4. Rear yard requirement is contrary to ZR 23-47
5. Sky exposure plane is contrary to ZR 23-631a”
and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of a single-family residence, which does not comply with the zoning requirements for floor area, open space ratio, side yards, rear yard and sky exposure plane, contrary to ZR §§ 23-141a, 23-461a, 23-47, and 23-631a; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2007, and then to decision on August 14, 2007; and

WHEREAS, the premises had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 14, Brooklyn,

recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue M and Avenue N; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a 2,335 sq. ft. (0.58 FAR) single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,335 sq. ft. (0.58 FAR) to 3,608 sq. ft. (0.9 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 116.1% to 70.1% (an open space ratio of 150% is required); and

WHEREAS, the proposed enlargement will retain the two existing side yards of 12’ – 11” and 4’ – 5-3/4” (side yards with a minimum width of 8’ – 0” and 5’ – 0” are required); and

WHEREAS, the proposed enlargement calls for a rear yard of 20’-0” (30’-0” is required); and

WHEREAS, the proposed enlargement calls for a dormer, which is a permitted obstruction in the sky exposure plane having a one-to-one horizontal to vertical ratio; and

WHEREAS, the Board notes that the enlargement will consist of extensions at the front and rear of the house; 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, 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 the City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, open space ratio, side yards, rear yard, and sky exposure plane, contrary to ZR §§ 23-141a, 23-461a, 23-47, and 23-631a; *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 July 31, 2007”–(11) sheets; and *on further condition*:

MINUTES

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,608 sq. ft., a total FAR of 0.90, side yards of 12'-11" and 4'-5-3/4", and rear yard 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;

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 the plan(s)/configuration(s) not related to the relief granted. (DOB Application No. 302280065)

Adopted by the Board of Standards and Appeals, August 14, 2007.

10-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Samuel Benitez, owner.

SUBJECT – Application January 20, 2005 – Zoning variance under §72-21 to allow a five (5) story residential building containing twenty-seven (27) dwelling units and fifteen (15) parking spaces contrary to use regulations (§42-00); M1-2 district.

PREMISES AFFECTED – 443 39th Street, a/k/a 459 39th Street, 39th Street between 4th Avenue and 5th Avenue, Block 705, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for continued hearing.

154-05-BZ

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to §42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, §42-13 (There are no residential bulk regulations in a M1-5B zoning district), and §13-12 (The proposed public parking garage is not permitted in a residential development.)

PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ken Lowenstein and Jack Freeman

For Opposition: Jack Lester and Stuart A. Klein, Paul Aurther, Jack Faxon, Sean Sweeney, Melissa Baldock, Megan Trusty, Gregg Levine, Sean H.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for decision, hearing closed.

31-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00. PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

59-06-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Paul Schillace, owner, Carvel Ice Cream, lessee.

SUBJECT – Application April 3, 2006 – Zoning variance under §72-21 to allow a one-store retail building (UG 6) with thirteen (13) unenclosed accessory parking spaces contrary to use regulations (§ 22-00); R4 district.

PREMISES AFFECTED – 1006 East 233rd Street, Southeast corner of Paulding Avenue, Block 4879, Lot 40, Borough of The Bronx.

COMMUNITY BOARD # 12BX

APPEARANCES –

For Applicant: Carl A. Sulfaro.

For Opposition: Emani P. Taylor, Nedra P. Thomas, A. Edward, I. Lee, Carmen Moore and Earl Wilkinson.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for continued hearing.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2

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zoning district. The proposal is contrary to Section 32-10.
PREMISES AFFECTED – 3349 and 3365 Webster Avenue,
Webster Avenue South of Gun Hill Road, Block 3355, Lot
121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August
21, 2007, at 1:30 P.M., for continued hearing.

311-06-BZ thru 313-06-BZ

APPLICANT – Rothkrug, Rothkrug, & Spector, LLP, for
White Star Lines LLC.

SUBJECT – Application December 4, 2006 – Zoning
variance under §72-21 to allow three, four (4) story
residential buildings containing a total of six (6) dwelling
units, contrary to use regulations (§42-10); M1-1 district.

PREMISES AFFECTED – 300/302/304 Columbia Street,
Northwest corner of Columbia Street and Woodhull Street,
Block 357, Lots 38, 39, 40. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to
September 18, 2007, at 1:30 P.M., for continued hearing.

10-07-BZ

APPLICANT – Kenneth Philogene, for George Smirnov,
owner.

SUBJECT – Application January 9, 2007 – Variance (§72-
21) to construct a two story, one family home on an
undersized vacant lot with less than the total required side
yards (§23-48) in an R3-1 zoning district.

PREMISES AFFECTED – 118 Graham Boulevard, south
side of Graham Boulevard, Block 3768, Lot 23, Borough of
Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Kenneth Philogene.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to
September 11, 2007, at 1:30 P.M., for decision, hearing
closed.

54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss,
owner.

SUBJECT – Application February 23, 200 – Special Permit
 (§73-622) for the enlargement of an existing single family
 home. This application seeks to vary floor area, lot coverage
 and open space (§23-141); side yard (§23-461) and rear yard
 (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1776 East 26th Street, west side
 of 26th Street, between Avenue R and Quentin Road, 200'
 north of Avenue R, Block 6808, Lot 34, Borough of
 Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to
September 11, 2007, at 1:30 P.M., for decision, hearing
closed.

72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado,
owner.

SUBJECT – Application March 28, 2007 – Special Permit
 (§73-622) for the enlargement of a single family residence.
 This application seeks to vary open space, lot coverage and
 floor area (§23-141); side yard (§23-461); rear yard (§23-47)
 and perimeter wall height (§23-631) in an R3-2 zoning
 district.

PREMISES AFFECTED – 1941 East 26th Street, eastern
 side of 26th Street between Avenue S and Avenue T, Block
 7305, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to
September 11, 2007, at 1:30 P.M., for continued hearing.

101-07-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe
 Blumenkranz, owner.

SUBJECT – Application April 26, 2007 – Special Permit
 (§73-622) for the enlargement of an existing single family
 detached residence. This application seeks to vary open
 space and floor area (§23-141) and side yard (§23-461) in an
 R-2 zoning district.

PREMISES AFFECTED – 2306 Avenue M, south side, 40'
 east of East 23rd Street, between East 23rd and East 24th
 Streets, Block 7627, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

For Opposition: Joseph Bergman.

ACTION OF THE BOARD – Laid over to
September 11, 2007, at 1:30 P.M., for continued hearing.

113-07-BZ

APPLICANT – Omnipoint Communications, Inc., for
Joseph Norman, owner; Omnipoint Communications Inc.,

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lessee.

SUBJECT – Application May 7, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communication facility and will consist of an 82-foot stealth, together with antennas mounted therein and related equipment at the base thereof.

PREMISES AFFECTED – 155 Clay Pit Road, northeast corner of the intersection of Veterans Road East and Clay Pit Road, Block 7105, Lot 679, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Gerasdioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

120-07-BZ

APPLICANT – Bryan Cave LLP, for Fiam Building Associates, owner.

SUBJECT – Application May 11, 2007 – Zoning variance under § 72-21 to allow the partial conversion to residential use of an existing 12-story mixed-use building; contrary to use regulations (§ 42-00). M1-6 district.

PREMISES AFFECTED – 24 West 30th Street, south side, 350' to the west of Fifth Avenue, Block 831, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Margery Perlmutter.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:30 P.M.

BULLETIN

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August 30, 2007

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203-07-BZ

137-35 Elder Avenue, Located at the northwest corner of Main Street and Elder Avenue., Block 5140, Lot(s) 40, Borough of **Queens, Community Board: 7**. Under 72-21 – To permit a 13-story, mixed use building within C2-2/R6 ZD which requires a variance of the following section of the zoning resolution: use (22-00), community facility floor area (35-311) and off-street parking (36-21).

204-07-BZY

163-167 Washington Avenue, Approximately 80 feet from the northeast corner of Myrtle Avenue and Washington Avenue., Block 1890, Lot(s) 1,4,82, Borough of **Brooklyn, Community Board: 2**. Proposed extension of time (11-331) to complete construction of a minor development of a 15 story mixed use building under the prior R6/C1-3 zoning district .

205-07-BZ

53-20 72nd Place, West side of 72nd Place 20 feet south of the intersection of 53rd Road and 72nd Place., Block 2506, Lot(s) 52, Borough of **Queens, Community Board: 5**. (SPECIAL PERMIT) 73-30 – To install a 25-foot non-accessory radio tower, disguised as a 25-foot stealth flagpole 27-feet to top of gold ball), together with related equipment, on the rooftop of an existing building.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 25, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 25, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

223-90-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Frank A. Burton, Jr., owner.

SUBJECT – Application April 3, 2007 – Amendment of a previous grant under the General City Law Section 36 to remove a Board condition requiring that no permanent Certificate of Occupancy shall be issued until a Corporation Counsel Opinion of Dedication has been obtained for Kresicher Street and to approve the enlargement of the site and building. M1-1 Zoning district.

PREMISES AFFECTED – 114 Kreisler Street, west side of Kreisler Street, 140.8' north of Androvette Street, Block 7408, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

16-92-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §§72-01 & 72-22 to permit a waiver of the rules of practice and procedure, a re-opening, an amendment, and an extension of the term of the variance. The requested application would permit the legalization from the change in use from auto repair and warehouse to a charity auto donation facility (Use Group 16 automotive storage), container storage (Use Group 16), a woodworking and metal working company (Use Group 16) and a legalization of a 2,420 square foot mezzanine addition. The premises is located in a R5/C1-1 zoning district.

PREMISES AFFECTED – 115 King Street/78 Sullivan Street, lot front King Street and Sullivan Street, between Richardson and Van Brunt Street, Block 556, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEALS CALENDAR

105-06-A

APPLICANT – Rothkrug Rothkrug and Spector, for Yafa Development, LLC, owner.

SUBJECT – Application May 23, 2006 – Proposed development of a single family home which will lie partially in the bed of a mapped street (Hook Creek Boulevard contrary to General City Law Section 35. Premises is

located within an R2 zoning district.

PREMISES AFFECTED – 240-23 128th Avenue, corner of 128th Avenue and Hook Creek Boulevard, Block 12866, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

157-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Blue Diamond Development, LLC, owner.

SUBJECT – Application June 11, 2007 – Extension of time (11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2/R6A, M1-2/R6B and MX-8.

PREMISES AFFECTED – 55 Eckford Street, western side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

162-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Edgewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of Queens.

COMMUNITY BOARD #14Q

165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Edgewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2848 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of Queens.

COMMUNITY BOARD #14Q

190-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Patricia & John Dalton, lessees.

SUBJECT – Application August 7, 2007 – Reconstruction and enlargement of an existing one family house not fronting on a mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 7 Chester Walk, east side of Chester Walk, 44', south of Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

OCTOBER 2, 2007, 10:00 A.M.

190-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Patricia & John Dalton, lessees.

SUBJECT – Application August 7, 2007 – Reconstruction and enlargement of an existing one family house not fronting on a mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 7 Chester Walk, east side of Chester Walk, 44', south of Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

SEPTEMBER 25, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 25, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

65-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Ship Management Corp., owner.

SUBJECT – Application March 15, 2007 – Variance (§ 72-21) to allow a one-story (UG 6) retail building to violate use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 146-93 Guy R. Brewer Boulevard, northeastern intersection of 147th Avenue and Guy R. Brewer Boulevard, Block 13354, Lot 12, Borough of Queens.

COMMUNITY BOARD #13Q

124-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gino Masci, owner.

SUBJECT – Application May 16, 2007 – Under (§ 72-21) to allow UG 6 (eating and drinking) on the first floor and cellar of an existing seven-story building, contrary to use regulations (§ 42-14(d)(2)(b)). M1-5B district.

PREMISES AFFECTED – 521 Broome Street, between Broome and Watts Streets, midblock between Thompson Street and Sixth Avenue, Block 476, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 2, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

919-57-BZ

APPLICANT – Cullen and Dykman LLP by Gary Goldman, owner; Stanley Halpern, lessee.

SUBJECT – Application August 20, 2007 – Extension of Term, ZR11-411 of a previously granted variance for the continued operation of a UG6 take out restaurant in an R3-2 zoning district which expired on March 25, 2003.

PREMISES AFFECTED – 4912 Avenue K, south side of Avenue K between East 49th Street and Utica Avenue, Block 7829, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

382-80-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Full Gospel New York Church, owners.

SUBJECT – Application June 29, 2007 – Extension of Term of a previously granted variance, which expired on July 1, 2005, to allow the operation of a theater (Playhouse 91) on the mezzanine and second floors located in an R8b zoning district.

PREMISES AFFECTED – 316 East 91st Street, south side of East 91st Street, 250' east side of Second Avenue, Block 1553, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

2-07-BZ thru 5-07-A

APPLICANT – Sheldon Lobel, P.C., for Ron Karo, owner.

SUBJECT – Application January 8, 2007 – To allow construction of four-3story 2 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED– 3212, 3214, 3216, 3218, Tiemann Avenue, northeast corner of Tiemann Avenue and unnamed Street, Block 4752, Lots 128, 129, 132, 133, Borough of Bronx.

COMMUNITY BOARD #12BX

39-07-BZ thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed

CALENDAR

construction of a 3 story, 3 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 3248, 3250, Givan Avenue, unnamed street between Wickham and Givan Avenue,, Block 4755, Lots 65 & 66, Borough of Bronx.

COMMUNITY BOARD #12BX

156-07-A

APPLICANT – Jorge F. Canepa, for Victor Battaglia, owner.

SUBJECT – Application June 11, 2007 – Proposed construction a swimming pool and equipment room, located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 60 Chipperfield Court, 433.95' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 337, Borough of Staten Island.

COMMUNITY BOARD #2SI

OCTOBER 2, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 2, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

78-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application April 12, 2007 – Special Permit (§73-36) to allow the operation of a PCE on the first floor of a two-story commercial building. The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 21, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

558-71-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for George Feig, owner.
SUBJECT – Application February 20, 2007 – Amendment
to permit the legalization of the change in use from the
previously approved greenhouse and nursery establishment
with accessory uses (UG6) to an eating and drinking
establishment (UG6) located in a R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, north
of Rockland Avenue, Block 2030, Lot 1, Borough of Staten
Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, and
Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an
amendment to legalize a change in use from a greenhouse with
an accessory retail store (Use Group 6) to an eating and
drinking establishment (Use Group 6); and

WHEREAS, the decision of the Staten Island
Commissioner dated February 2, 2007, acting on DOB
Application No. 500806611, reads:

“22-00 ZR: Change of existing legal use
(greenhouse, sales and display, retail store and
freezer and storage) in use group 6 to eating and
drinking establishment, pizzeria, and delicatessen
restaurant with seating (also use group 6) located
within an R3-1 zoning district which is contrary to
BSA Resolution Cal. No. 558-71-BZ and section 22-
00 of the NYC Zoning Resolution. Therefore, refer
to the board of standards and appeals for review.

“23-00, 25-00, 25-70 ZR: There are no bulk, parking
and loading regulations for a retail establishment (use
group 6) within an R3-1 district. Refer to the Board
of Standards and Appeals for review”; and

WHEREAS, a public hearing was held on this application
on June 19, 2007, after due notice by publication in *The City
Record*, with a continued hearing on August 7, 2007, and then
to decision on August 21, 2007; and

WHEREAS, the premises had a site and neighborhood

visit by Chair Srinivasan; and

WHEREAS, Community Board 2, Staten Island,
recommended approval of this application; and

WHEREAS, the site is located on the east side of
Richmond Avenue, between Amsterdam Place and Bleecker
Place, within an R3-1 zoning district; and

WHEREAS, the subject site is occupied by one-story
building with a floor area of 5,815 sq. ft. and 19 accessory
parking spaces; and

WHEREAS, the prior variance was granted on November
16, 1971, and permitted, within an R3-2 zoning district, the
construction and maintenance of an existing nursery and
greenhouse, pursuant to ZR § 72-21; and

WHEREAS, on March 25, 2005, the grant was amended
by letter to permit interior renovations; and

WHEREAS, an application was filed on January 27,
2006 on behalf of the previous owner of the premises for a
reopening and an amendment to legalize a change in use from a
greenhouse with an accessory retail store (Use Group 6) to an
eating and drinking establishment (Use Group 6); and

WHEREAS, the former owner’s business at the premises
failed and the application was not prosecuted; and

WHEREAS, on October 24, 2006, the Board dismissed
the application for lack of prosecution; and

WHEREAS, the premises has been purchased by a new
owner who wishes to legalize its use as an eating and drinking
establishment; and

WHEREAS, the applicant presented evidence that the
surrounding area is characterized by commercial
establishments, many of which were authorized by grants from
the Board; and

WHEREAS, the hours of operation of the eating and
drinking establishment will be Monday through Saturday 8
a.m. to 8 p.m. and Sunday 8 a.m. to 4 p.m., with a delivery area
within ten (10) blocks of the premises; and

WHEREAS, the operator anticipates that approximately
120 patrons will visit the eating and drinking establishment
each day; and

WHEREAS, in response to concerns expressed by the
Board at hearing, the applicant presented a traffic report
indicating that the 19 existing parking spaces are adequate for
anticipated use, and that no significant traffic impacts would be
anticipated; and

WHEREAS, accordingly, the Board agrees that all of the
requested changes are within the scope of the original grant and
has determined that none of the requested changes affects the
required findings; and

WHEREAS, based upon its review of the record, the
Board finds that the proposed amendments are appropriate,
with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and
Appeals reopens and amends the resolution, said resolution
having been adopted on November 16, 1971, so that as
amended this portion of the resolution shall read: “to permit
the conversion of the existing building from a greenhouse with
an accessory retail store (Use Group 6) to an eating and

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drinking establishment (Use Group 6) *on condition* that all work and site conditions shall comply with drawings marked "Received May 21, 2007"-(3) sheets; and *on further condition:*

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 500806611)

Adopted by the Board of Standards and Appeals, August 21, 2007.

200-00-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Blans Development Corp., owner.

SUBJECT –Application January 22, 2007 – Extension of Term/Waiver of a previously approved variance, which expired on July 17, 2006 for an existing physical culture establishment at the second floor of the premises located in a R6B (C1-4) zoning district

PREMISES AFFECTED – 107-24 37th Avenue, a/k/a 37-16 108th Street, southwest corner of 108th Street and 37th Avenue, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a physical culture establishment (PCE), which expired on July 17, 2006; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, with continued hearings on June 19, 2007, July 24, 2007, and then to decision on August 21, 2007; and

WHEREAS, Community Board 3, Queens, recommends disapproval of the application, citing concerns about non-compliance with required site conditions including the absence of (1) an overhead canopy, (2) lighting at the courtyard entrance for the proposed lift, (3) downward lighting along the façade, (4) six trees along 108th Street, (5) three trees along 37th Avenue, and (6) sufficient site maintenance; and

WHEREAS, the subject premises is located on the southwest corner of 108th Street and 37th Avenue; and

WHEREAS, the site is located within a C1-4 (R6B) zoning district and is occupied by a two-story mixed-use manufacturing/office building; and

WHEREAS, the PCE occupies 8,900 sq ft. on the second floor; and

WHEREAS, the PCE is operated as Squash Total Fitness; and

WHEREAS, on July 17, 2001, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the legalization of an existing PCE on the first floor and a portion of the second floor of an existing two-story mixed-use manufacturing/office building for a term of five years; and

WHEREAS, on May 11, 2004, the grant was amended to permit the relocation of the PCE onto the entire second floor; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, additionally, the applicant has not obtained a certificate of occupancy and requires time to obtain an amended certificate of occupancy to reflect the current uses; and

WHEREAS, the applicant represents that a certificate of occupancy has not been obtained due to ongoing modernization of the building unrelated to the PCE use; and

WHEREAS, as to the Community Board's concerns, the applicant has agreed (1) to install a canopy, (2) to install the required lighting, (3) to plant the required trees, and (4) to maintain the site free of debris and graffiti; and

WHEREAS, specifically, during the hearing process, the applicant installed the required lighting and submitted photographs reflecting this condition; and

WHEREAS, the applicant represents that the site landscape consultant has requested permission from the Parks Department to proceed with the tree planting and that the Parks Department has stated that it cannot be performed until October 15, 2007; and

WHEREAS, as to the canopy, the applicant represents that the installation of the canopy will be performed subsequent to the granting of the subject extension of term; and

WHEREAS, additionally, the Board notes that the applicant must install a wheelchair lift to provide access to the PCE; and

WHEREAS, the applicant represents that DOB will not issue permits for additional construction, including the installation of the lift and canopy, before the extension of term is granted; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 17, 2001, so that as amended this portion of the resolution shall read: "to grant an

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extension of the variance for a term of five years from the expiration of the last grant to expire on July 17, 2011; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 28, 2007" –(5) sheets; and; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on July 17, 2011;

THAT the site shall be maintained free of debris and graffiti;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT street trees shall be planted and maintained as per the BSA approved plans;

THAT lighting shall be installed and maintained as per the BSA-approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a wheelchair lift, as noted on the BSA-approved plans, shall be installed prior to the issuance of a Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all conditions from this and prior resolutions shall be complied with and a Certificate of Occupancy shall be obtained by May 21, 2008;

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. 410008636)

Adopted by the Board of Standards and Appeals, August 21, 2007.

20-02-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

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 the term for a previously granted special permit for a physical culture establishment (PCE), which expired on February 27, 2006; and

WHEREAS, a public hearing was held on this application on January 23, 2007, after due notice by publication in *The City Record*, with continued hearings on February 13, 2007, March 6, 2007, April 17, 2007, May 22, 2007, June 12, 2007, and July 24, 2007, and then to decision on August 21, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject premises is located on the northeast corner of Park Avenue and East 23rd Street; and

WHEREAS, the site is located within a C6-4A zoning district and is occupied by a five-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor space of 24,496 sq. ft., with 3,520 sq. ft. of floor space in the cellar, 5,900 sq. ft. of floor area on the first floor, and 15,076 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, in March 1997, under BSA Cal. No. 160-95-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the legalization of an existing PCE in the subject building for a term of ten years; and

WHEREAS, on June 18, 2002, under the subject calendar number, the Board granted a second special permit, to permit the expansion of the PCE onto the second floor and an increase in the total floor space from 15,368 sq. ft. to 24,496 sq. ft.; and

WHEREAS, this application seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, additionally, the applicant initially sought the following change in hours of operation: Monday through Friday, 12:00 a.m. to 12:00 a.m.; Saturday, 12:00 a.m. to 9:00 p.m.; and Sunday, 8:00 a.m. to 12:00 a.m.; and

WHEREAS, the Boar notes that at the time of the application, the PCE was operating on a 24-hour basis, contrary to the prior grant; and

WHEREAS, the hours of operation set forth in the 2002 grant were Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the building's residential occupants raised a number of concerns about the operation of the site; and

WHEREAS, specifically, they stated that: (1) the expanded hours of operation are not compatible with the other

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uses in the building, (2) there is excess noise emanating from the PCE's roof mechanicals, (3) microphones and music are too loud, and (4) the use of punching bags and treadmills creates vibrations felt within the residential units; and

WHEREAS, as to the expanded hours, the Board agrees that they are not compatible with other uses in the building, specifically, the residential use immediately above the PCE, and directed the applicant to restrict the hours of operation to what was previously approved; and

WHEREAS, as to the mechanicals, the applicant replaced the drive shaft and some bearings in the cooling tower on the roof, which appears to have eliminated certain noises; and

WHEREAS, the applicant notes that there are two exhaust systems on the roof, which are not associated with the PCE, which continue to produce vibration and noise; and

WHEREAS, the applicant has communicated with the building manager to address these concerns, which are not under the PCE's control; and

WHEREAS, as to the use of microphones and amplified music, the applicant has installed audio limiters in both its exercise studios to reduce the maximum permitted volume and has stopped using the sound system in the main areas; and

WHEREAS, as to the vibrations from PCE equipment, the applicant has (1) removed all high impact treadmills from the second floor; (2) ordered new low impact treadmills for the second floor; and (3) removed the hanging punching bags; and

WHEREAS, at the Board's request, the applicant submitted an acoustical analysis and information detailing the operation of the low impact treadmills, which reflect that the noted improvements should effectively limit the sound and vibrations from the PCE; and

WHEREAS, the Board notes that the residential occupants of the building provided testimony stating that the noted sound attenuation measures appear to be effective; and

WHEREAS, based upon its review of the record, the Board finds that a limited extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 18, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of one year from the date of this grant, to expire on August 21, 2008; *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received November 27, 2006" -(2) sheets and "August 15, 2007"-(2) sheets; and; and *on further condition*:

THAT this grant shall expire on August 21, 2008;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 6:00 a.m. to 11:00 p.m.; Friday, 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.;

THAT all sound attenuation measures shall be installed and maintained, per the BSA-approved plans;

THAT an audio limiter shall be installed and maintained

on all microphones and sound systems;

THAT no high impact treadmills are to be located on the second floor;

THAT the number of low impact treadmills on the second floor shall be limited to six;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 104475729)

Adopted by the Board of Standards and Appeals, August 21, 2007.

1328-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC., owner.

SUBJECT – Application June 5, 2007 – Extension of Term for a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 165 West End Avenue, 100' northwest corner of West 66th Street and End Avenue, Block 1179, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

1330-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Time to request a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 205 West End Avenue, West 70th Street, between West End and Freedom Place, Block 1179, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

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For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

1332-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Term – To request a variance, originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 185 West End Avenue, northwest corner of West 66th Street and West End Avenue, Block 1179, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

844-86-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Fred Lynn Associates, owner; Pyramida Billiards, lessee.

SUBJECT – Application February 12, 2007 – Extension of Term of a previously granted Special Permit (§73-50) for the enlargement of a one (1) story building, in a C8-2 zoning district, that encroaches into the open area required along a district boundary which expired on April 28, 1997; an Amendment to legalize the change in use from an auto repair shop (UG16) and custom clothing manufacturer (UG11) to a billiard parlor (UG12) and eating and drinking establishment (UG6) and to permit the addition of a 979. sq. ft. mezzanine in the UG6 portion of the building; an Extension of Time to obtain a Certificate of Occupancy which expired on May 4, 1999 and a Waiver of Rules of Practice & Procedure.

PREMISES AFFECTED – 1828/1836 McDonald Avenue, west side of McDonald Avenue, between Avenue P and Quentin Road, Block 6632, Lots 17 & 20, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 10 A.M., for continued hearing.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 18, 2007, at 10 A.M., for adjourned hearing.

214-96-BZ

APPLICANT – Rampulla Associates Architects, for Colonial Funeral Home, owner.

SUBJECT – Application July 2, 2007 – Extension of Term of a previously granted Variance (§72-21) which expires on April 7, 2008, to permit in an R3-1 zoning district, a UG7 (Colonial Funeral Home) and the existing accessory parking on the adjacent lot (Lot 30) which houses a conforming UG1 single family home.

PREMISES AFFECTED – 2819 Hylan Boulevard, North side Hylan Boulevard east corner of Hylan Boulevard and Tysens Lane. Block 4256, Lot 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip P. Rampulla.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 10 A.M., for continued hearing.

7-00-BZ, Vol. III

APPLICANT – Friedman & Gotbaum, LLP, for Trustees of the NYC Rescue Mission, owners.

SUBJECT – Application July 26, 2007 – Extension of Time to Complete Construction for a Variance previously granted on May 30, 2000 to permit within an M1-5 zoning district an enlargement to a UG3, non-profit homeless shelter for men, (New York City Rescue Mission) which expired on February 10, 2005.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White streets, Block 195, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Lori Cuisinier.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

170-06-A & 171-06-A

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 13, 2006, acting on Department of Buildings Application Nos. 200941614 & 200981429, reads in pertinent part:

“Objection #1 –Comply with General City Law Section 35”; and

WHEREAS, this application requests permission to build two, three-family homes within the bed of a mapped but unbuilt street (Needham Avenue); and

WHEREAS, a public hearing was held on this application on June 5, 2007, after due notice by publication in the *City Record*, with continued hearings on July 10, 2007 and August 7, 2007, and then to decision on August 21, 2007; and

WHEREAS, by letter dated November 16, 2006, the Fire Department states that it has reviewed the above application and that it has no objections as long as the 250’-0” maximum operating hydrant distance can be confirmed on drawings; and

WHEREAS, on April 4, 2007, the applicant submitted a site plan reflecting the location of an existing hydrant located within 250’-0” of the subject premises; and

WHEREAS, by letter dated January 10, 2007, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that the proposed site plan does not reflect any provisions for a cul de sac/turnaround at the dead end of Needham Avenue; and

WHEREAS, DOT states that such a turnaround, which would be half the width of Ely Avenue plus five feet for the entire length of the unopened portion of Ely Avenue (approximately 260 feet), should be constructed at the applicant’s expense; and

WHEREAS, the applicant revised the site plan to include

a Y-shaped turnaround; and

WHEREAS, the applicant has no objection to paving half of the width of Ely Avenue plus five feet, provided that the additional paving does not require the cutting of additional trees; and

WHEREAS, on June 28, 2007, in response to DOT, the applicant submitted a revised site plan reflecting the following: (1) the width of the proposed paved area is 35 feet (half the width of the mapped street plus five feet), (2) removal of additional trees, (3) a Y-shaped turnaround, and (4) a note stating that new sidewalks will match existing sidewalks; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS by letter dated July 11, 2007, DOT states that it has reviewed the applicant’s revised submission and has no further comments; and

WHEREAS, by letter dated September 18, 2006, the Department of Environmental Protection (DEP) states that it reviewed the above application and advises the Board that there is an adopted Drainage Plan #42-N (30) P(23), which calls for a future 18” combined sewer in the bed of Needham Avenue between Ely Avenue and Grace Avenue; and

WHEREAS, accordingly, DEP requests that the applicant provide a 31’-0” corridor in the bed of Needham Avenue between Ely Avenue and Grace Avenue to accommodate the installation, maintenance, and/or reconstruction of this sewer; and

WHEREAS, by letter dated October 11, 2006, the applicant states that DEP’s request is not warranted; and

WHEREAS, specifically, the applicant states that the subject premises includes half of the bed of Needham Avenue, a width of 40 feet; and

WHEREAS, the applicant represents that DEP’s request that the entire 31’-0” easement be provided on the subject premises would prohibit the proposed construction by encumbering approximately 80 percent of the land in the bed of the mapped street; and

WHEREAS, further, as to the built conditions on the other half of Needham Avenue (an additional 40 feet in width), it remains vacant and available for the proposed sewer line while the subject side of the bed of the street is already occupied by two homes, facing Grace Avenue, which would encroach upon the proposed easement; and

WHEREAS, by letter dated October 25, 2006, DEP reiterated its request that the development be revised so as to provide the 31’-0” sewer corridor on the subject site or to amend the latest drainage plan; and

WHEREAS, by letter dated November 1, 2006, the applicant again states that the DEP request is unwarranted given the availability of vacant land on the other half of Needham Avenue, which could provide the required access, and the history of development in the bed of Needham Avenue; and

WHEREAS, further, the applicant notes that there is a lack of undeveloped property in the area, which suggests that there will not be much future development and the mapped street will not be needed or constructed in the further; and

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WHEREAS, the applicant has offered to provide a 10'-0" easement within the subject portion of Needham Avenue; and

WHEREAS, by letter dated January 24, 2007, DEP notes that in order to carry out its mandate, it requires the applicant to file an amended drainage plan or to revise the layout of the proposed development to provide the requested sewer corridor; and

WHEREAS, by letter dated April 4, 2007, the applicant requests that, in light of the noted surrounding conditions, the Board permit the applicant to provide a 10'-0" sewer corridor rather than the 30'-0" sewer corridor DEP requests; and

WHEREAS, by letter dated June 28, 2007, the applicant states that the City owns the vacant southwesterly portions of Ely Avenue and a portion of Needham Avenue, including the land in the bed of Ely Avenue and Needham Avenue, which is part of a large City-owned site; and

WHEREAS, the applicant contends that it would be viable for DEP to use this vacant portion of the City's property for the proposed sewer construction; and

WHEREAS, the Board agrees with the applicant that the undeveloped side of Needham Avenue could provide the access DEP requests and that the proposal will not interfere with DEP's plans; and

WHEREAS, additionally, the Board notes that, given the built conditions and surrounding development, it is unlikely that the subject portion of Needham Avenue will be built; and

WHEREAS, based upon its review of the record, the Board finds that the proposal is appropriate with certain conditions as set forth below; and

WHEREAS, the Board notes that, although it has not required DEP's request for a 31'-0" sewer corridor, this decision does not supersede any other DEP or DOB requirements relevant to this proposal.

Therefore it is Resolved that the decision of the Bronx Borough Commissioner, dated July 13, 2006, acting on Department of Buildings Application Nos. 200941614 & 200981429, 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 June 29, 2007"-(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 the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the lot subdivision is to be approved by DOB; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,

August 21, 2007.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for continued hearing.

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 25, 2007, at 10 A.M., for decision, hearing closed.

323-06-A

APPLICANT – Vito J. Fossella, P.A., for Michael Sidnam, owner.

SUBJECT – Application December 14, 2006 – Proposed enlargement of an existing one family dwelling located within the bed of mapped street (North Avenue) which is contrary to Section 35 of the General City Law. R3X Zoning.

PREMISES AFFECTED – 389 College Avenue, Northside of College Avenue; 140.08' east of the corner formed by the

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intersection of College Avenue and Lockwood Place, running thence east 111.38', thence north 168.99', thence s/w 82.20', thence west 64.92', thence south 89.27'. Block 391, Lot 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 10 A.M., for decision, hearing closed.

96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District.

PREMISES AFFECTED – 41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Irving Minkin and Christopher Papa.

For Opposition: Janina Gaylard, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 A.M.

REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 30, 2007

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

108-06-BZ

APPLICANT– Eric Palatnik, P.C., for S & L-G Realty Corp., owner.

SUBJECT – Application May 30, 2006 – Zoning variance under §72-21 to allow a proposed 15-story residential building (U.G. 2) containing twenty-six (26) dwelling units and ground floor retail use (U.G. 6) to locate in an M1-6 district; contrary to §42-00 (use regulations).

PREMISES AFFECTED – 143 West 30th Street, between 6th and 7th Avenues, Block 806, Lot 4, Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, decision of the Manhattan Borough Commissioner, dated May 19, 2006, acting on Department of Buildings Application No. 104407553, reads:

“ZR-42-00: Proposed residential use (use group 2) within M1-6 district is not permitted”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-6 zoning district, a proposed 15-story, 154’-0” tall, residential (UG 2) building with 26 dwelling units containing 22,075.35 sq. ft. of floor area (8.94 FAR), with ground floor retail (UG 6) use containing 1,841.08 sq. ft. of floor area (0.75 FAR), and a total floor area of 23,916.43 sq. ft. and total FAR of 9.69, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in the *City Record*, with continued hearings on June 12, 2007 and July 17, 2007, and then to decision on August 21, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the south side of West 30th Street between Sixth and Seventh avenues; and

WHEREAS, the site is narrow, with 25 feet of frontage on West 30th Street, is 98’-0” deep, and has a total lot area of 2,469 sq. ft.; and

WHEREAS, the site is currently occupied by a 70-year-old, two-story office/store (UG 6) building, with a floor area of 2,469 sq. ft. and FAR of 1.89 (10.0 FAR is allowed for a permitted use), which would be demolished to permit the proposed development; and

WHEREAS, as noted, the applicant proposes to demolish the existing 2-story building and construct 15-story residential (UG 2) building with 26 dwelling units (8.94 FAR), with ground floor retail (UG 6) use (0.75 FAR), and a total FAR of 9.69; and

WHEREAS, the second through fifteenth floors will be

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occupied with residential units; and

WHEREAS, the applicant initially proposed a slightly larger building of 10.0 FAR with a 26'-0" rear yard; and

WHEREAS, in response to concerns expressed by the Board at hearing, the applicant increased the rear yard to 30'-0" in order to comply with residential regulations and to safeguard light and air for adjacent buildings; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: (1) the site is narrow and does not permit floor plates appropriate to permitted office or manufacturing uses; (2) a police station is located at 134 West 30th Street and the parking of police vehicles along the block inhibits manufacturing and commercial uses that rely on vehicular access for the movement of goods; (3) the site has a unique history of development; and (4) the existing structure is obsolete; and

WHEREAS, the applicant represents that the condition of a narrow lot is unique, and that while 14 of 64 lots in the surrounding area are as narrow, it is not required that the premises be the only such narrow lot in the area; and

WHEREAS, the applicant states that some of the other similarly narrow lots are grouped together so as to be suitable for zoning lot mergers to create lots for larger, more efficient development sites; and

WHEREAS, additionally, other narrow lots in the area have avenue frontage making them more suitable for conforming retail development and therefore less burdened than the premises; and

WHEREAS, at hearing the applicant stated that the owner of the premises had approached the owner of the adjacent lot regarding its purchase so that a lot more suitable for as-of-right could be created, but the owner of the adjacent lot was unwilling to sell; and

WHEREAS, the site is currently built to less than 20% of its allowable bulk and occupied by a 70-year-old building; and

WHEREAS, the applicant argues that the presence of the NYPD station at 134 West 30th Street makes the site desirable for residential development, but the parking generated by the police station reduces the vehicular access that would be required for commercial or manufacturing uses; and

WHEREAS, the Board notes that the lot is not unique in being burdened by the amount of police parking, but that all lots on the block are similarly affected; and

WHEREAS, the applicant did not present evidence of the unique development history of the premises in support of its assertion; and

WHEREAS, nevertheless, the Board finds that the small lot size, which is insufficient to provide floor plates of adequate size for commercial or manufacturing uses, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided financial analyses for (1) the existing commercial building, (2) an as-of-right office building, (3) an as-of-right hotel building, (4) a smaller

residential building with a rear yard of 30'-0" and FAR of 9.2, and (5) the original proposed building with rear yard of 26'-0" above the first story and FAR of 9.69; and

WHEREAS, the applicant's financial analyses showed negative rates of return for the existing building, the as-of-right office building, and the as-of-right hotel, a minimal rate of return for the smaller residential building, and an acceptable rate of return for the proposed residential building with first-floor commercial use;

WHEREAS, specifically with respect to the as-of-right hotel, the applicant claims that while typical hotel floor plates could be developed, the lot is not large enough to accommodate customary hotel amenities such as a restaurant or ballroom, and effort to market the premises for hotel use were unsuccessful; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the Board, at hearing, raised concerns about the compatibility of the residential use with conforming uses, specifically manufacturing uses in the vicinity of the premises, the impacts of the building's height, and traffic impacts; and

WHEREAS, the West 30th Street block where the premises is located is characterized generally by a mix of commercial, manufacturing and residential uses; and

WHEREAS, in response to the Board's concern regarding compatibility of the proposed residential use with conforming and surrounding land uses, the applicant surveyed land uses on the block and in the surrounding neighborhood and determined that the uses are 72% commercial, 7% residential, 9% manufacturing, 3% community facility, 4% wholesale, and 5% vacant/unknown; and

WHEREAS, based on the land use survey, the applicant determined that the proposed building would fit into the mixed-use character of the neighborhood and that sufficient convenience retail uses are present in the neighborhood to support additional residential development; and

WHEREAS, although zoned M1-6, the primarily commercial nature of actual land uses in the area is compatible with residential use, as in many high-density commercial districts, including the C6-4X district mapped along Sixth Avenue to the west of the site; and

WHEREAS, further, the Board notes that the City Planning Commission in 2003 approved the conversion of 130 West 30th Street, which is located across the street from the subject site, to residential use with 45 units, and determined, together with the City Council, that the introduction of these residential units would not alter the essential character of the

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neighborhood; and

WHEREAS, in addition to the residential and community facility uses noted above, there are many residential buildings in the manufacturing district to the south of the premises; and

WHEREAS, applicant's analysis showed that the proposed residential use would result in less traffic during peak hours than would the hotel alternative, and therefore would result in less impact on access to conforming uses on the block; and

WHEREAS, as to bulk and massing, the applicant represents that there are a number of buildings of comparable height in the immediate vicinity of the premises, including buildings of 12 and 14 stories immediately to the west on West 30th Street, a building of 16 stories to the rear of the premises on West 31st Street, and a building of 23 stories adjacent to the NYPD station across West 30th Street from the premises; and

WHEREAS, the applicant notes that the bulk of the proposed building is consistent with as-of-right development in the manufacturing district; and

WHEREAS, the applicant asserts that although the proposed residential building would not provide any accessory parking, the area is well-served by mass transit; and

WHEREAS, based upon the above, the Board finds that the proposed 26-unit residential building will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, accordingly, the Board finds that the current proposal, with the rear yard increased from 26'-0" to 30'-0", is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Part 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA093M, dated December 6, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: December, 2006

Environmental Assessment Statement (EAS) and November, 2006 Phase I Environmental Site Assessment report (Phase I); and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on July 31, 2007 and submitted for proof of recording on August 2, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within An M1-6 zoning district, a proposed 15-story residential building with 26 units, and commercial use on the first floor, which is contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 2, 2007"--one (1) sheet and "Received August 7, 2007"--six (6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 15 stories, 26 dwelling units, a total height of 154 feet, a residential floor area of 22,075.35 sq. ft. (8.94 FAR), a commercial floor area of 1841.08 sq. ft. (0.75 FAR), and a total floor area of 23,916.43 sq. ft (9.69 FAR), all 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 objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2007.

116-06-BZ

APPLICANT – Harold Weinberg, P.E., for David

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Nikchemny, owner.

SUBJECT – Application June 8, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§34-47) in an R3-1 zoning district.

PREMISES AFFECTED – 172 Norfolk Street, west side, 200’ north of Oriental Boulevard and Shore Boulevards, Block 8756, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto III.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 302164690, reads in pertinent part:

“The proposed enlargement of the one family residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to lot coverage and is contrary to section 23-141 of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area ratio and open space and is contrary to section 23-141 ZR.
3. Creates a new non-compliance with respect to rear yard and is contrary to section 23-47 ZR.
4. Extends the degree of non-compliance with respect to side yards and is contrary to sections 23-461 and 54-31”; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-1 zoning district, the proposed enlargement of a single-family residence, which does not comply with the zoning requirements for lot coverage, floor area, side yards and rear yard, contrary to ZR §§ 23-141, 23-47, 23-461, and 54-31; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 7, 2007, and then to decision on August 21, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the premises had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject site is located on the west side of Norfolk Street, between Oriental and Shore Boulevards; and

WHEREAS, the subject site has a total lot area of 2,840 sq. ft., and is occupied by a 913 sq. ft. (0.32 FAR) single-family home, with side yards of 4’-1” and 1’-7” (side

yards with a minimum width of 8’-0” and 5’-0” are required), and a rear yard of 25’-10-7/8” (30’-0” is required); 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 913 sq. ft. (0.32 FAR) to 2,668 sq. ft. (0.94 FAR); the maximum floor area permitted is 1,704 sq. ft. (0.6 FAR); and

WHEREAS, the proposed enlargement will increase lot coverage from 32.2% to 51.5% (a maximum of 35% is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards of 4’-1” and 1’-7” (side yards with a minimum width of 8’-0” and 5’-0” are required); and

WHEREAS, the proposed enlargement calls for a rear yard of 20’-0” (30’-0” is required); and

WHEREAS, the Board notes that the enlargement will consist of the addition of a second story over the first story and an enlargement into the rear yard; 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, 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 the City Environmental Quality Review and makes the required findings under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a two-family dwelling, which does not comply with the zoning requirements for floor area, FAR, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received July 26, 2007”-(7) sheets and “August 9, 2007”-(4) sheets; and *on further condition*:

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,668 sq. ft., a total FAR of 0.94,

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lot coverage of 51.5%, side yards of 4'-1" and 1'-7", and rear yard 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 driveway ramp and clearance for vehicles shall be approved by DOB;

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 the plan(s)/configuration(s) not related to the relief granted. (DOB Application No. 302164690)

Adopted by the Board of Standards and Appeals, August 21, 2007.

327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 58th and Lex Associates, owner; Manhattan Sports Performance, LLC, lessee.

SUBJECT – Application December 20, 2006 – Special Permit (§73-36) to legalize the existing PCE located at the sixth floor in a fourteen-story plus penthouse commercial building. The proposal is contrary to §32-10. C5-2 district. PREMISES AFFECTED – 133 East 58th Street, between Lexington and Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 12, 2006, acting on Department of Buildings Application No. 103946937, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as of right in C5-2 zoning district. This is contrary to section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2 zoning district, the legalization of a physical culture establishment (PCE) on the sixth floor of a 14-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication

in *The City Record*, and then to decision on August 21, 2007; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Lexington Avenue and East 58th Street; and

WHEREAS, the site is occupied by a 14-story commercial building; and

WHEREAS, the PCE occupies approximately 8,790 sq. ft. of floor area on the sixth floor; and

WHEREAS, the applicant represents that the PCE offers facilities for classes and instruction in body-building, weight reduction, aerobics, and general physical improvement; and

WHEREAS, the PCE is operated as Velocity Performance Sports; and

WHEREAS, the hours of operation are: Monday through Friday, 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 9:00 a.m. to 4:00 p.m.; and

WHEREAS, the Board notes that the PCE has been in operation since September 1, 2004; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA048M, dated June 7, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

MINUTES

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2 zoning district, the legalization of a physical culture establishment on the sixth floor of a 14-story commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received August 6, 2007"–(1) sheet; and on further condition:

THAT the term of this grant shall expire on September 1, 2014;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2007.

66-07-BZ

APPLICANT – Eric Palatnik, P.C., for High Definition Fitness, Inc., owner.

SUBJECT – Application – Special Permit (§73-36) to allow a PCE on the third floor of a three-story building. The proposal is contrary to §42-31. M1-1 district.

PREMISES AFFECTED – 3038 Atlantic Avenue, between Essex and Sheperd Avenues, Block 3972, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 23, 2007, acting on Department of Buildings Application No. 302280519, reads in pertinent part:

"Follow the requirements of ZR 42-31 correctly.

Proposed physical culture establishment within M1-1 zoning district is not permitted and requires a special permit from the New York City Board of Standards and Appeals"; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the legalization of a physical culture establishment (PCE) on the third floor of a three-story mixed-use commercial/manufacturing building, contrary to ZR § 42-31; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, and then to decision on August 21, 2007; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Atlantic Avenue, between Essex Avenue and Shepherd Avenue; and

WHEREAS, the site is occupied by a three-story mixed-use commercial/manufacturing building; and

WHEREAS, the PCE occupies approximately 5,689 sq. ft. of floor area on the third floor; and

WHEREAS, the applicant represents that the PCE offers facilities for classes and instruction in body-building, weight reduction, aerobics, and general physical improvement; and

WHEREAS, the PCE is operated as High Definition Fitness; and

WHEREAS, the hours of operation are: Monday through Thursday, 5:30 a.m. to 10:00 p.m.; Friday, 5:30 a.m. to 8:30 p.m.; and Saturday and Sunday, 8:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board notes that the PCE has been in operation since February 17, 2007; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any

MINUTES

pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.07BSA0068K, dated June 7, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the continued operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the legalization of a physical culture establishment on the third floor of a three-story mixed-use commercial/manufacturing building, contrary to ZR § 42-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 17, 2007"-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 17, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2007.

315-05-BZ

APPLICANT – David L. Businelli, AIA, for Diggy's LLC, owner.

SUBJECT – Application October 28, 2005 – Zoning variance under §72-21 to allow a two-story horizontal extension of an existing three-story mixed commercial retail (UG 6) and residential building containing one (1) dwelling unit. Twenty (20) open accessory parking spaces are proposed. Proposed commercial use is contrary to use regulations (ZR §22-10). R3X district (Special South Richmond District).

PREMISES AFFECTED – 862 Huguenot Avenue, South side of Huguenot Avenue, 0' east from Hawley Avenue. Block 6815, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for continued hearing.

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for decision, hearing closed.

MINUTES

103-06-BZ

APPLICANT – Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district. PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for continued hearing.

114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (§23-141); provides less than the minimum required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Judith ?

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for continued hearing.

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.

SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for decision, hearing

closed.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.

PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

MINUTES

262-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B zoning district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright and Elane Kalmon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

291-06-BZ

APPLICANT – Paul Bonfilio, AIA., for 6860 Austin Realty Corp., owner.

SUBJECT – Application November 2, 2006 – Special Permit (§73-44) to allow the reduction in the number of required parking spaces for an enlargement to an existing community facility building (Ambulatory Diagnostic/Treatment Facility). The Premises is located in a C8-2 zoning district. The proposal is contrary to Section 36-21.

PREMISES AFFECTED – 68-60 Austin Street, Austin Street, between Yellowstone Boulevard and 69th Road, Block 3234, Lot 29, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Paul Bonfilio and Tarek M. Zeid.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

319-06-BZ

APPLICANT– Sheldon Lobel, P.C., for 211 Service LLC., owner.

SUBJECT – Application December 8, 2006 – Special Permit pursuant to §73-49 to allow seventy-five (75) accessory parking spaces for an automotive service establishment (UG 16) on the rooftop of an existing building. M1-1 district.

PREMISES AFFECTED – 211/283 63rd Street, located on the north side of 63rd Street, between 2nd and 3rd Avenues, Block 5798, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for decision, hearing closed.

325-06-BZ

APPLICANT – Eric Palatnik, P.C., for Escava Brothers, owners; Ludlow Fitness, lessee.

SUBJECT – Application December 15, 2006 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment to be located on the second floor of the building under construction. The proposal is contrary to §32-00. C6-1 district.

PREMISES AFFECTED – 100 Delancey Street, between Ludlow Street and Essex Street, Block 410, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for deferred decision.

328-06-BZ

APPLICANT – Francis R. Angelino, Esq., for Okada Denki Sanyo Company Limited, owner.

SUBJECT – Application December 20, 2006 – Zoning variance under ZR §72-21 to allow an eight (8) story residential building containing six (6) dwelling units and ground floor retail use; contrary to regulations for use (§42-00, §111-104(e), and §111-102(b)). M1-5 district (Area B-2 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 50-52 Laight Street, Between Hudson and Greenwich Streets, Block 219, Lots 2 & 3, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2007, at 1:30 P.M., for decision, hearing closed.

71-07-BZ

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

MINUTES

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR §11-411 and §73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in an C1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21st Street, south side 21st Street blockfront between Broadway and 33rd Avenue, Block 555, Lot 16, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for continued hearing.

80-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 319 West LLC, owner. The Lantern Group, Incorporated, lessee.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to community facility floor area (§24-111), wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to October 25, 2007, at 1:30 P.M., for continued hearing.

98-07-BZ

APPLICANT – Eric Palatnik, P.C., for Yuri Gokhberg, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); rear yard (§23-47) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 67 Amherst Street, north of Hampton Avenue, south of Shore Boulevard, Block 8727, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

99-07-BZ

APPLICANT – Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Serge Mozer.

For Opposition: Judy Baron and Dr. Len Flug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 11, 2007, at 1:30 P.M., for decision, hearing closed.

118-07-BZ

APPLICANT – Rothkrug Rothkurg & Spector LLP, for A Very Special Place, Incorporated, owner.

SUBJECT – Application May 11, 2007 – Special Permit (§73-44) to allow the proposed two-story, Use Group 6B office development which has less than the required parking. The proposal is contrary to section 36-21. C1-1/R3-2 district.

PREMISES AFFECTED – 49 Cedar Grove Avenue, Between Wavcrest Street and Seaform Street. Block 4087, Lot 1 & 70, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for decision, hearing closed.

MINUTES

142-07-BZ

APPLICANT – Moshe M. Friedman, for Steven Weinberger, owner.

SUBJECT – Application May 29, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and side yards (§23-461) & (§23-48) in an R3-2 zoning district.

PREMISES AFFECTED – 2216 Avenue R, 56'-0" west of intersection formed by Avenue R and East 23rd Street. Block 6828, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for decision, hearing closed.

146-07-BZ

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77th Street, North side of East 77th Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 18, 2007, at 1:30 P.M., for decision, hearing closed.

166-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen LLP, for Mindy Guzzone, owner. JCR Fitness, Incorporated d/b/a Fitness Together, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture

establishment on the ground floor of a five-story mixed-use building. The proposal is contrary to section 32-00. C2-3 zoning district.

PREMISES AFFECTED – 213 Court Street, between Wyckoff and Warren Streets. Block 390, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Francine Olk and Judy Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:30 P.M.

BULLETIN

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Volume 92, Nos. 34-35

September 20, 2007

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144-07-BZ	3810 Bedford Avenue, Brooklyn

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6-98-BZ	3-9 Hubert Street/137 Hudson Street/4 Collister Street, Manhattan
42-06-BZ	139-24 Booth Memorial Avenue, Queens

DOCKETS

New Case Filed Up to September 11, 2007

206-07-BZY

712 6th Avenue, Between 22nd and 23rd Streets, Block 899, Lot(s) 40, Borough of **Brooklyn, Community Board: 7**. Extension of time (11-332) – To complete construction of a minor development commenced prior to the amendment of the zoning district regulations on November 16, 2005. R6B Zoning District .

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

207-07-A

48-20 57th Avenue, Westerly side of 49th Street at 57th Avenue, Block 2564, Lot(s) 1, Borough of **Queens, Community Board: 5**. Proposed construction of a four story commercial warehouse located within the bed of mapped street (48th St.) contrary to Section 35 of the General City Law Section 35. M3-1 Zoning District.

208-07-BZY

72-76 Grand Avenue, Grand Avenue between Myrtle and BQE service road (Park Avenue), Block 1892, Lot(s) 48, Borough of **Brooklyn, Community Board: 2**. Extension of time (11-331) – To complete construction of a minor development commenced prior to the amendment of the zoning district regulations on July 25, 2007.

209-07-BZ

187-30 Grand Parkway, Southwest corner of 188th Street and Grand Central Parkway., Block 9969, Lot(s) 12, Borough of **Queens, Community Board: 8**. Under 72-21 – To increase floor area and permit encroachment in, and reduce the depth of a portion of a required front yard.

210-07-BZ

15 Luger Street, Northern side of Luger Street between Columbia and Hicks Streets., Block 513, Lot(s) 44, Borough of **Brooklyn, Community Board: 6**. Under 72-21 – To permit the proposed residential development in an M1-1 zoning district.

211-07-BZ

1149 East 22nd Street, North of Avenue K, south of Avenue J, Block 7604, Lot(s) 13, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622-enlargement of a single family dwelling.

CALENDAR

OCTOBER 2, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 2, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

919-57-BZ

APPLICANT – Cullen and Dykman LLP by Gary Goldman, owner; Stanley Halpern, lessee.

SUBJECT – Application August 20, 2007 – Extension of Term, ZR11-411 of a previously granted variance for the continued operation of a UG6 take out restaurant in an R3-2 zoning district which expired on March 25, 2003.

PREMISES AFFECTED – 4912 Avenue K, south side of Avenue K between East 49th Street and Utica Avenue, Block 7829, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

382-80-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Full Gospel New York Church, owners.

SUBJECT – Application June 29, 2007 - Extension of Term of a previously granted variance, which expired on July 1, 2005, to allow the operation of a theater (Playhouse 91) on the mezzanine and second floors located in an R8b zoning district.

PREMISES AFFECTED – 316 East 91st Street, south side of East 91st Street, 250' east side of Second Avenue, Block 1553, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

2-07-BZ thru 5-07-A

APPLICANT – Sheldon Lobel, P.C., for Ron Karo, owner.
SUBJECT – Application January 8, 2007 – To allow construction of four-3story 2 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED– 3212, 3214, 3216, 3218, Tiemann Avenue, northeast corner of Tiemann Avenue and unnamed Street, Block 4752, Lots 128, 129, 132, 133, Borough of Bronx.

COMMUNITY BOARD #12BX

39-07-BZ thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of a 3 story, 3 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED –3248, 3250, Givan Avenue, unnamed street between Wickham and Givan Avenue,, Block 4755, Lots 65 & 66, Borough of Bronx.

COMMUNITY BOARD #12BX

156-07-A

APPLICANT – Jorge F. Canepa, for Victor Battaglia, owner.

SUBJECT – Application June 11, 2007 – Proposed construction a swimming pool and equipment room, located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 60 Chipperfield Court, 433.95' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 337, Borough of Staten Island.

COMMUNITY BOARD #2SI

OCTOBER 2, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 2, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

79-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Power Test Realty Company, LP, owner.

SUBJECT – Application April 12, 2007 – under §11-411 to re-establish the previously granted variance permitting the operation of an automotive service station with accessory uses which is not permitted as-of-right in a C2/2R3-2 zoning district as per section 32-10 of the zoning resolution. The prior BSA grant was under calendar number 711-53-BZ and expired on July 24, 2001.

PREMISES AFFECTED – 114-05 Farmers Boulevard, east side of Farmers Boulevard between Murdock Avenue and 114th Road, Block 11007, Lot 5, Borough of Queens.

COMMUNITY BOARD #12Q

CALENDAR

114-07-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Sullivan Mountain RE, LLC, owner.

SUBJECT – Application May 7, 2007 – Special Permit (§73-19) to allow a day-care center (school), (UG3). M1-1 district.

PREMISES AFFECTED – 7-05 152nd Street, 152nd Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD # 7Q

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Kingswood Partners, LLC, owner; TSI Midwood LLC, owner.

SUBJECT – Application May 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on portions of the first and second floors of a three-story commercial building. The proposal is contrary to section 32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, westerly side of East 15th Street, 50' north of Kings Highway, Block 6777, Lots 17 and 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

148-07-BZ

APPLICANT – Ivan Khoury, for Kerry Riorden, owner; Tribeca Spa of Tranquility, lessee.

SUBJECT – Application June 6, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment. The proposal is contrary to section 42-10. M1-5 zoning district within the Tribeca Mixed-Use Special District.

PREMISES AFFECTED – 462 Greenwich Street, 49'-8.5" south from the corner of Greenwich and Watts Streets, Block 224, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

176-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Fei Guo, owner.

SUBJECT – Application June 29, 2007 – Variance (§72-21) to permit the alteration and enlargement of an existing one-story single family home for commercial use. The proposal is contrary to sections 22-12 (use), 23-45(a) (front yard), and 23-461(a) (required 5' side yard). R4 district.

PREMISES AFFECTED – 50-34 69th Street, aka 68-18 Garfield Avenue, southwest corner of the intersection of Garfield Avenue and 69th Street, Block 2425, Lot 33, Borough of Queens.

COMMUNITY BOARD #2Q

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 16, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

APPEALS CALENDAR

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for North Seven Associates, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

OCTOBER 16, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 16, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

331-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Putnam Holding Corp., owner.

SUBJECT – Application December 27, 2006 – Variance under § 72-21 to allow a three-family dwelling to violate front yard (§ 23-45) and side yard (§ 23-462(a) requirements. R4 district.

PREMISES AFFECTED – 3647 Palmer Avenue, south side of Palmer Avenue, between Needham Avenue and Crawford Avenue, Block 4917, Lot 17, Borough of Bronx.

COMMUNITY BOARD #12BX

Jeff Mulligan, Executive Director

Jeff Mulligan, Executive Director

OCTOBER 16, 2007, 10:00 A.M.

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**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 11, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

80-54-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates LLC, owner.

SUBJECT – Application July 2, 2007 – ZR §11-411 for the Extension of Term of a previously granted variance which, which expired on July 2, 2006, to permit commercial uses on the first floor and cellar of an existing residential building located in an R8B zoning district; the Extension of Time to obtain a Certificate of Occupancy which expired on April 24, 2002 and a Waiver of the rules.

PREMISES AFFECTED – 150 East 39th Street, Located on south side of 39th Street between Third and Lexington Avenues, Block 894, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance to permit commercial uses (Use Group 6) on the first floor and cellar of an existing residential building, which expired on July 2, 2006; and

WHEREAS, a public hearing was held on this application on August 14, 2007, after due notice by publication in *The City Record*, and then to decision on September 11; and

WHEREAS, the subject premises is a 16-story mixed-use building located on the south side of East 39th Street, between 3rd and Lexington Avenues, within an R8B zoning district; and

WHEREAS, on December 13, 1955, under the instant BSA Cal. No., the Board granted a variance to permit office and retail uses on floors 1-5 of the premises; and

WHEREAS, the variance was subsequently amended to convert all floors of the premises except the cellar and first floor to as-of-right residential use; and

WHEREAS, the term of the variance was last extended on July 2, 1996 for a period of ten (10) years, expiring on July

2, 2006; and

WHEREAS, on April 23, 2002, the Board amended the variance to permit the use of a portion of the cellar for a recreation room with fitness equipment for residents of the premises, and required that an amended Certificate of Occupancy be obtained within one year; and

WHEREAS, this application seeks to extend the term of the variance for an additional ten years and to extend the time to obtain an amended Certificate of Occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 13, 1955, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten (10) years from the expiration of the last grant, to expire on July 2, 2016; to grant a one-year extension of term to obtain a certificate of occupancy; *on condition* that any and all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this grant shall expire on July 2, 2016;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT an amended Certificate of Occupancy shall be obtained by September 11, 2008;

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. 104817352)

Adopted by the Board of Standards and Appeals, September 11, 2007.

1328-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC., owner.

SUBJECT – Application June 5, 2007 – Extension of Term for a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 165 West End Avenue, 100’ northwest corner of West 66th Street and End Avenue, Block 1179, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the term for a previously granted variance under § 60(3) of the Multiple Dwelling Law (“MDL”) for a transient parking garage, which expired on July 5, 2007; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, Manhattan Community Board 7 recommends approval of the instant application; and

WHEREAS, the subject premises is located on the west side of West End Avenue between West 66th and West 67th Streets; and

WHEREAS, the site is occupied by a 28-story plus cellar and sub-cellar multiple dwelling building; and

WHEREAS, the site is located within an R8 zoning district; and

WHEREAS, the cellar and subcellar levels are occupied by the garage, with 227 spaces on the cellar level and 218 spaces on the subcellar level; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit surplus parking spaces not used by residents of the building, and not to exceed 50% of the total number of spaces, to be used for transient parking for a term of twenty (20) years; and

WHEREAS, on July 5, 1967, under BSA Cal. No. 1329-66-A, the Board granted an appeal to allow transient parking in the accessory garage by persons other than the occupants of the multiple dwelling, provided, however, that the requirements of BSA Cal. No. 1328-66-BZ were complied with; and

WHEREAS, on February 28, 1989 and May 19, 1998, under the subject calendar number, the Board granted ten-year extensions of term, with the most recent extension to expire on July 5, 2007; and

WHEREAS, no changes are proposed in the layout or operation of the transient parking garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions 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 having been adopted on July 5, 1967, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from July 5, 2007, to expire on July 5, 2017; *on condition* that that all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this term shall expire on July 5, 2017;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 104719038)

Adopted by the Board of Standards and Appeals, September 11, 2007.

1330-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Time to request a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 205 West End Avenue, West 70th Street, between West End and Freedom Place, Block 1179, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the term for a previously granted variance under § 60(3) of the Multiple Dwelling Law (“MDL”) for a transient parking garage, which expired on July 5, 2007; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, with continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, Manhattan Community Board 7 recommends approval of the instant application; and

WHEREAS, the subject premises is located on the south side of West 70th Street between West End Avenue and Freedom Place; and

WHEREAS, the site is occupied by a 28-story plus cellar and sub-cellar multiple dwelling building; and

WHEREAS, the site is located within an R8 zoning

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district; and

WHEREAS, the cellar and subcellar levels are occupied by the garage, having its entrance on Freedom Place, with 131 spaces on the cellar level and 145 spaces on the subcellar level; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit surplus parking spaces not used by residents of the building, and not to exceed 50% of the total number of spaces, to be used for transient parking for a term of twenty (20) years; and

WHEREAS, on July 5, 1967, under BSA Cal. No. 1331-66-A, the Board granted an appeal to allow transient parking in the accessory garage by persons other than the occupants of the multiple dwelling, provided, however, that the requirements of BSA Cal. No. 1330-66-BZ were complied with; and

WHEREAS, on February 28, 1989 and May 19, 1998, under the subject calendar number, the Board granted ten-year extensions of term, with the most recent extension to expire on July 5, 2007; and

WHEREAS, no changes are proposed in the layout or operation of the transient parking garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions 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 having been adopted on July 5, 1967, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from July 5, 2007, to expire on July 5, 2017; *on condition* that that all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this term shall expire on July 5, 2017;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 104706908)

Adopted by the Board of Standards and Appeals, September 11, 2007.

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Term – To request a variance, originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED –185 West End Avenue, northwest corner of West 66th Street and West End Avenue, Block 1179, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the term for a previously granted variance under § 60(3) of the Multiple Dwelling Law ("MDL") for a transient parking garage, which expired on July 5, 2007; and

WHEREAS, a public hearing was held on this application on this application on July 24, 2007, after due notice by publication in *The City Record*, with continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, Manhattan Community Board 7 recommends approval of the instant application; and

WHEREAS, the subject premises is located on the West side of West End Avenue between West 69th and West 70th Streets; and

WHEREAS, the site is occupied by a 28-story plus cellar and sub-cellar multiple dwelling building; and

WHEREAS, the site is located within an R8 zoning district; and

WHEREAS, the cellar and subcellar levels are occupied by the garage, with 205 spaces on the cellar level and 206 spaces on the subcellar level; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit surplus parking spaces not used by residents of the building, and not to exceed 50% of the total number of spaces, to be used for transient parking for a term of twenty (20) years; and

WHEREAS, on July 5, 1967, under BSA Cal. No. 1333-66-A, the Board granted an appeal to allow transient parking in the accessory garage by persons other than the occupants of the multiple dwelling, provided, however, that the requirements of BSA Cal. No. 1332-66-BZ were complied with; and

WHEREAS, on February 28, 1989 and May 19, 1998, under the subject calendar number, the Board granted ten-year extensions of term, with the most recent extension to expire on July 5, 2007; and

WHEREAS, no changes are proposed in the layout or

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operation of the transient parking garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions 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 having been adopted on July 5, 1967, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from July 5, 2007, to expire on July 5, 2017; *on condition* that that all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this term shall expire on July 5, 2017;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 104706917)

Adopted by the Board of Standards and Appeals, September 11, 2007.

7-00-BZ, Vol. III

APPLICANT – Friedman & Gotbaum, LLP, for Trustees of the NYC Rescue Mission, owners.

SUBJECT – Application July 26, 2007 – Extension of Time to Complete Construction for a Variance previously granted on May 30, 2000 to permit within an M1-5 zoning district an enlargement to a UG3, non-profit homeless shelter for men, (New York City Rescue Mission) which expired on February 10, 2005.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White streets, Block 195, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the

enlargement of an existing Use Group 3 non-profit homeless shelter; and

WHEREAS, a public hearing was held on this application on August 21, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, the application is brought on behalf of the Trustees of the NYC Rescue Mission, a non-profit entity; and

WHEREAS, the subject premises is located on the northwest corner of Lafayette and White Streets, within an M1-5 zoning district; and

WHEREAS, the premises had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, on May 30, 2000, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of the existing shelter at the premises; and

WHEREAS, a condition of the grant was that work be completed within the time permitted by ZR § 72-23, which is four years from the date of the grant; and

WHEREAS, in 2004 the Applicant sought, and the Board granted, a waiver of Z.R. § 72-23 to extend the time to complete construction for 18 months to February 10, 2005; and

WHEREAS, the Applicant represents that construction was delayed as funding requirements were being met; and

WHEREAS, the Applicant represents that the NYC Rescue Mission has initiated a new fundraising campaign for the expansion of the mission as previously approved by the Board; and

WHEREAS, the applicant represents that the work has been divided into four phases, and that Phase I is fully complete and Phase II is expected to be completed in September 2007; and

WHEREAS, accordingly, the applicant requests a further extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that an additional eighteen-month extension of time to complete construction and obtain a certificate of occupancy is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 30, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a period of eighteen months from the date of this grant; *on condition* that any and all work shall substantially conform to the approved drawings and *on further condition*:

THAT construction shall be completed by March 11, 2009;

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

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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. 102242627)

Adopted by the Board of Standards and Appeals,
September 11, 2007.

671-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 24 Pack LLC, owner; Euclide Enterprises, Inc., lessee.

SUBJECT – Application March 21, 2007 – Amendment to a previously granted Variance (§72-21) to convert the existing service bays to an accessory convenience store, an area previously approved for a new bay to a mechanical room and (§11-412) to legalize a UG6 eating and drinking establishment (Texas Chicken); Extension of Time to complete construction and to obtain a Certificate of Occupancy and a Waiver of the rules in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 1249-1265 Sutter Avenue, blockfront from Euclid Avenue to Doscher Street, Block 4249, Lots 55 & 59, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: John Ronan and Zekria Manely.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 10 A.M., for decision, hearing closed.

517-68-BZ

APPLICANT – Alfonso Duarte, for 1667 Rental Depot Incorporated, owner.

SUBJECT – Application November 15, 2006 – Extension of Term/Amendment/Waiver of a variance previously granted pursuant to §72-21 permitting in an R3-2 district open automobile sales (UG 16A) with accessory office and automobile repairs on cars for sale. The application seeks to legalize the rental of automobiles and trucks (UG 8C). The term of the variance expired on October 7, 2005.

PREMISES AFFECTED – 1667 East Gun Hill Road, East side 175' south of Tiemann Avenue, Block 4802, Lot 21, Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to

September 25, 2007, at 10 A.M., for decision, hearing closed.

142-70-BZ

APPLICANT – Barbara Hair, Esq., for Target Realty LLC, owner.

SUBJECT – Application December 12, 2006 – Amendment to a variance previously approved pursuant to section 72-21 of the zoning resolution which allowed commercial office space (Use Group 6) on the cellar level of a residential building located in a R7-2 zoning district. The application seeks a change of use in the existing commercial space on the cellar level from Use Group 6 office to Use Group 6 store.

PREMISES AFFECTED – 8 St. Marks Place, south side, 126' east of 3rd Avenue, Block 463, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Barbara Hair.

For Opposition: Susanne Schrepp and Brandon Kielbasa.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0' east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

APPEARANCES –

For Applicant: Alan Sigman.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

997-84-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for 222 Union Associates, owner.

SUBJECT – Application March 2, 2007 – Extension of Term/Amendment/Waiver for a special permit which expired on September 10, 2005, to revise the BSA plans to reflect existing conditions utilizing the Board's formula for attended parking of one space per 200 square feet, and the legalization of the existing automobile lifts within the parking garage.

PREMISES AFFECTED – 800 Union Street, southside of Union Street, between 6th and 7th Avenues, Block 957, Lot 29, Borough of Brooklyn.

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COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Calvin Wong and Howard Zipser.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

244-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Parkwood Realty Assoc., LLC, owner; AGT Crunch New York, lessee.

SUBJECT – Application July 6, 2007 – Extension of Term/Time/Amendment/ Waiver for a Physical Cultural Establishment "Crunch Fitness" filed pursuant to §§ 73-11 and 73-36 to reopen the resolution for a special permit for a physical culture establishment "Crunch Fitness" adopted November 4, 1998, amended December 21, 1999, and corrected January 20, 2000: for a waiver for an extension of term which expires November 4, 2008; for the extension of time to obtain the Certificate of Occupancy; and for an amendment to the Resolution for an enlargement of the total PCE floor area within an existing two story commercial building, which the PCE will fully occupy, located in a C2-5/R-8B zoning district.

PREMISES AFFECTED – 162 West 83rd Street, south side of West 83rd Street, between Columbus and Amsterdam Avenues, Block 1213, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to September 25, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

70-06-A

APPLICANT – Eric Palatnik, P.C., for James Pullano, owner.

SUBJECT – Application April 19, 2006 – Proposed construction of a two- story, three family dwelling located within the bed of mapped street (Zev Place) is contrary to General City Law Section 35. Premises is located within an R3-2 Zoning District.

PREMISES AFFECTED – 4 Rockwell Avenue, west of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lot 1(tent), Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 4, 2006, acting on Department of Buildings Application No. 500689347, reads in pertinent part:

“No permit shall be issued for any building in the bed of any street without a variance from BSA”; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in the *City Record*, to continued hearings on July 10, 2007 and August 7, 2007, and then to decision on September 11, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit the construction of one three-family home within the bed of a mapped street (Zev Place); and

WHEREAS, by letter dated June 7, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated June 12, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advised the Board that there is an adopted Drainage Plan No. PRD-A-5, which calls for a future 10-inch diameter sanitary sewer and 21-inch diameter storm sewer to be installed in Zev Place, between Kansas Avenue and Rockwell Avenue; and

WHEREAS, therefore, DEP asked that the applicant provide a 35'-0" wide sewer corridor in the bed of the mapped street (Zev Place) for the purpose of the future installation, maintenance, and/or reconstruction of future sewers; and

WHEREAS, in response to DEP's request, the applicant proposes a 30'-0" wide sewer corridor for the installation, maintenance, and/or reconstruction of future sewers; and

WHEREAS, by letter dated April 30, 2007, DEP states that it has reviewed this proposal and finds it acceptable; and

WHEREAS, by letter dated October 3, 2006, the Department of Transportation (DOT), states that it has reviewed the application and advised the Board that the proposal does not reflect any provisions for an emergency vehicle access/turnaround, such as a cul-de-sac at the dead end of Rockwell Avenue; and

WHEREAS, the Board notes that the October 3, 2006 letter did not state that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated March 26, 2007, in response to DOT's request, the applicant has submitted revised plans providing for an emergency vehicle access/turnaround; and

WHEREAS, by letter dated July 30, 2007, DOT states that it has reviewed the applicant's submission and has no further comments or objections; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted adequate evidence to warrant this

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approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated April 4, 2006, acting on Department of Buildings Application No. 500689347, 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 September 6, 2007"- (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 the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the lot subdivision is to be as approved by DOB; 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, September 11, 2007.

67-07-A

APPLICANT – Kevin Finnegan, Esq., for Benjamin Shaul, Magnum Mgmt., owner.

SUBJECT – Application July 17, 2007 – An appeal seeking to revoke permits and approvals that allow the construction of a penthouse that exceeds the permitted height limitations governed by ZR 23-692 (Sliver Law). R7-2 Zoning District.

PREMISES AFFECTED – 515 East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Kevin Finnegan.

For Opposition: Marivin Mitzner.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated February 15, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings ("DOB") (the "Final Determination") addressed to Manhattan Borough President Stringer, Councilmember Mendez, and District Manager of Community Board 3 Stetzer, with respect to Alteration Application No.

104368845; and

WHEREAS, the Final Determination states, in pertinent part:

"This letter is in reference to your correspondence to me, dated September 18, 2006, regarding the Department's interpretation of NYC Zoning Resolution (ZR) § 23-692 (Sliver Law) in relation to the above referenced alteration application. Specifically, you requested that the Department reconsider, in light of ZR § 11-22, its approval of the applicant's exclusion of a penthouse from the calculation of building height under the Sliver Law.

"Although your letter refers to ZR § 11-22 as a provision that provides guidance in the calculation of building height under the Sliver Law, this statutory section is not applicable. Section 11-22 addresses the application of overlapping or contradictory regulations. Here, there is neither overlap nor contradiction.

"It has been the Department's practice to allow building height (which is not a defined term in the Zoning Resolution) of penthouses to exceed the width of the street for buildings covered by the Sliver Law in instances similar to the project in question, particularly in cases such as this where the penthouse is not visible from the street. It would be inconsistent with these prior decisions to overturn the approval of the penthouse here. It is the Department's position that the addition of a penthouse at the building in question does not violate the Sliver Law as the continuity of the street wall has been maintained. In accordance with this interpretation, the penthouse, as constructed with a twenty foot setback from the street wall, complies with ZR § 23-692.

"Please accept this letter as a final determination by the Department, appealable to the Board of Standards and Appeals"; and

WHEREAS, a public hearing was held on this appeal on July 17, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins and Commissioners Hinkson and Ottely-Brown; and

WHEREAS, a representative from Borough President Stringer's Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of Council Member Mendez' Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of State Senator Connor's Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of State Assembly Speaker Silver's Office testified at hearing in support of the instant appeal; and

WHEREAS, representatives of several civic associations

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testified at hearing in support of the instant appeal; and

WHEREAS, DOB, Appellant Tenants Association of 515 East 5th Street, and the owner of 515 East 5th Street (the "Owner" and the "Building") have been represented by counsel throughout this Appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the addition of a new sixth floor and penthouse, to be occupied by four duplex apartments, to the Building, a five-story "old law" tenement, which is located in an R7-2 zoning district; and

WHEREAS, an alteration permit application was filed under DOB's professional certification program, and the initial work permit was issued on March 31, 2006; and

WHEREAS DOB subsequently conducted a special audit of the approved plans, and on May 8, 2006 issued an Intent to Revoke Approval(s) based on nineteen Building Code and zoning objections; and

WHEREAS, Objection No. 6 in the May 8, 2006 Intent to Revoke Approval(s) stated, in pertinent part;

"ZR 23-692: Sliver Law: Height Regulation Narrow Building:

a. Proposed vertical enlargement is higher than 60' which is width of narrow street, and it is contrary to Resolution 23-692, hence not permitted.

Indicate compliance in height and setback diagram"; and

WHEREAS, the plans were revised to correct various violations and were approved on June 29, 2006; and

WHEREAS, the plans approved on June 29, 2006 still showed a building exceeding the 60-foot maximum height that Appellant argues is imposed by Z.R. § 23-692 (the "Sliver Law"); and

WHEREAS, on July 26, 2006, Manhattan Borough President Stringer, Council Member Mendez and Community Board 3 District Manager Stetzer wrote to the Manhattan Borough Commissioner requesting reconsideration of its approval of the revised plans; and

WHEREAS, although the Manhattan Borough Commissioner responded on August 25, 2006 and issued a second Intent to Revoke Approval(s) and Permit(s) and a Partial Order to Stop Work Immediately, he maintained that the amended plans did not violate the Sliver Law; and

WHEREAS, on September 18, Manhattan Borough President Stringer, Council Member Mendez and Community Board 3 District Manager Stetzer requested that the Manhattan Borough Commissioner reconsider his application of the Sliver Law in light of Z.R. §23-62, which does not include penthouses among "permitted obstructions"; and

WHEREAS, on February 15, 2007 the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

PROVISIONS OF THE ZONING RESOLUTION AND BUILDING CODE RELEVANT TO THIS APPEAL

WHEREAS, the Sliver Law (comprised of Z.R. §§ 23-691 and 692, enacted in 1983, established limited height districts and regulates the height of new buildings and

enlargements of existing buildings that have street walls of 45 feet or less in width), reads, in pertinent part:

"Subject to applicable front height and setback regulations, or any height limitations of the underlying district, no such new or *enlarged building* shall exceed a height equal to the width of the abutting *street* on which it fronts or 100 feet, whichever is less. When the *street walls* of a new *building* or *enlargement* front on two *streets* on a *corner lot*, the height of the *building* shall not exceed the width of the abutting *wide street* or 100 feet, whichever is less.

"However, if the *street wall* of the new or *enlarged building* abuts a contiguous and fully attached existing *building street wall* that exceeds the height permitted above, such new or enlarged building street wall may reach the height of:

- (a) the tallest of such abutting building walls if it fronts on a *wide street*;
- (b) the lowest of such abutting building walls if it fronts on a *narrow street* provided that:
 - (1) there shall be no penetration of the *sky exposure plane* required by the underlying districts for any portion of such new or *enlarged buildings*; and
 - (2) such height does not exceed any height limitation of the underlying district"; and

WHEREAS, Z.R. § 23-62 (titled "Permitted Obstructions"), relied upon by Appellant, reads, in pertinent part:

"In all *Residence Districts*, except as provided in Section 23-621 (Permitted obstructions in certain districts), the following shall not be considered obstructions and may thus penetrate a maximum height limit or *front* or *rear sky exposure planes* set forth in Sections 23-63 (Maximum Height or Walls and Required Setbacks), 23-64 (Alternate Front Setbacks) or 23-69 (Special Height Limitations):

- (a) Balconies, unenclosed subject to the provisions of Section 23-13;
- (b) Chimneys or flues, with a total width not exceeding 10 percent of the *aggregate width of street walls* of a *building* at any level;
- (c) Dormers having an *aggregate width of street walls* equal to not more than 50 percent of the width of the *street wall* of a *detached* or *semi-detached single- or two-family residence*;
- (d) Elevators or stair bulkhead, roof water tanks or cooling towers (including enclosures), each having an *aggregate width of street walls* equal to not more than 30 feet. However, the product, in square feet, of the *aggregate width of street walls* of such obstructions facing each *street* frontage, times their average height, in feet, shall not exceed a figure equal to four times the width, in feet, of the *street wall* of the *building* facing

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- such frontage;
 - (e) Flagpoles or aerials;
 - (f) Parapet walls, not more than four feet high;
 - (g) Wire, chain link or other transparent fences.
- Building columns having an aggregate width equal to not more than 20 percent of the *aggregate width of street walls* of a building are a permitted obstruction, to a depth not exceeding 12 inches, in an *initial setback distance*, optional front open area, or any other required setback distance or open area set forth in Sections 23-63, 23-64, or 23-65 (Tower Regulations)”; and

WHEREAS, § 27-306(c) of the Building Code, relied upon by DOB in interpreting Z.R. § 23-692, reads, in pertinent part:

“In applying the provisions of this code governing height limits, the following appurtenant structures shall not be included in the height of the building unless the aggregate area of all such structures exceeds thirty-three and one-third percent of the area of the roof of the building upon which they are erected:

* * *

- (c) Roof structures, bulkheads, and penthouses”; and

DISCUSSION

A. The Basis of the Appeal – The Plain Meaning of the Zoning Resolution

WHEREAS, Appellant, citing Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 107 (1997), argues that the plain language of the Sliver Law is unambiguous, and that under applicable New York decisional law on statutory interpretation, DOB may not go outside the zoning text, as it has by referring to the Building Code, to interpret the Sliver Law’s unambiguous language; and

WHEREAS, the Sliver Law regulates new buildings or enlargements of existing buildings such that “no such new or *enlarged building* shall exceed a height equal to the width of the abutting *street* on which it fronts or 100 feet, whichever is less”; and

WHEREAS, it is undisputed that the width of East 5th Street is sixty (60) feet; and

WHEREAS, Appellant argues that the height of the Building is therefore limited to sixty (60) feet; and

WHEREAS, it is also undisputed that the height of the Building, *including the penthouse*, exceeds sixty (60) feet; and

WHEREAS, Appellant therefore concludes that DOB erred in permitting the enlargement of the Building; and

WHEREAS, Appellant notes that the term “height” (although not defined) appears in the Zoning Resolution’s chapter titled “Bulk Regulations for Residential Buildings in Residential Districts” over 200 times; and

WHEREAS, Appellant further cites Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 (1998) for the proposition that, “In construing statutes, it is a well-established rule that resort must be had to the natural

significance of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning”; and

WHEREAS, Appellant concludes that DOB acted unreasonably in looking beyond the plain language of the Zoning Resolution to the language of the Building Code in order to construe the meaning of the Sliver Law; and

WHEREAS, Appellant also argues that even if DOB were justified in looking beyond the Zoning Resolution to determine the height of the building, DOB’s application of the Penthouse Rule (described below) is arbitrary and capricious when viewed in the context of the September 24, 2003 report of the DOB Professional Technical Forum, which indicates that there is no exception for penthouses under the Sliver Law and the position adopted by DOB in BSA Cal. No. 15-05-A, in which DOB objected to a new building application on the basis that the “Proposed Penthouse penetrates special height limitation of 60’ (width of abutting street) contrary to Resolution 23-692”; and

WHEREAS, finally, Appellant states that DOB’s interpretation of the Sliver Law is the equivalent of an act of legislation, which requires action by the City Planning Commission and the City Council, or the equivalent of the grant of a variance, which requires action by the Board, and as such is outside DOB’s authority; and

B. The Department of City Planning’s Submission

WHEREAS, the Department of City Planning (“DCP”), although not a party, submitted a letter to the Board in connection with the instant appeal; and

WHEREAS, DCP states that zoning rules have been frequently applied without the need for a special definition of “height”; and

WHEREAS, DCP, referring to the definition of “building” as “any structure which (a) is permanently affixed to the land; (b) has one or more floors and a roof; and (c) is bounded by either open area or the *lot lines* of a *zoning lot*,” states that the “height of a building” is therefore “the height measured up to the roof level, exclusive of permitted obstructions”; and

WHEREAS, DCP notes that “building height” and “*building* height” are used 73 times in the Zoning Resolution without being defined; and

WHEREAS, DCP further observes that the terms “building height” and “*building* height” are customarily applied to govern permissible heights of Quality Housing buildings and buildings in contextual districts, limited height districts, special purpose districts, and on the waterfront; and

WHEREAS, DCP concludes that in a case “where the abutting street is a narrow street (60 feet) and the provisions of the third paragraph of Z.R. § 23-692 [which allows the street wall of the building to reach the height of an adjacent building] do not apply, the maximum permitted height of the “sliver” building, or enlargement thereof, is 60 feet, as measured from the curb level to the highest roof level, and only the items listed in the Zoning Resolution as permitted

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obstructions may exceed that height”; and

C. DOB’s Analysis of the Zoning Resolution and its Interpretive Authority

WHEREAS, DOB argues that “the Zoning Resolution rarely contains plain language,” and that therefore DOB must attempt to construe the Zoning Resolution in accordance with the intent of the City Planning Commission in adopting the Sliver Law; and

WHEREAS, DOB argues that because “height” is not defined within the Zoning Resolution, it is within DOB’s authority to construe the meaning of “height” in interpreting the Zoning Resolution in a way that gives effect to the legislative intent of its drafters; and

WHEREAS, DOB contends that the legislative intent in enacting the Sliver Law was not to restrict density but was aesthetic in nature; and

WHEREAS, DOB reiterates the rationale of the Final Determination that it is permissible for a penthouse to exceed the height limitations of Z.R. § 23-692 if it complies with the Penthouse Rule, particularly when the penthouse is not visible from the street and the penthouse is set back; and

WHEREAS, pursuant to the Penthouse Rule, codified in Building Code § 27-306(c), DOB does not include a penthouse in the calculation of the height of a building unless its area exceeds one-third of the area of the roof; and

WHEREAS, DOB also asserts that the intent of the Sliver Law is to regulate the fronts of buildings and to encourage contextual buildings, and not to prevent building owners from constructing penthouses; and

WHEREAS, DOB further contends that it is within DOB’s authority to turn to the Building Code in an effort to define “height”; and

WHEREAS, DOB also argues that its interpretation of “height” is similarly consistent with the Multiple Dwelling Law; and

WHEREAS, DOB therefore concludes that it properly excluded the penthouse in its calculation of the height of the Building; and

D. Owner’s Interpretations of Applicable Sections of the Zoning Resolution and the Board’s Authority

1. The Penthouse is not Part of the Building and Therefore Should not be Included in Measuring the Height of the Building

WHEREAS, the Building’s Owner, through counsel, contends that while the words of the Zoning Resolution are generally “plain English words,” that within the framework of the Zoning Resolution as a whole they are ambiguous and require interpretation to give effect to the legislative intent of the City Planning Commission; and

WHEREAS, the Owner notes that “penthouse” is not defined within the Zoning Resolution; and

WHEREAS, Owner notes also that Z.R. § 23-691 regulates “buildings or other structures,” and that Z.R. § 23-692 regulates only the height of “buildings”; and

WHEREAS, Owner also observes that Building Code

§ 27-232 defines a penthouse as “an enclosed structure on or above the roof of any part of a building” and that therefore a penthouse must be distinct from the building itself; and

WHEREAS, based on the foregoing, Owner contends that penthouses are not part of the buildings to which they are attached, but are rather “other structures,” and are therefore not regulated under Z.R. § 23-692, the applicable section of the Sliver Law, which regulates “buildings” only; and

WHEREAS, Owner further argues that the Zoning Resolution acknowledges that such “other structures” are different from buildings by describing under what circumstances penthouses are deemed to contain floor area; and

WHEREAS, Owner concludes that because a penthouse is an “other structure” distinct from a building, that the height of a penthouse cannot be included in the height of a building in applying Z.R. § 23-692, and that therefore the Building does not violate the Sliver Law; and

2. Equitable and Other Relief

WHEREAS, Owner, relying on the Board’s resolution in BSA Cal. No. 152-97-A (the “Travelers Umbrella”), also argues that if the Board does grant the instant appeal, it has the jurisdiction to fashion equitable relief so as to make its rule prospective only and not to require the Owner either to remove the existing penthouse or to apply for relief in the form of a variance from the Board; and

WHEREAS, alternatively, relying on BSA Cal. Nos. 330-03-A and 132-03-A, Owner argues that the Board should, within the context of the instant appeal, pursuant to City Charter § 666(7) grant the equivalent of a variance to permit the penthouse that has been constructed; and

E. Appellant’s Response to DOB’s and Owner’s Arguments

WHEREAS, Appellant argues that even if the language of the Sliver Law were deemed to be ambiguous, DOB exceeded its authority by going beyond the text of the Zoning Resolution to interpret Sliver Law such that the penthouse should not be included in the “height of the building,” and that the Zoning Resolution itself sets standards for measuring building height; and

WHEREAS, Appellant argues that assuming, *arguendo*, that the Sliver Law were ambiguous, DOB should have relied on Z.R. § 23-62 (“Permitted Obstructions”), which lists permitted obstructions that “may thus penetrate a maximum height limit” and which does *not* list penthouses among such permitted obstructions; and

WHEREAS, Appellant concludes that the penthouse must be included in the “height of the building,” and that the Building therefore violates the provisions of the Sliver Law; and

WHEREAS, furthermore, Appellant argues that where the language of the Zoning Resolution is unambiguous, DOB’s past practice in applying the “Penthouse Rule” is not relevant and should carry no weight in the Board’s resolution of the instant appeal, and that even if it were

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permissible for DOB to have created the Penthouse Rule for the purpose of interpreting Z.R. § 23-692, DOB has not applied the Penthouse Rule consistently and has applied the Penthouse Rule inconsistently within the context of the events that form the basis of the instant appeal; and

WHEREAS, Appellant observes that because the definition of a building's "floor area" in Z.R. § 12-10 specifically includes "floor space used in penthouses," Owner's argument that a penthouse is an "other structure" and not part of a building is incorrect; and

WHEREAS, Appellant further observes that the Building Code, relied upon by DOB in the Penthouse Rule, also defines a building so as to include appurtenant structures such as penthouses; and

WHEREAS, Appellant observes that with respect to Owner's request that the Board exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that does "substantial justice" to Owner, the proper procedure for such relief is an application for a variance pursuant to Z.R. § 72-21; and

WHEREAS, Appellant further notes that Owner's argument that it justifiably relied on DOB's policy in applying the Penthouse Rule to interpret the Sliver Law is weak because DOB's interpretations of the Sliver Law have been inconsistent, even as applied to the events giving rise to the instant appeal, and therefore could not have created any justifiable expectation about the application of the Sliver Law to the Building; and

WHEREAS, with respect to Owner's request that the Board exercise its alleged equitable powers to protect Owner from having to demolish the penthouse it constructed atop the Building, Appellant notes that it has pursued the instant appeal at considerable expense, and that it would be unfair to Appellant for the Board to issue a merely advisory opinion, rather than to grant appellant the specific relief to which it is entitled; and

CONCLUSION

WHEREAS, the Board agrees with Appellant and DCP that the language of Z.R. § 23-692 is unambiguous with respect to the meaning of "height of the building" and its limitation to the width of the abutting street; and

WHEREAS, the Board further agrees that merely because "height" is not defined in the Zoning Resolution does not mean that the word is ambiguous, but rather that "height," which, as both Appellant and DCP have observed, is used repeatedly throughout the Zoning Resolution, has a commonly accepted meaning and does not require definition in the Zoning Resolution; and

WHEREAS, the Board is unpersuaded by DOB's and Owner's attempts to create ambiguity in the Zoning Resolution where none exists; and

WHEREAS, specifically, the distinction between the use of "building or other structure" in Z.R. § 23-691 and "building" in Z.R. § 23-692 does not render ambiguous the meaning of "building" or "building height" or justify turning to the Building Code to clarify an ambiguity that does not

exist; and

WHEREAS, the Board agrees with DCP that the definition of "building" as "any structure which (a) is permanently affixed to the land; (b) has one or more floors and a roof; and (c) is bounded by either open area or the *lot lines* of a zoning lot," reinforces the plain meaning of height as measured to the highest roof level, excluding any specifically designated "permitted obstructions"; and

WHEREAS, even if the Board credited DOB's argument that the language of the Sliver Law is ambiguous, DOB has not established that the text was not intended to restrict the overall heights of buildings or to give DOB the authority to establish its own exemptions to the requirements of the Sliver Law, such as DOB's Penthouse Rule; and

WHEREAS, the Board finds that the fact that the Sliver Law establishes exceptions to the general height limitation by permitting the street wall of the new or enlarged building to match the street wall of an adjacent building in certain circumstances argues against DOB's position that CPC intended for DOB to create the exceptions to the Sliver Law; and

WHEREAS, as to DOB's argument, the Board notes that DOB provides no support from the CPC Report for its argument that the Sliver Law was intended to be limited to serving an aesthetic purpose and to regulating front walls only, and therefore the Board is unconvinced that the Sliver Law should be so narrowly read; and

WHEREAS, the Board agrees with Appellant that the Building Code cannot override the Zoning Resolution and the limitations it establishes on the heights of buildings; and

WHEREAS, the Board agrees with Appellant that a penthouse is part of a building for the purpose of applying the Sliver Law, and that therefore the penthouse must be included in measuring the height of the Building; and

WHEREAS, the Board further agrees that, in the absence of action by the Board or by the City Planning Commission and City Council, DOB has exceeded its authority both in applying the Penthouse Rule and in limiting its application to instances in which the penthouse is set back and not visible from the street, such action being equivalent to a legislative act; and

WHEREAS, as to Owner's arguments with respect to equitable considerations, the Board disagrees that any hardship that may be imposed on the Owner is relevant to its disposition of the instant appeal; and

WHEREAS, with respect to Owner's argument that if the Board grants the appeal it should exercise equitable powers so that its determination only applies prospectively and would not apply to the Building, the Board does not have the authority simultaneously to determine that the building permits for the expansion of the Building were issued unlawfully and to permit DOB to ignore that fundamental fact; and

WHEREAS, furthermore, as an administrative body, the Board does not have the equitable powers of a court to address any alleged unfairness to the Owner that may result

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from its decision in the instant appeal; and

WHEREAS, the Board rejects Owner's argument that the Board should exercise its jurisdiction under § 666(7) of the City Charter to create a variance to permit the penthouse addition to the Building to remain despite its noncompliance with zoning; and

WHEREAS, the proper procedure to request such relief from zoning is a variance application in which, after public notice and hearing, the Board could grant such variance pursuant to Z.R. § 72-01(b) and other applicable provisions of Article VII, Chapter 2 of the Zoning Resolution, which define the procedures and standards pursuant to which the Board can vary the Zoning Resolution; and

WHEREAS, the Board will not act on Owner's suggestion that it could fashion relief for Owner from its decision in the instant appeal in the absence of a demonstration on the record that Owner can meet the five findings required for a variance pursuant to Z.R. § 72-21; and

WHEREAS, further with respect to the Board's authority to vary the Zoning Resolution for the Building in the instant appeal, the Board disagrees that the prior Board resolutions cited by Owner are applicable: in BSA Cal. No. 330-03-A the Board required a demonstration of the required statutory findings under the MDL and furthermore limited the applicability of its resolution of that appeal to its specific and unique facts, and BSA Cal. No. 132-03-A was denied, so that the language relied upon by Owner is essentially equivalent to *dicta* and has no precedential value; and

WHEREAS, finally, with respect to the "Travelers Umbrella" case (BSA Cal. No. 152-97-A), the Board agrees with Appellant that the instant appeal is clearly distinguishable in that DOB's policy with respect to the sign at issue had been formalized in guidance documents whereas, in the instant appeal, DOB's standards were never formalized or uniformly applied even to the facts giving rise to the instant appeal; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated February 15, 2007, determining that the Building's expansion complies with the Sliver Law, is hereby granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District.

PREMISES AFFECTED – 41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough

of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated April 13, 2007 by the Queens Borough Commissioner of the NYC Department of Buildings ("DOB") (the "Final Determination") addressed to counsel for 4175 Building Corp. ("4175 BC"), the owner of the Premises, with respect to New Building Application Nos. 402006878 and 402006887; and

WHEREAS, the Final Determination states, in pertinent part:

"In response to your letter dated March 29, 2007 regarding objection number 2 and 3 dated September 12, 2006, relative to the subject applications. You are advised that I modify said objections and condense it into a single denial, which stated as follows:

'Proposed portion of building, which exceeds 35 feet or more than three stories above the level of a side yard, is contrary to section Z.R. 24-551 which regulates side setbacks'.

The reason for the foregoing is that section Z.R. 24-551 is applicable in lieu of Z.R. 23-661, since both buildings contain community facility uses.

The foregoing denial supersedes the above mentioned objections issued by Plan Examiner Kai-Ki Wong. This response is my final determination" and

WHEREAS, a public hearing was held on this appeal on June 17, 2007, after due notice by publication in *The City Record*, with continued hearings on July 24, 2007 and August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, DOB and 4175 BC have been represented by counsel throughout this Appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns two of three 4-story buildings constructed on one zoning lot in an R5 zoning district, each of which contains a community facility use on the first floor and in the cellar, with residential use on the second, third and fourth floors; and

WHEREAS, the two buildings at issue are semi-detached, and share party walls with the building at 41-32 75th Street (which is located between them), and each has a side yard of 8' – 0"; and

WHEREAS, on October 5, 2004 DOB issued objections which stated, in pertinent part:

"Required side and rear setback from the yard lines above 33' – 0" as per 23-661, Z.R. for R5 zone"; and

WHEREAS, based on the October 5, 2004 objection, the

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plans were revised and subsequently approved on November 16, 2004; and

WHEREAS, after construction of the buildings, DOB conducted a post-approval audit, and the Queens Borough Deputy Commissioner issued a letter of intent to revoke the approvals, based on four new objections dated September 12, 2006; and

WHEREAS, the September 12, 2006 objections read, in pertinent part:

2. The subject building is contained portion of a community facility use and, that building only qualified as “any building” not a residential building as per definition of section 12-10 Z.R. therefore, the bulk regulation of Article II and chapter 4 is applied for the building partially used as community facility as per section 24-01 Z.R.
3. The section 24-551 Z.R. shall comply and limited building in R5, no portion of any building that is more than 35 feet or more than three stories above the level of a side yard; and

WHEREAS, at a subsequent meeting, objections 1 and 4 dated September 12, 2006 were deemed complied with; and

WHEREAS, a written appeal was made to the DOB Commissioner’s Executive Engineer with respect to objections 2 and 3; and

WHEREAS, the Executive Engineer denied the appeal on December 15, 2006; and

WHEREAS, on April 13, 2007, the Queens Borough Commissioner issued his final determination, cited above; and

WHEREAS, the instant appeal was filed with the Board on April 20, 2007; and

WHEREAS, new plans were subsequently filed in compliance with objections 2 and 3 of September 12, 2006 in connection with the issuance of a Temporary Certificate of Occupancy for 41-32 75th Street; and

WHEREAS, at hearing on June 19, 2007, the Board advised the Appellant that the new plans had eliminated the objections on which the appeal was based, and that the appeal would be dismissed; and

WHEREAS, Appellant subsequently withdrew the amended plans for 41-30 and 41-34 75th Street, and the Board permitted the appeal to continue; and

WHEREAS, however, at hearing on August 21, 2007, Appellant, through its counsel, requested permission to amend the appeal to include arguments on vested rights and/or detrimental reliance on the November 16, 2004 approvals; and

WHEREAS, at the August 21, 2007 hearing the Board declined to grant leave to amend the appeal to include the additional claim was; and

WHEREAS, the sole issue in the appeal is whether Z.R. § 24-551 applies to the Buildings in their entirety, as determined by DOB, or whether, as Appellant argues, Z.R. § 24-551 applies to the community facility portions of the Buildings and Z.R. § 23-661 applies to the residential portions of the Buildings; and

RELEVANT PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the first sentence of Z.R. § 24-01 (“Applicability of this Chapter,” referring to Article II, Chapter 4, “Bulk Regulations for Community Facility Buildings in Residence Districts”) provides that “the *bulk* regulations of this chapter [4] apply to any *community facility building* or any *building* used partly for a *community facility use* on any *zoning lot* located in any *Residence District* in which such *building* is permitted”; and

WHEREAS, Z.R. § 24-01 further states that, “As used in this Chapter, the term ‘any *building*’ shall therefore not include a *residential building*, the *bulk* regulations for which are set forth in Article II, Chapter 3”; and

WHEREAS, Z.R. § 23-01 (“Applicability of this Chapter,” referring to Article II, Chapter 3, “Bulk Regulations for Residential Buildings in Residence Districts”) states, “As used in this Chapter [3], the term ‘any *building*’ shall therefore not include a *community facility building* or a *building* used partly for *community facility uses*, the *bulk* regulations for which are set forth in Article II, Chapter 4”; and

WHEREAS, Z.R. § 24-551, found in Article II, Chapter 4 of the Zoning Resolution (titled “Bulk Regulations for Community Facility Buildings in Residence Districts”) provides that in an R5 district, “no portion of any *building* that is more than 35 feet or more than three *stories* above the level of a *side yard*, whichever is lower, shall be nearer to a *side lot line* bounding such *yard* than a distance equal to one-half the height above yard level of such portion of the *building*”; and

WHEREAS, Z.R. § 23-661, found in Article II, Chapter 3 of the Zoning Resolution (titled “Bulk Regulations for Residential Buildings in Residence Districts”) provides that, “In an R5 District, except R5A and R5D Districts, any portion of a *residential building* bounding a *side yard* or a *rear yard* which is more than 33 feet above the level of the *base plane* shall be set back from such *side yard line* or such *rear yard line* for a distance equal to one-half the height of that portion of the *residential building* which is higher than 33 feet above the level of the *base plane*”; and

WHEREAS, the two buildings at issue in the instant appeal are mixed-use, with community facility uses in the cellars and on the first floors, with residential use on the second through fourth floors; and

WHEREAS, DOB argues that Article II, Chapter 4 (Z.R. § 24-551) of the Zoning Resolution governs mixed-use buildings in residence districts when part of the building is used for community facility uses; and

WHEREAS, appellant contends that Article II, Chapter 4 (Z.R. § 24-551) applies only to the community facility portion of such buildings and that Article II, Chapter 3 (Z.R. § 23-661) applies to the residential portion of such buildings; and

WHEREAS, the Buildings would be compliant with zoning regulations if Appellant’s interpretation were correct, but are not in compliance with Z.R. § 24-551 if that provision is applied to the Buildings in their entirety; and

DISCUSSION

A. Appellant’s Analysis of the Zoning Resolution

WHEREAS, as noted above, Appellant argues that the residential bulk regulation of Article II, Chapter 3 should apply to the residential portion of the buildings, and that the

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community facility bulk regulations of Article II, Chapter 4 should apply to the community facility portion of the buildings; and

WHEREAS, Appellant points to no language in the Zoning Resolution that either a) contradicts DOB's application of Z.R. § 24-551 to the buildings in their entirety, or b) unambiguously indicates an intention on the part of the drafters of the Zoning Resolution to apply different bulk regulations to different parts of the same building; and

WHEREAS, in support of the proposition that a building that contains both community facility and residential uses should not be deemed subject to the requirements of Z.R. § 24-551, Appellant cites Z.R. § 12-10, which defines "community facility building" as "a *building* used only for a *community facility use*"; and

WHEREAS, Appellant concludes that Article II, Chapter 4 is applicable only to the part of the Buildings used for community facility use, and that Article II, Chapter 3 is applied to the residential part of the Buildings; and

WHEREAS, however, Z.R. §§ 23-01 and 24-01 both explicitly contemplate that a building used partly for residential and partly for community facility uses should in its entirety be subject to the requirements of Article II, Chapter 4 (Z.R. § 24-551); and

WHEREAS, Appellant further cites Z.R. § 12-10's definition of a residence as "a building or part of a building containing dwelling units" in support of its interpretation of Z.R. § 24-10; and

WHEREAS, the term "residence" appears nowhere in the relevant language of Z.R. §§ 24-10 and 23-10; and

WHEREAS, Appellant further points to potential instances in which, assuming DOB's argument set forth below that "the use of any building used partly for community facility uses makes the bulk regulations of Article II, Chapter 4 applicable in its entirety to the entire building," the "more generous" provisions of Article II, Chapter 4 would be applied to mixed community facility/residential buildings and the less generous provisions of Article II, Chapter 3 would be applied to residential buildings in R5 zoning districts; and

WHEREAS, Appellant posits that such application of Article II, Chapter 4 to mixed use community facility/residential buildings "would create chaos in regard to requirements for lot sizes[,] lot coverage, front yards, rear yards, [and] rear yard equivalents"; and

B. DOB's Interpretation of Applicable Sections of the Zoning Resolution

WHEREAS, DOB observes that Z.R. § 24-01 explicitly provides that the bulk regulations of Article II, Chapter 4 apply to "any *community facility* or any *building* used partly for *community facility use* on any *zoning lot* in any *Residence District* in which such *building* is permitted"; and

WHEREAS, DOB further argues that the next sentence of Z.R. § 24-01, which provides that, "As used in this Chapter, the term 'any *building*' shall therefore not include a *residential building*, the *bulk* regulations for which are set forth in Article II, Chapter 3," clarifies, consistent with DOB's interpretation of the Zoning Resolution, that where

the bulk regulations of Article II, Chapter 3, apply, the bulk regulations of Article II, Chapter 4 do not apply; and

WHEREAS, DOB concludes that Appellant's interpretation that the bulk regulations of Article II, Chapter 3 should apply to the residential portion of a mixed-use community facility and residential building and the bulk regulations of Article II, Chapter 4 apply to the community facility portion contradicts the plain language of Z.R. § 24-01; and

WHEREAS, DOB further observes that in Article II, Chapter 4, specific sections refer back to the regulations of Article II, Chapter 3, and that if Appellant's argument that the bulk regulations of Article II, Chapter 3 always applied to the residential portion of a mixed-use residential and community facility building, then these references would be mere surplusage; and

APPELLANT'S REQUEST TO AMEND THE APPEAL

WHEREAS, at the hearing on August 21, 2007, counsel for 4175 BC requested leave to amend the appeal to include a claim with respect to vested rights/detrimental reliance on the interpretation of the Zoning Resolution by a DOB examiner; and

WHEREAS, based on the explanation offered by counsel for 4175 BC at hearing the Board exercised its discretion and declined to grant leave to amend the appeal; and

WHEREAS, the only issue in this appeal is whether DOB correctly required compliance with Z.R. § 24-551; and

WHEREAS, a successful vested rights claim, whether under the Zoning Resolution or under a common-law theory of vested rights, requires the work at the Premises upon which the claim is based to have been done under a valid building permit; and

WHEREAS, if DOB correctly required compliance with Z.R. § 24-551, then the permit under which the buildings at the Premises were constructed could not have been validly issued; and

WHEREAS, the Board advised counsel for 4175 BC that he could seek to assert the new theory in a new appeal, but that in the interest of reaching a disposition of this appeal he would not be permitted to amend the appeal at the last minute; and

WHEREAS, the instant resolution does not address the issue of vested rights or of detrimental reliance; and

CONCLUSION

WHEREAS, the Board finds nothing in the language of the Zoning Resolution indicates the intention to apply different bulk regulations to the residential and community facility portions of a mixed-use residential/community facility building in an R5 zoning district; and

WHEREAS, the Board finds the language of Z.R. §§ 24-01 and 23-01 to be unambiguous in requiring the application of Article II, Chapter 4 (Z.R. § 24-551) to mixed-use community facility/residential buildings in R5 zoning districts; and

WHEREAS, the Board finds Appellant's attempts to cast doubt on the plain language of Z.R. §§ 24-01 and 23-01 to be unconvincing; and

WHEREAS, the issue in the instant appeal is limited to whether the bulk regulations of Article II, Chapter 4 should

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apply to the Buildings as DOB argues, or whether the bulk regulations of Article II, Chapter 4 should apply to the residential portions and the bulk regulations of Article II, Chapter 3 should apply to the community facility portions of the Buildings as Appellant argues; and

WHEREAS, the Board also finds that Appellant's argument that adopting DOB's interpretation will lead to a series of unintended consequences with respect to regulation of lot size, lot coverage, front yards, rear yards, and rear yard equivalents is not relevant to the issue before the Board in the instant appeal; and

WHEREAS, in the absence of ambiguity of the plain language of the zoning text, the Board declines to reinterpret the Zoning Resolution to avoid the series of entirely speculative harms that Appellant posits; and

WHEREAS, the Board has determined that because the November 16, 2004 approvals were not in compliance with the Zoning Resolution, as explained above, no vested rights would have been created by such approvals; and

WHEREAS, although the Board advised the Appellant at hearing that it could seek a determination on these issues in a separate appeal, the Board reaffirms its decision not to grant Appellant leave to amend the instant appeal to include arguments that the Board deems both nonmeritorious and untimely raised; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated April 13, 2007, determining that the requirements of Z.R. § 24-551 apply to the Buildings, is hereby denied.

Adopted by the Board of Standards and Appeals, September 11, 2007.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 10 A.M., for continued hearing.

73-07-A

APPLICANT– Fire Department of The City of New York
OWNER – L. W. Equity Associates Incorporated

LESSEE – Fabco Shoe Store

SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.

PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

For Opposition: Otis Allen.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 10 A.M., for continued hearing.

138-07-A

APPLICANT – New York City Department of Buildings.

OWNER: 614 NYC Partners, Incorporated

SUBJECT – Application May 24, 2007 – Appeal seeking to revoke Certificate of Occupancy No. 104114487 that allowed the conversion of single room occupancy units (SRO) to Class A apartments without obtaining a Certificate of No Harassment from NYC Housing Preservation and Development (HPD). R8 Zoning District.

PREMISES AFFECTED – 614 West 138th Street, West 138th Street, east of Riverside Drive and west of Broadway, Block 2086, Lot 141, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Opposition: Mark E. Klein.

For Administration: John Beeme.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for decision, hearing closed.

154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57th Apartments, Inc., owner.

SUBJECT – Application June 11, 2007 – Appeal seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under Section 23-692(a) and is not listed as a permitted obstruction in Section 23-62. R10 Zoning district.

PREMISES AFFECTED – 441 East 57th Street, north side of east 57th Street, between 1st Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCE –

For Applicant: Caroline G. Harris and Henry Radev.

For Opposition: Stuart Beckerman and Stephen P. Krammer

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of Department of Buildings.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 11, 2007

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

161-06-BZ

CEQR #07-BSA-006X

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.

PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Bronx Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application Nos. 201050469 and 201050478, read in pertinent part:

“Proposed Residential Zoning Use Group 2 in a C8-2 Zoning District is not permitted as-of-right and therefore, is contrary to the stated section (32-10) of the New York City Zoning Resolution, and requires a referral to the Board of Standards and Appeals (BSA);” and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C8-2 zoning district, the proposed construction of two eight-story mixed-use residential/commercial/community facility buildings, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 17, 2007 after due notice by publication in *The City Record*, with continued hearings on July 10, 2007, August 14, 2007, and August 21, 2007 and then to decision on September 11, 2007; and

WHEREAS, this application is brought on behalf of the Doe Fund (“Doe”), a not-for-profit entity; and

WHEREAS, Community Board 7, Bronx, recommends approval of this application on condition that the single unit size at 3349 Webster Avenue be increased to a minimum of 400 sq. ft. per dwelling unit; the Community Board also recommends that the building be reduced to six stories; and

WHEREAS, the New York City Department of Homeless Services submitted a letter in support of the proposal; and

WHEREAS, Borough President Adolfo Carrion, Jr. submitted a letter in support of the proposal; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the site has a lot area of approximately 19,800 sq. ft., and is on the west side of Webster Avenue, 200 feet south of East Gun Hill Road; and

WHEREAS, the site is currently occupied by a one-story garage building for an automotive repair business, which will be demolished, and a parking lot; and

WHEREAS, the applicant proposes to construct two adjacent eight-story residential buildings - 3349 and 3365 Webster Avenue (“3349 Webster” and “3365 Webster”, respectively); and

WHEREAS, 3349 Webster will include 41,114 sq. ft. of floor area and 84 single-room occupancy units identified as non-profit residences for the elderly (Use Group 2); and

WHEREAS, 3349 Webster will also include accessory community facility space (Use Group 4) and ground floor retail use (Use Group 6); and

WHEREAS, 3365 Webster will include 52,306 sq. ft. of floor area and 56 dwelling units (14 studios, 14 one-bedroom, and 28 two-bedroom apartments) for low-income and formerly homeless families; and

WHEREAS, 3365 Webster will also include accessory community facility space (Use Group 4), ground floor retail (Use Group 6), and 11 parking spaces at the rear of the building; and

WHEREAS, together, the buildings will have 140 units; a total floor area of 96,420 sq. ft. (4.68FAR); a residential floor area of 87,269 sq. ft.; a commercial floor area of 3,669 sq. ft.; a community facility floor area of 1,761 sq. ft.; a street wall height of 70’-6”; and a total height of 80’-3”; and

WHEREAS, the two buildings will also accommodate other tenants eligible for Doe housing programs who are not seniors or families, as space permits; and

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WHEREAS, as to programmatic needs, the applicant represents that the proposed housing program is designed to provide low cost housing for graduates of the Doe Fund work training initiatives who have been successfully employed but who cannot afford market rate housing; and

WHEREAS, the units will be restricted to families and individuals with annual incomes at or below 60 percent of the adjusted medium income established for the New York metropolitan area, many of whom will be formerly homeless and will pay below market rates; and

WHEREAS, 3349 Webster will be reserved for tenants who are 55 years and older and will be limited to one tenant per unit; and

WHEREAS, the applicant represents that Doe worked closely with HPD to design the facility with components of existing facilities with comparable missions; and

WHEREAS, further, the applicant represents that the design includes access to onsite accessory social service programming, which includes training, counseling, and case management; and

WHEREAS, Doe will secure financing from State and City programs including Low Income Tax Credits, Tax Exempt Bond Financing, and New York City Real Estate Tax Abatements; and

WHEREAS, the applicant further represents that the size of the units, including units smaller than 400 sq. ft., follows HPD's Supportive Housing Loan Program guidelines, which reflect an average size for such units as 270 sq. ft., and follows the models set forth by comparable programs in other buildings; and

WHEREAS, Doe follows an established building model with a comparable allocation of residential, commercial, and community facility uses, which has been successful at other locations; and

WHEREAS, the applicant notes that the construction of 140 units at the site requires a certain minimum amount of floor area and efficient floor plates with access to light and air which, in turn, necessitates the requested building envelope; and

WHEREAS, however, since the site is within a C8-2 zoning district, which does not permit residential development as of right, the requested use waiver is required; and

WHEREAS, in addition to the programmatic needs, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the site rests at the foot of a rock outcropping with a height of 50 feet; and (2) the history of uses at the site have resulted in surface and subsurface contamination and the resultant need for remediation; and

WHEREAS, as to the rock outcropping, the applicant has identified premium costs associated with rock removal and foundation work at the site; and

WHEREAS, the applicant represents that the rock condition makes development below grade infeasible and requires that facilities that would normally be provided below grade, such as mechanical space, cannot be provided below grade and must be provided on the first floor, which reduces the amount of first floor commercial space; and

WHEREAS, as to the history of use at the site, as noted the site has been occupied by an automotive repair facility and parking for many years; and

WHEREAS, accordingly, the applicant represents that an environmental analysis revealed that there are underground storage tanks and discharge piping at the site, in addition to other contaminants associated with the historic use of automotive repair and vehicle storage; and

WHEREAS, the applicant represents that these conditions require excavation and removal of underground storage tanks in accordance with applicable regulations; and

WHEREAS, the applicant has documented the premium costs associated with this process; and

WHEREAS, the applicant represents that any development of available floor area at the site would be burdened by these conditions; and

WHEREAS, the applicant notes that the site is one of only approximately seven within the 400-ft. radius which is not developed with at least a two-story building; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, however, during the hearing process, the applicant analyzed an alternative of a six-story development with 100 units and determined that given the requirements of the funding sources, fewer units would be more expensive to operate and would not be financially viable; and

WHEREAS, the applicant also submitted an analysis which reflects that a re-use of the existing one-story garage building is not viable and that constructing a new building for a conforming use would not be viable due to the premium costs associated with the unique conditions of the site, including the rock outcropping and the inability to develop the site below grade; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, as to residential use, the applicant states that the proposed building is located adjacent to an R7-1 zoning district and is adjacent and near to many residential buildings; and

WHEREAS, specifically there is one six-story and one four-story multiple dwelling building directly to the rear of the site on Decatur Avenue and there are at least two other multiple dwelling buildings south of the site on Webster Avenue within the C8-2 zoning district; and

WHEREAS, additionally, the applicant represents that there are a number of residential buildings, including an abandoned residential building across the street from the site; and

WHEREAS, the Board notes that the existing use of automotive use and truck rental is less compatible with adjacent

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residential uses; and

WHEREAS, as to bulk, the applicant represents that the proposed bulk is consistent with the permitted bulk for an as of right Use Group 4 community facility building in the C8-2 zoning district, which would be permitted a maximum 4.8 FAR; and

WHEREAS, specifically, a building with ten stories and a height of 93 feet could be built as of right; and

WHEREAS, the proposed buildings will have eight stories and a height of 80 feet; and

WHEREAS, because the six-story and four-story residential buildings at the rear of the site, with frontage on Decatur Avenue, are situated on top of the rock outcropping with a height of 50 feet, they appear much taller and have a height that is comparable or taller to that of the proposed buildings; and

WHEREAS, the applicant proposes to provide landscaping and an outdoor recreation area at the rear of the site; and

WHEREAS, as to the ground floor commercial use, the applicant notes that the proposed as-of-right commercial use on the first floor fits into the neighborhood character; and

WHEREAS, specifically, the site abuts a residential district with a C1-1 overlay on East Gun Hill Road; and

WHEREAS, as to parking, the applicant asserts that because of the Doe Fund's eligibility requirements that the units be reserved for low-income tenants, substantial car ownership is not anticipated and the 11 proposed parking spaces will be sufficient to serve staff, deliveries, and other service providers; and

WHEREAS, additionally, the applicant notes that the site is well served by public transportation including subway stops at 205th Street (D train), Gun Hill Avenue (2/5 trains), and Moshulu Parkway (4 train); a Metro North stop at Williamsbridge; and buses on Gun Hill Avenue (Nos. 30 and 28) and Webster Avenue (Nos. 55 and 41); and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, Doe requires a minimum number of housing units in order to achieve its programmatic needs and to be eligible for certain funding; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Doe to carry out the stated needs; and

WHEREAS, also, as discussed above, the applicant submitted an analysis of a building with fewer units and determined that it could not be supported financially; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA006X, dated December 18, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within a C8-2 zoning district, the proposed construction of two eight-story mixed-use residential/commercial/community facility buildings, contrary to ZR § 32-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 8, 2007"-(7) sheets; and *on further condition*:

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the parameters of the proposed building shall be: a total floor area of 92,699 sq. ft.; a residential floor area of 87,269 sq. ft.; a commercial floor area of 3,669 sq. ft.; a community facility floor area of 1,761 sq. ft.; a total FAR of 4.68; a street wall height of 70'-6"; and a total height of 80'-3" (without bulkhead);

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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

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plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
September 11, 2007.

262-06-BZ

CEQR #07-BSA-021Q

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B zoning district.

PREMISES AFFECTED – 71-13 60th Lane, between 71st Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 25, 2007, acting on Department of Buildings Application No. 402442031, reads in pertinent part:

- “1. Proposed residential building is contrary to the minimum distance requirements between legally required windows and walls or lot line of Section 23-861 of the Zoning Resolution.
2. Proposed residential building is contrary to the street wall, height, and setback requirements pursuant to 23-633 of the Zoning Resolution.
3. Proposed residential building is contrary to the parking requirements pursuant to 25-23 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6B zoning district, the modification and conversion of an existing four-story manufacturing building to residential use, which does not comply with height, setback, street wall, and parking requirements and is contrary to ZR §§ 23-861, 23-633, and 25-23; and

WHEREAS, a public hearing was held on this application on March 13, 2007, after due notice by publication in the *City Record*, with continued hearings on June 5, 2007, July 17, 2007, and August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site

and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Queens, recommends disapproval of this application, citing concerns about residential density and insufficient parking; and

WHEREAS, the site is located on the east side of 60th Lane, between Myrtle Avenue and 71st Avenue, within an R6B zoning district; and

WHEREAS, the site is long and irregularly-shaped with varying widths; it has a width of approximately 44.97 feet at its narrowest point on the 60th Lane frontage and a width of approximately 128.48 feet at the rear of the site; and

WHEREAS, the site extends to a depth of approximately 308 feet and has a lot area of 27,919 sq. ft.; and

WHEREAS, there is also a narrow portion of the site, occupied by a driveway with a width of 11'-3", running perpendicular to the rear of the site, which provides access to 71st Avenue; and

WHEREAS, the site is occupied by a four-story former factory building, which extends for almost the entire depth of the site and is built to the northern lot line; and

WHEREAS, the applicant proposes to convert the existing building into a 50-unit residential building; the plans include the demolition of a one-story portion at the rear of the building and a four-story portion at the front of the building; and

WHEREAS, the proposal includes the partial demolition (to create emergency vehicle access and room for parking) and reconstruction of the existing building, which results in a total floor area of 54,327 sq. ft. (1.95 FAR); and

WHEREAS, as to street wall, building height, and setback, the existing building height of 60'-2", without setback, is an existing non-complying condition (50 feet is the maximum height permitted in the zoning district and a 15'-0" setback is required at a height of 40 feet); and

WHEREAS, the street wall of 60'-2" will be maintained, but a waiver is also required for its location in relationship to the street, which does not match adjacent street walls; and

WHEREAS, the proposed penthouse at a height of 70 feet will increase the degree of non-compliance as to height; and

WHEREAS, the Board notes that the proposed building will maintain the existing distance between its side windows and the rear walls and lot lines of adjacent lots, but that this creates a new non-compliance due to the introduction of residential occupancy (a minimum distance of 30 feet is required between a legal window and the rear wall or rear lot line of adjacent lots); and

WHEREAS, as to parking, the applicant proposes to provide 24 parking spaces, which meet the minimum width requirement of 8'-6", and one parking space, which has a width of 8'-0"; zoning district regulations require that parking be provided for 50 percent of the 50 dwelling units, which is 25 spaces; and

WHEREAS, the original proposal provided for 55 units

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and 27 parking spaces; and

WHEREAS, the original proposal required the waiver for failure to provide the minimum distance between legally required windows and adjacent walls or lot lines as well as a waiver of the Building Code for failure to meet the requirement that at least eight percent of the building's total perimeter wall length be located at the street frontage; the request for a waiver of the Building Code was brought under BSA Cal. No. 59-07-A and was subsequently withdrawn; and

WHEREAS, the Board notes that the height and setback waivers are required because of the noted non-complying street wall and the redistribution of the demolished floor area to the top of the building; and

WHEREAS, further, the parking was reduced to below the required amount in order to provide sufficient clearance for emergency vehicles; and

WHEREAS, the applicant provided several iterations of the proposal throughout the hearing process, and revised the plans to reflect the demolition of the narrowest part of the building at the street frontage and to provide for additional frontage above the 60th Lane driveway, which reduced the total amount of perimeter wall and resulted in sufficient frontage to meet the Building Code requirement; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the existing historic building is obsolete and does not comply with zoning district regulations; and (2) the site is irregularly-shaped, with very limited frontage; and

WHEREAS, as to the existing building, the applicant states that the building, built in 1930, is a historic former factory, which was abandoned many years ago; and

WHEREAS, the configuration of the building and the constraints on access to the site are not compatible with the requirements for a modern factory and, further, the use is not permitted under the current zoning; and

WHEREAS, specifically, as to the position of the building on the site, the applicant notes that the front portion of the building is built to the northern lot line and it follows the angle of the lot along its southern side; and

WHEREAS, the applicant notes that the site and building extend in a perpendicular line behind the rear yards of the adjacent properties to the north and south and runs parallel to the properties on the east side; and

WHEREAS, accordingly, the site is flanked by a total of 25 rear yards on its north and south sides; and

WHEREAS, because of these condition, the windows along these the north and south walls do not all meet the 30 ft. required distance between legal windows and adjacent walls or lot lines; and

WHEREAS, the applicant notes that in order to comply with the legal window requirements, the entire front portion of the building and a portion of the rear building would need to be demolished; and

WHEREAS, during the hearing process, the applicant explored the option of demolishing portions of the front

building along the northern lot line to create small courtyards and provide for alternate means of access for light and air, but found these alternatives to be cost-prohibitive; and

WHEREAS, additionally, the applicant found that the structural integrity of the building would be compromised with additional demolition to the existing walls; and

WHEREAS, the Board notes that the height and setback are existing non-compliances; and

WHEREAS, the applicant proposes to increase the degree of non-compliance by adding a penthouse to the rear portion of the building to redistribute a portion of the floor area that is demolished; and

WHEREAS, additionally, in order to meet the Fire Department's requirement for emergency vehicle access at the front of the site, the applicant plans to demolish a portion of the front of the building and to maintain an open space in that area; and

WHEREAS, as noted, this setback of the building creates a new non-compliance as to the required street wall; and

WHEREAS, the applicant represents that due to the configuration of the site and the building and the building's position on the site, it is not feasible to provide all of the required parking spaces; and

WHEREAS, as to the parking requirement, the applicant will provide 24 spaces for 50 dwelling units and requires a waiver of one space; and

WHEREAS, the applicant agreed to demolish the building at the rear to provide additional room for parking; and

WHEREAS, the Board notes that the noted constraints do not support a re-use of the building that would be in compliance with all zoning district regulations; and

WHEREAS, as to the shape of the lot, as noted, the lot is long and narrow with a range of widths from 44.97 feet to 128.48 feet widths; and

WHEREAS, the applicant represents that this is the only such irregularly-shaped lot within a 400 sq. ft. radius of the site; and

WHEREAS, this condition, and the building's position on the site, results in varying distances between the windows on the southern portion of the building and adjacent buildings, some of which provide the required width and others which are insufficient; and

WHEREAS, specifically, the range in distances from legal windows to walls or rear lot lines varies from 14 feet to 40 feet across the southern portion of the site and none of the windows on the northern portion of the site can comply as the building is built on the lot line or to a maximum distance of eight feet from it; and

WHEREAS, the applicant notes that the rear windows and the majority of the windows on the upper floors can comply with the required distance; and

WHEREAS, the configuration of the lot and the building precludes compliance with the required 30 feet between residential windows; and

WHEREAS, the applicant has documented the premium construction costs associated with the demolition and

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reconstruction of the building; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a complying community facility scenario, (2) a complying residential development, and (3) the initial proposal for a 55-unit non-complying residential building; and

WHEREAS, the applicant concluded that complying scenarios would result in a loss, due to the unique conditions of the site; and

WHEREAS, the applicant concluded that the initial proposal would result in a reasonable return, but it required the additional waiver of the Building Code and an increased degree of non-compliance as to the required parking; and

WHEREAS, at hearing, the Board asked the applicant if it was possible to reduce the number of units below the revised proposal's 50; and

WHEREAS, the applicant provided an additional analysis of comparable buildings, which reflects that fewer apartments, with more floor area each, would not provide a reasonable rate of return at this site; and

WHEREAS, further, the applicant represents that a reduced number of apartments cannot generate the income required to offset the incremental costs incurred in addressing the site's physical conditions, specifically, costs associated with the demolition of the building to create an emergency access area and the other required demolition and reconstruction, which are not present on the typical building site; and

WHEREAS, the applicant represents that the addition of the penthouse is required to achieve a reasonable rate of return due to the construction costs associated with the partial demolition and reconstruction of the building and the other unique characteristics noted above; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to the proposed use, the applicant notes that the site and surrounding area were zoned R6B to reflect the residential character of the neighborhood and that the factory use has been abandoned for many years; and

WHEREAS, the applicant notes that the proposed building complies with floor area and FAR regulations; and

WHEREAS, the proposal reflects a floor area of 54,327 sq. ft. (1.95 FAR), which is almost identical to the existing floor area; 55,838 sq. ft. (2.0 FAR) is the maximum permitted;

and

WHEREAS, the existing building has a floor area of 54,453 sq. ft. (1.95 FAR); and

WHEREAS, the Board notes that the applicant has placed the penthouse at the rear of the site, so as to minimize its visibility; and

WHEREAS, as to the creation of a courtyard and the setting back of the front wall, the applicant has improved emergency access to the building; and

WHEREAS, additionally, the demolition of the rear one-story building improves parking conditions and circulation at the site; and

WHEREAS, as to the windows, the Board has required that the windows on the north side of the building, which are on the lot line, remain inoperable and other means of light and ventilation must be provided there, as noted on the plans; and

WHEREAS, this will eliminate the potential for encroachments, such as air conditioners, into adjacent rear yards and maintain privacy with adjacent properties as well as contain noise; and

WHEREAS, the applicant notes that the rear yards of adjacent buildings contribute to the 30'-0" distance from legal windows; and

WHEREAS, the proposed demolition at the front and rear of the building will increase the depth of the front and rear yards and the amount of open space; and

WHEREAS, the Board notes that since the number of dwelling units was reduced from 55 to 50 and because of the demolition at the rear of the building, the applicant is able to provide at least 24 parking spaces, which is only one less than what is required; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby uses and that the changes to the existing building envelope are compatible with the surrounding area; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board notes that the applicant initially stated that a 55-unit building was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site and the existing building that require portions of the building to be demolished and reconstructed, but disagrees that the initial plan was required to make the building feasible; and

WHEREAS, accordingly, the applicant revised the proposal to eliminate the waiver of the Building Code and decreased the degree of non-compliance as to parking by reducing the number of dwelling units, as noted above; and

WHEREAS, as noted, the applicant also increased the frontage and demolished more of the building, in order to

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improve access and to reflect a more appropriate distribution of floor area on the site; and

WHEREAS, through a redesign of the building, the applicant also reduced the number of non-complying windows to 11 and agreed to find alternate means of light and ventilation for remaining ones which are adjacent to residential rear yards; and

WHEREAS, the Board notes that, although the current proposal increases the degree of non-compliance as to height for a portion of the building, it increases the amount of open space and provides greater vehicle access and circulation; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to offset the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA021Q, dated September 26, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an R6B zoning district, the modification and conversion of an existing four-story manufacturing building to residential use, which does not comply with height, setback, street wall, and parking requirements and is contrary to ZR §§ 23-861, 23-633, and 25-23, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked

“Received August 7, 2007” – six (6) sheets and “Received August 30, 2007” – five (5) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: five stories; a total floor area of 54,327 sq. ft. (1.95 FAR); a maximum total height of 70 feet; and a minimum of 25 parking spaces;

THAT required light and air will be approved by DOB; THAT the driveway on 71st Avenue shall be for egress only;

THAT signs shall be posted at the entrance/exits stating that there be no standing or parking in those areas;

THAT all windows on the lot line shall be inoperable and an alternate means of ventilation is required;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district. PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 28, 2006, acting on Department of Buildings Application No. 302211782, reads in pertinent part:

- “1. Proposed floor area contrary to ZR 23-141.
2. Proposed open space ratio contrary to ZR 23-141.

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3. Proposed side yard contrary to ZR 23-461.
4. Proposed rear yard contrary to ZR 23-47.
5. Proposed lot coverage is contrary to ZR 23-141b"; 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, open space ratio, side yards, rear yard, and lot coverage, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 6, 2007, after due notice by publication in *The City Record*, with continued hearings on April 17, 2007, May 15, 2007, June 5, 2007, July 10, 2007, and August 7, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony at hearing and in writing in opposition to the application (the "Opposition"), citing concerns about the proposal not being compatible with neighborhood character and whether it constituted an enlargement; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue P and Quentin Road; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,230.7 sq. ft. (0.45 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,230.7 sq. ft. (0.45 FAR) to 5,022.2 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 75.81 percent to 56.1 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3'-4" and the complying side yard of 9'-6" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 30'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, the applicant proposes to increase the lot coverage from 24.35 percent to 43.9 percent (35 percent is the maximum permitted); and

WHEREAS, at hearing, the Board asked the applicant to address two issues: (1) which portions of the existing home will be retained and (2) neighborhood character; and

WHEREAS, as to the amount of the building that will be retained, the applicant identified the portions of the building which would be retained and noted that DOB had accepted the plans as an Alteration 1 application; and

WHEREAS, the Board asked the applicant specifically to address how certain floor joists would be retained; and

WHEREAS, the applicant responded that some foundation walls will support floor joists and not walls; and

WHEREAS, as to neighborhood character, the Board noted there are several blocks in the vicinity of the home, occupied by a majority of homes with similar features including both front and rear yards with depths of 30'-0" and a raised or terraced front yard; and

WHEREAS, at hearing, the Board asked the applicant to provide information about the depths of front yards in the noted area; and

WHEREAS, initially, the applicant asserted that since a front yard waiver was not being requested (a 15'-0" front yard is the minimum required and an 18'-8" front yard is proposed), the Board did not have authority to review the front yard and thus the context for front yards was not relevant to the Board's findings; and

WHEREAS, the Board agrees that the applicant has 0.05 FAR of available floor area and could build an as of right enlargement into the existing front yard; and

WHEREAS, however, the Board disagrees with the applicant's interpretation of the Board's authority under the special permit and asserts that it may request information about neighborhood character and evaluate a proposal accordingly, regardless of whether a particular waiver is sought; and

WHEREAS, specifically, ZR § 73-622 provides that "the Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located" and "The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area"; and

WHEREAS, ultimately, the applicant submitted block front plans of adjacent homes, which reflect the front yard depths of approximately 30'-0" on both sides of East 28th Street on the subject block except for at the corner lots; and

WHEREAS, the applicant submitted information which reflects that at least two other homes in the vicinity have yards with depths ranging from 23'-0" to 25'-0"; and

WHEREAS, further, the applicant notes, and the Board agrees, that the Opposition incorrectly included the depth of the sidewalk in measurements of nearby front yards; and

WHEREAS, additionally, the Opposition asserted that the applicant erred by identifying the yards with depths of 4'-0" on the corner lots as front yards, rather than side yards; and

WHEREAS, the Board agrees with the applicant that

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the noted yards are front yards with depths of 4'-0"; and

WHEREAS, during the hearing process, the applicant increased the depth of the proposed front yard from 17'-8" at its shallowest point and 19'-0" at its deepest point to 18'-8" and 20'-0", respectively; and

WHEREAS, the Board notes that a majority of the front yard will have a depth of 20'-0"; and

WHEREAS, the applicant proposes to provide a stepped front wall to be compatible with the neighborhood character; and

WHEREAS, at the Board's direction, the applicant also ensured that the roof lines comply with all height and sky exposure plane regulations; and

WHEREAS, the applicant also modified the plans to appropriately indicate which portions of the attic would be considered floor area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, rear yard, and lot coverage, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 25, 2007"-(6) sheets and "July 31, 2007-(6) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 697 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 5,022.2 sq. ft., a total FAR of 1.0, a perimeter wall height of 21'-0", a total height of 35'-0", a front yard of 18'-8", side yards of 3'-4" and 9'-6", a rear yard

of 20'-0", and open space of 2,803.8 sq. ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, September 11, 2007.

291-06-BZ

CEQR #07-BSA-035Q

APPLICANT – Paul Bonfilio, AIA., for 6860 Austin Realty Corp., owner.

SUBJECT – Application November 2, 2006 – Special Permit (§73-44) to allow the reduction in the number of required parking spaces for an enlargement to an existing community facility building (Ambulatory Diagnostic/Treatment Facility). The Premises is located in a C8-2 zoning district. The proposal is contrary to Section 36-21.

PREMISES AFFECTED – 68-60 Austin Street, Austin Street, between Yellowstone Boulevard and 69th Road, Block 3234, Lot 29, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Tarek M. Zeid.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 28, 2006, acting on Department of Buildings Application No. 402307302, reads in pertinent part:

“Provide required amount of parking spaces for new enlargements as per Section 36-21 ZR”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C8-2 zoning district, a reduction in the required number of accessory parking spaces for an existing mixed-use ambulatory diagnostic and treatment/office/retail building from 90 to 58, contrary to ZR

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§ 36-21; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Austin Street, between Yellowstone Boulevard and 69th Road, and has a lot area of 18,000 sq. ft.; and

WHEREAS, the site is currently occupied by a 36,645.2 sq. ft. five-story mixed-use building, with 90 required accessory parking spaces; and

WHEREAS, specifically, the uses at the site are as follows: (1) parking for 85 attended spaces in the cellar level; (2) retail use (Use Group 6), offices (Use Group 6) and ambulatory diagnostic and treatment use (Use Group 4) on the first floor; and (3) offices (Use Group 6) on the second through fifth floors; and

WHEREAS, the Certificate of Occupancy reflects that five parking spaces are required to be located in an outdoor area on the first floor, which is currently being used for outdoor restaurant seating; and

WHEREAS, the applicant represents that there are plans to enlarge the existing building; and

WHEREAS, however, the Board analyzed the request for the parking waiver based on the current approved uses at the site and notes that any enlargement of the building must be approved by DOB for compliance with all zoning district regulations; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C8-2 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for ambulatory diagnostic and treatment facilities and the noted Use Group 6 uses in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, the total number of required parking spaces for all uses at the site is 90; and

WHEREAS, the existing ambulatory diagnostic/treatment facility (Use Group 4) on the first floor occupies 3,960 sq. ft.; at a rate of one required parking space per 400 sq. ft. of floor area, 10 parking spaces are required for this use; and

WHEREAS, the remaining office uses on the first through fifth floors are classified as Use Group 6, in parking category B1 and occupy 21,486.20 sq. ft.; at a rate of one required parking space per 400 sq. ft. of floor area, 54 parking spaces are required for these uses; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 64; as noted, the special permit allows for a 50 percent reduction for qualifying spaces and this would reduce the required parking for these uses to 32 spaces; and

WHEREAS, the applicant represents that an additional 26 parking spaces are required for other uses at the site, which are not eligible for the special permit; these 26 spaces will remain; and

WHEREAS, the applicant proposes to provide a total of 58 parking spaces; and

WHEREAS, the Board notes that the applicant proposes to maintain 90 parking spaces, but only 58 are required to support the existing uses at the building; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic and treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response to the Board's concerns regarding parking, the applicant prepared a parking analysis based upon a transportation survey for the existing uses at the site and studied a 400-ft. radius; and

WHEREAS, the analysis revealed that the parking structure is underutilized and that at the busiest time of the day, there is a demand for only 19 parking spaces; during a peak hour, five cars entered the site; and

WHEREAS, the applicant completed a survey of the surrounding area and found that there are a number of other parking structures with available space; and

WHEREAS, as to public transportation, the applicant represents that the site is well-served by (1) a New York City Transit bus on Austin Street with a bus stop directly in front of the building's entrance, and (2) the 71st Avenue/Continental subway stop is three blocks from the site and provides access to the E/F/G/R trains; and

WHEREAS, based upon this study, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA035Q, dated August 17, 2007; and

WHEREAS, the EAS documents that the project as

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proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit, within a C8-2 zoning district, a reduction in the required number of accessory parking spaces for an existing mixed-use ambulatory diagnostic and treatment/office/retail building from 90 to 58, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received November 2, 2006" -(11) sheets and "Received August 18, 2007"-(1) sheet and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 58 attended parking spaces shall be provided in the accessory parking lot for the existing uses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

325-06-BZ

CEQR #07-BSA-047M

APPLICANT – Eric Palatnik, P.C., for Escava Brothers, owners; Ludlow Fitness, lessee.

SUBJECT – Application December 15, 2006 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment to be located on the second floor of the building under construction. The proposal is contrary to §32-00. C6-1 district.

PREMISES AFFECTED – 100 Delancey Street, between Ludlow Street and Essex Street, Block 410, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 29, 2007, acting on Department of Buildings Application No. 103623571, reads in pertinent part:

"A physical culture establishment is not permitted as of right in a C6-1 (R7 equivalent). This is contrary to ZR 22-00 & ZR 32-10"; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the establishment of a physical culture establishment (PCE) on the second floor of a six-story building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Delancey Street and Ludlow Street; and

WHEREAS, the site is occupied by a six-story commercial building, which will be altered and reconstructed; and

WHEREAS, the PCE will occupy approximately 5,069 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the PCE will offer facilities for classes and instruction in body-building, weight reduction, aerobics, and general physical improvement; and

WHEREAS, the PCE will be operated as Ludlow Fitness; and

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WHEREAS, the proposed hours of operation are: Monday through Friday, 5:30 a.m. to 12:00 a.m. and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA047M, dated June 7, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the establishment of a physical culture establishment on the second floor of a six-story building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 17, 2007"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 21,

2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

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10-07-BZ

APPLICANT – Kenneth Philogene, for George Smirnov, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to construct a two story, one family home on an undersized vacant lot with less than the total required side yards (§23-48) in an R3-1 zoning district.

PREMISES AFFECTED – 118 Graham Boulevard, south side of Graham Boulevard, Block 3768, Lot 23, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated January 8, 2007 and August 10, 2007, acting on Department of Buildings Application No. 500837936, read in pertinent part:

“Proposed one foot side yard for detached one family residential building in R3-1 zoning district is not permitted as of right (ZR 23-49)

Applicant seeks waiver of required off-street parking contrary to ZR 25-22 where in the Borough of Staten Island, two accessory off-street parking spaces shall be provided for each single-family residence”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-1 zoning district within a Lower Density Growth Management Area (LDGMA), the proposed construction of a two-story with attic single-family home that does not provide the required side yard or off-street parking spaces and is contrary to ZR §§ 23-49 and 25-22; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, the site is located on the south side of Graham Boulevard, between Baden Place and Colony Avenue, in an R3-1 zoning district; and

WHEREAS, the site has a width of approximately 20 feet, a depth of approximately 100 feet, and a total lot area of approximately 2,000 sq. ft.; and

WHEREAS, the applicant represents that the site has existed in its current configuration since before December 15, 1961; and

WHEREAS, the applicant represents that a deed of record could not be located for the adjacent lot, Lot 22, but existing records reflect that the subject lot has been owned independently from all adjacent lots since approximately 1927;

and

WHEREAS, the Board notes that DOB has accepted the lot as a pre-existing undersized lot; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with attic single-family home without any off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 1,000 sq. ft. of floor area (0.5 FAR), lot coverage of 29 percent, a wall height of 21'-0", a total height of 28.33 feet, a front yard of 27'-0", and a rear yard of 30'-0"; and

WHEREAS, however, the applicant proposes to provide one side yard with a width of 6'-0" (two side yards with widths of 5'-0" each are the minimum required); and

WHEREAS, additionally, the LDGMA regulations require two off-street parking spaces, which are not permitted to be located in the front yard; and

WHEREAS, the applicant states that side yard and parking relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject lot is narrow; and

WHEREAS, the Board notes that there are approximately 87 vacant lots within a 400-ft. radius of the site, of which 17 (or 19 percent) have widths of 20 feet or less; and

WHEREAS, further the Board notes, that the majority of vacant lots have widths of at least 30 feet and can thus meet the side yard requirement of two side yards with widths of 5'-0" each and still provide a home with a reasonable width of 20 feet; and

WHEREAS, the applicant represents that the requested side yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20 feet cannot feasibly accommodate as of right development; and

WHEREAS, the applicant states that the building would have an exterior width of only ten feet if side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, as to parking, because of the site's narrow width, a driveway cannot be accommodated at the side of the house; and

WHEREAS, accordingly, parking would be required to be either in the cellar or in a garage at grade; and

WHEREAS, additionally, the applicant represents that the site is located within a flood plane and therefore it is infeasible to provide parking below grade; and

WHEREAS, the applicant submitted plans, which reflect the constraints associated with providing two off-street parking spaces on such a narrow site with a modestly sized home, particularly since there is no option to provide parking in the

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side yard or in the front yard; and

WHEREAS, the Board notes that open parking in the front yard is not permitted in the LDGMA; and

WHEREAS, accordingly, since parking cannot be provided at the side or front of the home or feasibly within the garage scenarios, the applicant does not propose to provide any off-street parking; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable side yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations; and

WHEREAS, further, the applicant represents that there is not a context for homes with a width of only 10'-0", such as the as of right building; and

WHEREAS, initially, the applicant proposed to provide one side yard with a width of 5'-0" on its eastern side and one side yard with a width of 1'-0" on its western side; and

WHEREAS, the applicant suggested that since the lot on its western side is comparable in size, it has the same constraints as to width and that a narrower side yard along that lot line would provide the opportunity for that lot to be developed as the mirror image of the subject building, with one complying side yard and one lot line condition; and

WHEREAS, the applicant noted that two semi-detached homes, each with one 5'-0" side yard could be built as of right on a lot with a width of 40'-0" in the zoning district; and

WHEREAS, the Board agrees that the placement of the building so that it provides one complying side yard and one lot line condition is compatible with future development of the adjacent similarly under-sized lot; and

WHEREAS, accordingly, the applicant revised the plans to provide for one side yard with a width of 6'-0" on its eastern side and no side yard on its western side; and

WHEREAS, the proposed lot line wall on the building's western side will not have any fenestration so as to be compatible with any future development of the adjacent site; and

WHEREAS, as to parking, the applicant initially proposed to provide one parking space in the cellar and one parking space in the front yard; and

WHEREAS, however, the applicant determined that due to the site conditions, it would be infeasible to provide a cellar; and

WHEREAS, additionally, as noted above, the Board notes that the LDGMA does not permit parking in the front yard and the applicant would require a waiver to do so; and

WHEREAS, the Board notes that there are a large number of vacant lots in the area and there is ample on-street

parking; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R3-1 zoning district and LDGMA regulations except for one required side yard and required off-street parking; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21 to permit, within an R3-1 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story with attic single-family home that does not provide the required side yard or off-street parking spaces and is contrary to ZR §§ 23-49 and 25-22; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 30, 2007"– (4) sheets and "August 27, 2007"– (5) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,000 sq. ft. of floor area (0.5 FAR), a wall height of 21'-0", a total height of 28.33 feet, and one side yard with a width of 6'-0", as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, September 11, 2007.

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54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1776 East 26th Street, west side of 26th Street, between Avenue R and Quentin Road, 200' north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 26, 2007, acting on Department of Buildings Application No. 302292524, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and open space and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution”; 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, FAR, lot coverage, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, with continued hearings on June 12, 2007, July 17, 2007, and August 14, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony at hearing and in writing in opposition to the proposal, citing concerns that the proposal is not compatible with neighborhood character and questioned whether it constituted an enlargement; and

WHEREAS, the Madison Marine Civic Association provided testimony in opposition to the proposal, citing concerns about neighborhood character; and

WHEREAS, the subject lot is located on the west side of East 26th Street, between Avenue R and Quentin Road; and

WHEREAS, the subject lot has a lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,488 sq. ft. (0.37 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 1,488 sq. ft. (0.37 FAR) to 4,114 sq. ft. (1.03 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 21 percent to 44 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-10" and provide second side yard to 8'-0" (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will reduce the rear yard from 44'-4" to 21'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, additionally, the applicant notes that the existing home is small, with floor plates of approximately 829 sq. ft., and that the plans include as much of it that can support an enlargement; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of walls and floor joists will be retained; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, further, the Board notes that the applicant is increasing the depth of the front yard from a non-complying 10'-0" to a complying 15'-0"; and

WHEREAS, accordingly, 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

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will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 28, 2007"-(11) sheets and "September 10, 2007"-(2) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area in the attic shall be limited to 650 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,114 sq. ft., a total FAR of 1.03, side yards of 2'-10" and 8'-0", a rear yard of 21'-0", a perimeter wall height of 21'-7", a total height of 35'-0", and lot coverage of 44 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received August 28, 2007" plan sheets 10, 11, 12, 15, 16 & 18 shall be retained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, September 11, 2007.

72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado, owner.

SUBJECT – Application March 28, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1941 East 26th Street, eastern side of 26th Street between Avenue S and Avenue T, Block 7305, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 5, 2007, acting on Department of Buildings Application No. 302311479, reads in pertinent part:

"The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and open space and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution"
5. Creates non-compliance with respect to perimeter wall height by exceeding the permitted maximum height of Section 23-631 of the Zoning Resolution"; 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, FAR, lot coverage, open space, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication

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in *The City Record*, with continued hearings on June 12, 2007, July 17, 2007, and August 14, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony at hearing in opposition to the proposal, citing concerns that the home would potentially later be converted to a two-family home, which would be out of character with the neighborhood; and

WHEREAS, the subject lot is located on the east side of East 26th Street, between Avenue S and Avenue T; and

WHEREAS, the subject lot has a lot area of 3,221 sq. ft., and is occupied by a single-family home with a floor area of 1,245 sq. ft. (0.39 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 1,245 sq. ft. (0.39 FAR) to 3,102 sq. ft. (0.96 FAR); the maximum floor area permitted is 1,610.5 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the perimeter wall height from 20'-6" to 22'-6" along the front wall and 24'-0" along the south side of the building (a perimeter wall with a height of 21'-0" is the maximum permitted, except as per ZR § 73-622); and

WHEREAS, the proposed enlargement will increase the lot coverage from 21 percent to 43 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-1" and provide a second side yard of 8'-0" (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will reduce the rear yard from 46'-9" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of foundation, walls, and floor joists will be retained; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, at hearing, the Board asked the applicant to confirm that the proposed perimeter wall height, which exceeds the maximum height of 21'-0" permitted in the zoning district, was lower than that of the adjacent semi-detached building; and

WHEREAS, the applicant provided a reconsideration

from DOB which states that the noted adjacent building's perimeter wall on the street front is measured from the top of the sloping portion of its flat roof, behind the decorative mansard roof, and has a height of 25'-10"; and

WHEREAS, the Board accepts this as the height of the perimeter wall of the adjacent building on the street front and agrees that the proposed perimeter wall height of 22'-6" along the front wall and 24'-0" along the turret portion of the south wall are within the parameters for perimeter walls set forth in ZR § 73-622; and

WHEREAS, specifically, the Board notes that the increased the perimeter all height along the street front to 22'-6" is limited and is less than the adjacent perimeter wall height, as per DOB; and

WHEREAS, further, the proposed perimeter wall height of 24'-0" is confined to the turret portion of the south side of the building facing the perimeter wall with a height of 25'-10" on the adjacent property; and

WHEREAS, at hearing, the Board asked the applicant to confirm whether any of the proposed turret space would be calculated as floor area; and

WHEREAS, the applicant responded that the turret area is walled off and not accessible and therefore does not count as floor area; and

WHEREAS, further, the Board notes that the attic floor area computation, which includes all attic space with a height of 5'-0" or greater, will be as approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 29, 2007"-(10) sheets, "July 3, 2007"-(1) sheet and "July 31, 2007"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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THAT the floor area in the attic shall be limited to 352 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,102 sq. ft., an FAR of 0.96, side yards of 2'-1" and 8'-0", a rear yard of 20'-0", a perimeter wall height of 22'-6" at the front of the building and 24'-0" along the turret portion of the south wall, a total height of 35'-0", and lot coverage of 43 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received May 29, 2007" plan sheets 11, 12, 13, 19, 19-A and 20 shall be retained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the attic floor area shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, September 11, 2007.

98-07-BZ

APPLICANT – Eric Palatnik, P.C., for Yuri Gokhberg, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); rear yard (§23-47) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 67 Amherst Street, north of Hampton Avenue, south of Shore Boulevard, Block 8727, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 4, 2007, acting on Department of Buildings Application No. 302289878, reads in pertinent part:

“Proposed conversion of two-story one-family dwelling Use Group 1 in R3-1 zoning district:

1. Proposed floor area ratio is contrary to ZR 23-141(b).
2. Proposed open space is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed rear yard is contrary to ZR 23-47 Minimum required: 30' Proposed: 20'
5. Proposed side yards are contrary to ZR 23-461”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, rear yard, and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice-Chair Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Manhattan Beach Civic Association provided testimony in opposition to the proposal, citing concerns about whether the proposal constitutes an enlargement; and

WHEREAS, the subject lot is located on the west side of Amherst Street, between Hampton Avenue and Shore Boulevard; and

WHEREAS, the subject lot has a lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,570 sq. ft. (0.64 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,570 sq. ft. (0.64 FAR) to 3,713.93 sq. ft. (0.92 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 35 percent to 38.8 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3'-7" and the existing complying side yard to 11'-2" (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying rear yard of 18'-3" (the

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minimum rear yard required is 30'-0"); and

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of walls and floor joists will be retained; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, additionally, the Board asked the applicant to confirm that the proposed home did not encroach into the sky exposure plane; and

WHEREAS, in response, the applicant submitted a reconsideration from DOB stating that the proposed envelope does not encroach into the sky exposure plane, pursuant to ZR § 23-631; and

WHEREAS, at hearing, the Board asked the applicant to explain why the initially-proposed 1.1 FAR was required; and

WHEREAS, the applicant responded that the floor area was initially calculated at 4,431.1 sq. ft. (1.1 FAR) because a large portion, 1,363.4 sq. ft., of the lower level met the definition of a basement (more than 50 percent of the height is above grade) and was counted as floor area; and

WHEREAS, the applicant subsequently modified the plans to lower a portion of the lower level so that only 653.48 sq. ft. are within the parameters of a basement and count as floor area; and

WHEREAS, the revised plans reflect the distinction between cellar space and basement space; and

WHEREAS, additionally, the applicant notes that there are portions of the second floor which are below the pitched roof and have heights of 5'-0" to 8'-0" and could be considered attic bonus floor area but are included in the total FAR calculation; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR

§§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, rear yard, and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 7, 2007"-(7) sheets and "August 29, 2007"-(5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar portion of the lower level;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,713.93 sq. ft., a total FAR of 0.92, side yards of 3'-7" and 11'-2", a rear yard of 18'-3", a perimeter wall height of 21'-0", a total height of 33'-0", and lot coverage of 38.8 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received August 7, 2007" plan sheets A1-2, A-2, A-3, A-4, A-9 and A-10 shall be retained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, September 11, 2007.

99-07-BZ

APPLICANT – Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

COMMUNITY BOARD#15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 4, 2007, acting on Department of Buildings Application No. 302289869, reads in pertinent part:

“Proposed conversion of two-story one-family dwelling Use Group 1 in R3-1 zoning district:

1. Proposed floor area ratio is contrary to ZR 23-141(b).
2. Proposed open space is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141(b).
4. Proposed rear yard is contrary to ZR 23-47
Minimum required: 30’
Proposed: 20’’; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, with continued hearings on July 24, 2007 and August 21, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the Manhattan Beach Civic Association provided testimony in opposition to the proposal, citing concerns about whether the proposal constitutes an enlargement and whether the perimeter wall height complies with zoning district regulations; and

WHEREAS, the subject lot is located on the west side of Girard Street, between Hampton Avenue and Oriental Boulevard; and

WHEREAS, the subject lot has a lot area of 8,320 sq. ft., and is occupied by a single-family home with a floor area of 4,233 sq. ft. (0.50 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 4,233 sq. ft. (0.50 FAR) to 7,579.77 sq. ft. (0.92 FAR); the maximum floor area permitted is 4,160 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 29.16 percent to 47.69 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will reduce the rear yard from 33’-3’’ to 20’-0’’ (the minimum rear yard required is 30’-0’’); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0’’ of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, the applicant also noted that DOB issued an alteration permit, rather than a new building permit for the work; and

WHEREAS, the Board notes that a determination from DOB that construction constitutes an alteration rather than new construction is not dispositive to the Board, and that it may consider other factors when establishing whether the construction constitutes an enlargement permitted pursuant to ZR § 73-622; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of foundation, walls and floor joists will be retained and used for structural purposes; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, additionally, the Board asked the applicant to confirm that the proposed perimeter wall was complying since the Board does not have the authority to waive perimeter wall height; and

WHEREAS, the Board notes that DOB will confirm that the perimeter wall height complies with zoning district regulations; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall

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substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 7, 2007"–(15) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar portion of the lower level;

THAT the floor area attributed to the attic shall be limited to 111.69 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 7,579.77 sq. ft., a total FAR of 0.91, a rear yard of 20'-0", a perimeter wall height of 21'-0", a total height of 35'-0", and lot coverage of 47.69 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received August 7, 2007" plan sheets A1-2, A1-3, A-2, A-4, A-10, A-11 and A-11-2 shall be retained;

THAT DOB shall confirm that the perimeter wall height complies with zoning district regulations;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, September 11, 2007.

101-07-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Blumenkranz, owner.

SUBJECT – Application April 26, 2007 – Special Permit (§73-622) for the enlargement of an existing single family detached residence. This application seeks to vary open space and floor area (§23-141) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2306 Avenue M, south side, 40' east of East 23rd Street, between East 23rd and East 24th Streets, Block 7627, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 20, 2007, acting on Department of Buildings Application No. 302309945, reads in pertinent part:

"The proposed enlargement of the existing one-family residence in an R2 zoning district:

1. Creates a new non-compliance with respect to floor area ratio exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates a new non-compliance with respect to the open space ratio and is contrary to Section 23-141 of the Zoning Resolution.
3. Increases the degree of non-compliance with respect to one side yard and is contrary to Sections 23-461 & 54-31 of the Zoning Resolution.;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and side yards, contrary to ZR §§ 23-141, 23-461, and 54-31; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in *The City Record*, with continued hearings on July 17, 2007 and August 14, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Member Michael C. Nelson submitted testimony in opposition to this application, citing concerns about potential impact to adjacent properties; and

WHEREAS, a neighbor provided testimony at hearing and in writing in opposition to this application, citing concerns about neighborhood character and the potential impact the proposed rear yard would have on the adjacent property at the rear; and

WHEREAS, specifically, the neighbor contends that (1) the application is not eligible for a special permit pursuant to § 73-622; (2) the applicant has not provided sufficient information; (3) the proposed enlargement will alter the neighborhood character; and (4) there is an ongoing dispute over the ownership of a portion of the subject site, which prevents the Board from acting; and

WHEREAS, the subject site is located on the south side of Avenue M, between East 23rd Street and East 24th Street; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a

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floor area of 2,681.6 sq. ft. (0.67 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,681.6 sq. ft. (0.67 FAR) to 3,519.8 sq. ft. (0.88 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 109.7 percent to 61.6 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3'-10 1/2" and will provide a 8'-0" side yard at the rear of the home (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement, which is entirely at the rear of the existing home, will reduce the rear yard from 33'-3" to 3'-0"; and

WHEREAS, the Board notes that sites located within the subject zoning district, which are within 100 feet of the intersection of two street lines are not required to provide rear yards, pursuant to ZR § 23-541; and

WHEREAS, additionally, the Board notes that sites located on the short dimension of the block with a width of 230 feet or less are not required to provide rear yards within 100 feet of the front lot line, pursuant to ZR § 23-542; and

WHEREAS, the applicant represents and has provided a 200-ft. radius diagram to support that the site is within 100 feet of the intersection and fronts on the short dimension of the block which measures approximately 200 feet in width; and

WHEREAS, accordingly, the Board notes that, pursuant to ZR §§ 23-541 and 23-542, there is no requirement for a rear yard for this site; and

WHEREAS, as to the absence of a rear yard with a minimum depth of 20'-0", the Board notes that the provision of ZR § 73-622 which states that "any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*" relates to required rear yards and, as noted, there is no required rear yard at this site; and

WHEREAS, thus, the Board agrees with the applicant that since no rear yard is required pursuant to ZR §§ 23-541 or 23-542, the yard with a depth of 3'-0" along the rear lot line is within the parameters set forth in the special permit; and

WHEREAS, as to the sufficiency of the application, the applicant has submitted information about the proposal, including a discussion of other nearby homes with non-complying FAR, that is comparable to information the Board has accepted in other cases; and

WHEREAS, accordingly, the Board has determined that it has sufficient information to evaluate the required findings; and

WHEREAS, as to the neighborhood character finding, the Board notes that under two separate sections of the ZR, sites similarly located within the subject zoning district either within 100 feet of the intersection of two street lines or on the short dimension of the block are not required to

provide rear yards; and

WHEREAS, thus, the Board finds that the proposed absence of a rear yard was contemplated by the ZR and the subject site meets the criteria, in two separate instances, for the rear yard exception; and

WHEREAS, the Board notes that the proposed enlargement is entirely at the rear of the existing home; and

WHEREAS, further, the Board notes that a one-story garage or shed would be permitted to be built to the rear lot line as of right and that a number of properties in the vicinity have such a structure built at or near to the rear lot line, including both properties adjacent to the subject site; and

WHEREAS, the proposed enlargement is one-story, with a maximum height of 16'-0"; and

WHEREAS, at hearing, the Board asked the applicant if the proposed enlargement could be reconfigured so as to occupy two floors and, thus, reduce the amount of lot coverage and increase the size of the rear yard; and

WHEREAS, the applicant responded that the plan for the enlargement, to accommodate a kitchen, dining room, and family room, would not be feasible to be divided between the first and second floors; and

WHEREAS, however, during the hearing process, the applicant agreed to increase the size of the rear yard from 0'-0" to 3'-0"; and

WHEREAS, the applicant represents that the neighbor at the rear has a 4'-6" side yard abutting the subject property's rear lot line (an existing non-complying condition); and

WHEREAS, the Board notes that with the proposed 3'-0" rear yard, there will be a total of 7'-6" between the two homes; and

WHEREAS, additionally, in an effort to maintain privacy, the applicant agreed not to construct any windows on the rear wall of the enlargement and to plant shrubbery along the rear lot line; and

WHEREAS, the applicant submitted a shadow study, which reflects that the shadows cast by the enlargement at sunset and sunrise fall entirely outside of the boundaries of the adjacent property at the rear; and

WHEREAS, as to bulk, the applicant represents that the homes within the vicinity of the subject home have floor area ranging from 0.43 FAR to 1.11 FAR; and

WHEREAS, the Board notes that the proposed 0.88 FAR is within that range; and

WHEREAS, as to the adverse possession claim, the Board notes that ownership issues may be adjudicated in other forums and are outside of its jurisdiction; 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, 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

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and side yards, contrary to ZR §§ 23-141, 23-461, and 54-31; 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 July 31, 2007"-(12) sheets; and on further condition:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,519.8 sq. ft., a total FAR of 0.88, a rear yard of 3'-0", one side yard of 3'-10 1/2", and one side yard of 8'-0", as illustrated on the BSA-approved plans;

THAT shrubbery shall be planted and maintained along the rear lot line, 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; 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, September 11, 2007.

112-07-BZ

CEQR #07-BSA-079K

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalmam, owners.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to permit the construction of a synagogue. The Premises is located in an R2 zoning district. The proposal is contrary to floor area ratio and lot coverage (§24-11), side yards (§24-35), rear yard (§24-36), wall height (§24-521) and parking (§25-31).

PREMISES AFFECTED – 1089-1093 East 21st Street, East 21st Street between Avenue I and Avenue J, Block 7585, Lots 21 & 22 (Tent. 21), Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 5, 2007, acting on Department of Buildings Application No. 302334034, reads in pertinent part:

“Proposed plans are contrary to ZR 24-11 in that the proposed building exceeds the maximum permitted floor area ratio of .5.

Proposed plans are contrary to ZR 24-11 in that the proposed lot coverage is more than the maximum permitted lot coverage of 55%.

Proposed plans are contrary to ZR 24-34 in that the proposed front yard is less than the minimum required front yard of 15’.

Proposed plans are contrary to ZR 24-35 in that the proposed side yards are less than the minimum required side yards allowed.

Proposed plans are contrary to ZR 24-36 in that the proposed rear yard is less than the minimum required rear yard of 30’.

Proposed plans are contrary to ZR 24-521 in that the proposed wall height exceeds the maximum wall height of 25’.

Proposed plans are contrary to ZR 25-31 in that there are no parking spaces proposed”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2 zoning district, the proposed construction of a two-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in *The City Record*, with a continued hearing on September 11, 2007, and decided on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with the condition that the fence along the north property line be protected and/or restored and that garbage be stored within the building; and

WHEREAS, this application is being brought on behalf of Congregation Bnai Shloima Zalman, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the east side of East 21st Street, between Avenue I and Avenue J, and is

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occupied by a two-story and cellar synagogue, which will be demolished; and

WHEREAS, the site has a total lot area of 5,500 sq. ft.; and

WHEREAS, on June 7, 1994, under BSA Cal. No. 160-93-BZ, the Board granted a variance to permit the legalization of an enlargement to an existing synagogue at the site; and

WHEREAS, the prior grant provided for waivers of floor area, FAR, lot coverage, wall height, yards, and parking; and

WHEREAS, the applicant represents that the existing building is obsolete, has sustained water damage, and does not meet the Synagogue's current programmatic needs; and

WHEREAS, the current proposal provides for a two-story and cellar synagogue with the following parameters: a street wall of 24'-0", a total height of 34'-10", 7,236.41 sq. ft. of floor area (2,750 sq. ft. is the maximum permitted); and an FAR of 1.32 (0.50 FAR is the maximum permitted for a community facility), with Use Group 4 synagogue use in the entire building; and

WHEREAS, additionally, the applicant proposes 76 percent lot coverage (a maximum of 55 percent is permitted); no side yards (two side yards of 8'-0" feet each are the minimum required) a front yard of 7'-9" (a front yard of 15'-0" is the minimum required), no rear yard (a rear yard of 30'-0" is the minimum required), and no parking spaces (36 parking spaces are required); and

WHEREAS, the proposed building will have the following program: (1) a multi-purpose room and mikvah in the cellar; (2) the main sanctuary for men and a library on the first floor; and (3) the women's gallery on the second floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to provide sufficient space to accommodate the congregation of approximately 275 families; (2) to provide separate space for men and women during prayer; and (3) to provide space for meetings and programs other than worship services; and

WHEREAS, the applicant states that the proposed amount of space would accommodate the existing congregation; the existing building can only accommodate approximately 275 people seated, or one seat per family; and

WHEREAS, the applicant states that it is religious tradition to provide separate space for men and women during prayer and that the current size and configuration of the worship space does not provide sufficient space for both men and women to worship at the same time; and

WHEREAS, the applicant represents that meeting space is required for educational programs accessory to the Synagogue and for groups to meet outside of the worship space; and

WHEREAS, further, the Synagogue requires a space for providing food to congregants somewhere other than in the worship space, which is intended to remain sacred; and

WHEREAS, the applicant notes that the proposed synagogue is designed with a moveable partition on the first floor so that the space can be divided into smaller spaces for meetings, but opened up into a large worship space when needed; and

WHEREAS, additionally, the applicant represents that

the current building is obsolete in that it lacks adequate restroom facilities and the cellar is no longer functional due to water damage; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right floor area, lot coverage, and yard parameters and allow for efficient floor plates that will accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard waivers would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating sufficient floor plates, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district and that the Synagogue has existed at the site for several decades; and

WHEREAS, specifically, the applicant represents that the use of the multi-purpose room in the cellar may hold gatherings for members of the congregation approximately once a month for a maximum of approximately 175 people, but will be limited to those parameters for such events; and

WHEREAS, the Board notes that the immediate area is characterized by two- and two-and-a-half-story detached homes, and a number of other community facilities; and

WHEREAS, as to height, the Board notes that the majority of the building will have a street wall height of 24'-0", which is lower than the existing street wall height of 28'-2"; only the center portion of the building will reach a peak of 34'-10"; and

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WHEREAS, the applicant represents that the tower, which encroaches into the sky exposure plane is a permitted obstruction because it does not have any floor area in the portion that penetrates the sky exposure plane; and

WHEREAS, the applicant states that this tower, with a pitched roof, was designed to resemble a dormer, which is a permitted obstruction for homes in the area and is compatible with neighborhood character; and

WHEREAS, the Board notes that the proposed building will provide open space with a width of 7'-0" on both sides of the front of the building and will maintain the front yard of 7'-9"; and

WHEREAS, at hearing, the Board asked the applicant to provide an analysis of the requested parking waiver; and

WHEREAS, the applicant represents that this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 83 percent of the congregants live within three-quarters of a mile of the site; and

WHEREAS, the Board notes that this exceeds the minimum requirement set forth in ZR § 25-35 that at least 75 percent of the congregants live within three-quarters of a mile of the subject site in order to qualify as a localized congregation; and

WHEREAS, in response to the Community Board's conditions, the applicant agrees to (1) repair and maintain the fence along the north property line at the adjacent neighbor's request; and (2) maintain garbage in a designated area in the cellar until it is removed for collection; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.07BSA079K, dated June 14, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2 zoning district, the proposed construction of a two-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-521, and 25-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 14, 2007" – six (6) sheets and "Received August 27, 2007" – five (5) sheets; and "Received September 10, 2007" – one (1) sheet; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: a floor area of 7,236.42 sq. ft. (1.32 FAR), two stories, a street wall height of 24'-0", a total height of 34'-10", lot coverage of 76 percent, and a front yard of 7'-9";

THAT the use shall be limited to a house of worship (Use Group 4) and any classes shall be accessory to this use;

THAT the use of the cellar kitchen shall be limited to warming;

THAT no commercial catering shall take place onsite;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT any rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

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;

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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, September 11, 2007.

113-07-BZ

CEQR #07-BSA-080R

APPLICANT – Omnipoint Communications, Inc., for Joseph Norman, owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application May 7, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communication facility and will consist of an 82-foot stealth, together with antennas mounted therein and related equipment at the base thereof.

PREMISES AFFECTED – 155 Clay Pit Road, northeast corner of the intersection of Veterans Road East and Clay Pit Road, Block 7105, Lot 679, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Gerasdioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner of the New York City Department of Buildings, dated May 2, 2007, acting on Department of Buildings Application No. 500851731, reads, in pertinent part:

“Proposed construction of telecommunication cabinets on grade and 80 feet height monopole that are not attached to a building or other secure structure that has a lawful use in residential R3-2 zoning district as per TPPN # 5/98 are referred to Board of Standards and Appeals for approval pursuant to Sections 22-21 and 73-30 of the NYC Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS, because the monopole will exceed fifty feet in height and will be located in the Special South Richmond Development District, construction of the monopole will also require a special permit from the City

Planning Commission pursuant to Z.R. § 107-73; and

WHEREAS a public hearing was held on this application on August 14, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the instant application; and

WHEREAS, the applicant represents that the proposed facility will remedy a significant gap in wireless service in Staten Island; and

WHEREAS, the proposed stealth monopole will be located at 155 Clay Pit Road, at the northeast corner of Clay Pit Road and Veterans Road East; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a stealth monopole with a maximum height of 82 feet; and

WHEREAS, the proposed stealth monopole has been designed to resemble a flagpole equipped with an American flag and decorative gold ball; and

WHEREAS, all antennae and cables will be hidden within the stealth monopole; and

WHEREAS, the related equipment cabinets will be located at the base of the proposed monopole and will be secured by an approximately 6-foot high PVC fence; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that the related equipment cabinets will be concealed behind a fence; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will neither alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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

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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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07-BSA-080R, dated May 7, 2007; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and *grants* a special permit under ZR §73-03 and §73-30, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 7, 2007"- (8) sheets; and *on further condition*;

THAT stealth monopole, flag and screen for the equipment cabinets will be maintained in accordance with BSA-approved plans;

THAT no building permit shall be issued unless authorizations are obtained from the City Planning Commission for the proposed height and location;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

120-07-BZ

CEQR #07-BSA-085M

APPLICANT – Bryan Cave LLP, for Fiam Building Associates, owner.

SUBJECT – Application May 11, 2007 – Zoning variance under § 72-21 to allow the partial conversion to residential use of an existing 12-story mixed-use building; contrary to use regulations (§ 42-00). M1-6 district.

PREMISES AFFECTED – 24 West 30th Street, south side, 350' to the west of Fifth Avenue, Block 831, Lot 53,

Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Ivan Schonfeld.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 25, 2007, acting on Department of Buildings Application No. 104741521, reads in pertinent part:

"The proposed conversion is not permitted as-of-right in an M1-6 district. Partial conversion of floor 5 and entire conversion of floors 8, 10, and 11 to Use Group 2 from Use Group 17 is contrary to ZR 42-00. There are no bulk regulations governing residential buildings in M1-6 district"; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-6 zoning district, the residential conversion of three and one-half floors of an existing 12-story mixed-use building from commercial/manufacturing use (Use Group 17) to residential use (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in the *City Record*, with a continued hearing on August 14, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the south side of West 30th Street, between Broadway and Fifth Avenue, within an M1-6 zoning district; and

WHEREAS, the site has a width of 25'-0", a depth of 98'-9", and a lot area of 2,472.5 sq. ft.; and

WHEREAS, the site is occupied by a 12-story mixed-use commercial/manufacturing/residential building; and

WHEREAS, the current uses in the building are: (1) retail (Use Group 6) on the first floor; (2) commercial/manufacturing (permitted Use Group 17) on the second floor, third floor, fourth floor, eighth floor, tenth floor, eleventh floor, and the south half of the fifth floor; and (3) residential (Use Group 2) on the sixth floor, seventh floor, ninth floor, twelfth floor, and north side of the fifth floor; and

WHEREAS, the residential use occupies 9,971 sq. ft. of floor area and the commercial/manufacturing use occupies 16,929 sq. ft. of floor area for a total floor area of 26,900 sq. ft. (10.9 FAR); and

WHEREAS, the applicant proposes to convert the southern portion of the fifth floor (969 sq. ft.), the entire eighth floor (2,188 sq. ft.), the entire tenth floor (2,188 sq. ft.), and the

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entire eleventh floor (2,188 sq. ft.) to residential use; and

WHEREAS, the applicant represents that half of the fifth floor, and the entire eighth and tenth floors are currently vacant or used for storage; and

WHEREAS, the applicant proposes to maintain the existing uses on the other floors; and

WHEREAS, the proposed conversions would result in 17,504 sq. ft. of residential floor area and 9,396 sq. ft. of commercial/manufacturing floor area; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: the existing building is functionally obsolete and cannot accommodate a conforming use; and

WHEREAS, specifically, the building is constrained by the following conditions: (1) small floorplates; (2) the absence of a freight entrance and designated freight elevator; and (3) the incompatibility of permitted Use Group 17 uses with existing legal residential tenants on floors above or below; and

WHEREAS, as to the floorplates, the applicant represents that the layout of the building is not marketable for a conforming use; and

WHEREAS, specifically, the central portion of each floor along the easternmost side of the building is occupied by a long and deep, two-elevator and stair core that reduces the useable floor area of each floor by 199 sq. ft. or approximately 11 percent to 1,800 sq. ft. and reduces the width of approximately one-third of the interior floor space from 23 feet to 17 feet adjacent to the core; and

WHEREAS, the applicant notes that the core of the subject building requires a larger proportion of the floorplate than it would for a larger building; and

WHEREAS, the applicant represents that due to the core's design, any separation of floors into individual offices or tenant spaces must provide a fire-rated corridor from the elevator/stair lobby to the fire escape exit door; and

WHEREAS, the applicant notes that the existing fire escape, which provides the second means of egress, is accessed through the rear of the building; and

WHEREAS, the introduction of a second means of egress would further reduce the width of the interior floor space in front of the elevator and stair core from 17 feet to 12 feet, and the width of the rear third of building from 23 feet to 19 feet; and

WHEREAS, the applicant represents that, due to the noted conditions, the floors must be rented to a single office-type user with a small business and minimal needs for individual offices; and

WHEREAS, as to freight access, the applicant represents that the absence of a freight entrance or designated freight elevator and the single narrow entrance serving a mix of uses make the building unsuitable for a conforming tenant with heavy visitor or delivery traffic; and

WHEREAS, the applicant represents that, although there are two passenger elevators, there is no designated freight elevator and it would not be feasible to install one; and

WHEREAS, because the first floor is occupied by retail use, the building entrance and lobby are confined to a narrow

space between the easternmost building wall and the demising wall of the store and the elevator/stair core, which, as noted, is shared by passenger and freight access; and

WHEREAS, the applicant represents that this results in a narrow and awkwardly-shaped lobby corridor condition that is not compatible with a commercial use requiring a regular receipt or delivery of large packages; and

WHEREAS, as to marketability, the applicant asserts that the noted conditions limit the suitable tenants to small office-type uses; and

WHEREAS, however, the building in this location in the wholesale district (occupied by many shipping and wholesaling businesses) is not marketable to such uses and the building cannot compete with other more suitable buildings in the area; and

WHEREAS, as to the uniqueness of these conditions, the applicant analyzed other buildings within the subject zoning district (bounded by West 23rd Street, West 31st Street, Fifth Avenue, and Sixth Avenue) and found that there are only three buildings in the area that are similar in size and configuration; and

WHEREAS, the applicant distinguished those three buildings from the subject building in that they have at least one of the following conditions (1) larger elevators, (2) office tenants, as opposed to manufacturing tenants, with little need for freight elevators, (3) location not within the wholesale district and thus more marketable as office space, (4) better access to natural light, (5) no residential tenants in the building, (6) a separate entrance for freight, and (7) a corner lot; and

WHEREAS, the applicant submitted a land use map identifying the uses in the area; and

WHEREAS, as to the existing uses in the building, the presence of legal pre-existing residential uses limits which commercial uses would be viable on floors above or below them, given concerns about environmental conditions such as noise; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in using the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conforming fully commercial building and (2) the proposed building with four floors of market rate residential units and four floors of existing/regulated rate residential units; and

WHEREAS, the applicant concluded that the conforming fully commercial scenario would result in an insufficient rate of return, due to the unique conditions of the site; and

WHEREAS, at hearing, the Board directed the applicant to analyze a scenario with all the existing and proposed residential units at market rates; and

WHEREAS, the applicant submitted supplemental analyses of (1) a scenario with the existing permitted uses but with an improved elevator and lobby configuration and (2) a scenario with the existing permitted uses, but with market rates for all the residential uses as opposed to the existing/regulated rates; and

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WHEREAS, the applicant represents that neither scenario would result in a sufficient rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as noted, the applicant proposes to convert three and one-half floors of the building from commercial/manufacturing use to residential; and

WHEREAS, the applicant notes that four and one-half floors are already occupied by residential use and that all of the floors proposed to be converted are either above or below a floor currently occupied by residential use; and

WHEREAS, the applicant represents that the surrounding area is a mix of commercial, light manufacturing, residential, and Joint Living Work Quarters for Artists; and

WHEREAS, specifically, the applicant represents that there are several residential and commercial buildings located on the north side of West 30th Street, across the street from the site; and

WHEREAS, additionally, there are two residential buildings with ground floor retail on the south side of West 30th Street, adjacent to the site; and

WHEREAS, the applicant notes that the proposed conversion would not change the street-level retail use and the second through fourth floors would remain commercial; and

WHEREAS, the proposed conversion would add three new residences (on the eighth, tenth and eleventh floors); the conversion on the fifth floor involves the enlargement of the existing residence into the empty storage space on that floor, which is currently vacant; and

WHEREAS, the applicant does not propose any changes to the building envelope; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of three dwelling units and the expansion of a fourth will not impact any nearby conforming uses; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board observes that the proposed conversion of three and one-half floors of a 12-story building to residential use is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief;

and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA085M, dated May 11, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-6 zoning district, the residential conversion of three and one-half floors of an existing 12-story mixed-use building from commercial/manufacturing use (Use Group 17) to residential use (Use Group 2), contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 11, 2007"—twelve (12) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all 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, September 11, 2007.

25-06-BZ

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APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 and §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for decision, hearing closed.

48-06-BZ

APPLICANT – Jack A. Adesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under §72-21 to allow an eight (8) story residential building containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is contrary to use regulations (§42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Mario A. Canteros.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P. M., for postponed hearing.

212-06-BZ

APPLICANT – Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application August 22, 2006 – Variance (§72-21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to §22-10.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey Chester, Robert Pauls and Georges Jacquemart.

For Opposition: Maria Kalish of Assemblyman Mark Weprin, Antonio Whitaker of Council Member David Weprin, Anna Levine, Dave Kerper and L. Simon.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for continued hearing.

329-06-BZ

APPLICANT – Wholistic Healthworks, Inc., for Albino J. Testani, owner.

SUBJECT – Application December 21, 2006 – Special Permit (§73-36) to legalize a PCE in C2-2/R2A/R4 zoning districts. The proposal is contrary to Section 32-00.

PREMISES AFFECTED – 34-34 Bell Boulevard, west of Bell Boulevard, 184.07’ from 35th Avenue, Block 6112, Lot 39, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Seung Pak.

For Opposition: Gary Kallem.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for decision, hearing closed.

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33-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (§72-21) to permit the conversion of the upper four floors of an existing five-story manufacturing building for residential use. The Premises is located in a M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of Carroll Street, 200’ east of intersection with Van Brunt Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P. M., for continued hearing.

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (23-141); perimeter wall height (23-361) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for continued hearing.

53-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19th Street, Block 888, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Opposition: David Latham.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for decision, hearing closed.

58-07-BZ

APPLICANT – Rex Carner c/o Carner Associates, for Mr. Vito Savino, owner.

SUBJECT – Application March 5, 2007 – Variance (§72-21) to permit a new two-family dwelling on a vacant lot. The Premises is located in an R3A zoning district. The proposal is contrary to lot area (§23-32), residential FAR (§23-141), and parking (§25-21).

PREMISES AFFECTED – 18-02 Clintonville Street, North west corner of 18 Avenue and Clintonville Street. Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Rex Carner.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

88-07-BZ

APPLICANT – Eric Palatnik, P.C., for Lisa Roz and Ronnie Roz, owners.

SUBJECT – Application April 19, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (§23-141(b)); side yard (§23-461(a)) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1633 East 29th Street, eastern border of 29th Street, south of Avenue P and North of Quentin Road, Block 6792, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

126-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Massachusetts Mutual Life Insurance Co., owner; AGT Crunch New York, LLC, lessee.

SUBJECT – Application May 17, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on a portion of the ground floor, second floor mezzanine, and on part of the second floor in a 43-story residential building. The proposal is contrary to §32-00. C6-4 zoning district.

PREMISES AFFECTED – 555 West 42nd Street, north side of West 42nd Street, at 11th Avenue, Block 1071, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

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ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for decision, hearing closed.

128-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sharon Perlstein and Sheldon Perlstein, owners.

SUBJECT – Application May 18, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); less than the minimum side yards (§23-461 and §23-48) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1382 East 26th Street, west side of East 26th Street, between Avenue M and Avenue N, Block 7661, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for decision, hearing closed.

144-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuta Shlesinger, owner.

SUBJECT – Application May 30, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage, (§23-141) and side yards (§23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 3810 Bedford Avenue, southwest corner of Bedford Avenue and Quentin Road, Block 6807, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on December 11, 2001, under Calendar Nos. 6-98-BZ and printed in Volume 86, Bulletin No. 50, is hereby corrected to read as follows:

6-98-BZ

APPLICANT – Pillsbury Winthrop LLP for WXII/ Hubert Street, L.L.C., owner.

SUBJECT – Application July 23, 2001 – reopening for an amendment to the resolution.

PREMISES AFFECTED - 3-9 Hubert Street/137 Hudson Street/4 Collister Street, Block 214, Lot 14, Borough of Manhattan.

COMMUNITY BOARD # 1M

APPEARANCES -

For Applicant: Adriene Bernard.

ACTION OF THE BOARD – Application reopened, and resolution amended.

THE VOTE TO GRANT –

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo.....4

Negative:0

THE RESOLUTION –

WHEREAS, the applicant has requested a re-opening and an amendment to the resolution; and

WHEREAS, Community Board #1, Manhattan, recommends approval of this application; and

WHEREAS, a public hearing was held on this application on November 20, 2001, after due notice by publication in the City Record, laid over to December 11, 2001 for decision; and

WHEREAS, the applicant seeks a minor modification of the prior variance (6-98-BZ) which authorized the construction of a twelve-story building (including mezzanine) consisting of sixty-eight loft style residential units and penthouse, which is contrary to Z.R. § 41-11; and

WHEREAS, on June 1, 2001, the Landmarks Preservation Commission granted approval of certain design changes in the building as previously approved; and

WHEREAS, the instant application seeks to alter the configuration of the building as approved by the Board to conform to the design of the building as approved by the Landmarks Preservation Commission, and to make certain changes in the interior layout of the building and to permit a curb cut; and

WHEREAS, the building as modified, will contain fewer residential units, including the residential units in the townhouses on Collister Street and Hubert Street; and

WHEREAS, the building's massing will be more slender and slightly taller but will not create any greater encroachment of the sky exposure plane than previously approved; and

WHEREAS, the decorative bridge connecting the subject building to 145 Hudson Street has been removed; and

WHEREAS, the infill building on Hudson Street has

been designed for commercial use, which is permitted by the M1-5 and Tribeca Mixed Use regulations; and

WHEREAS, the curb-cut on Collister Street would only access a single enclosed parking space within the Collister Street townhouse building and will not inhibit traffic or pedestrian flow.

Resolved, that the Board of Standards and Appeals hereby reopens and amends the resolution pursuant to Z.R §§ 72-01 and 72-22, said resolution having been adopted on November 4, 1998, so that as amended this portion of the resolution shall read:

“to permit the reduction in the number of residential units from sixty eight (68) to thirty six (36) and a reduction in floor area from 96,410 to 96,094 square feet, to remove the decorative bridge connecting the subject building to 145 Hudson Street and to allow a curb cut to be located on Collister Street, within 50 feet of the intersection of Collister and Beach Streets, on condition that the premises shall be maintained in substantial compliance with the existing and proposed plans submitted with the application marked ‘Received August 31, 2001-(14) sheets; and on further condition;

THAT the premises shall be maintained in compliance with all applicable provisions of the Administrative Code with respect to fire safety and prevention

THAT the premises remain graffiti free at all times

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the development as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

THAT substantial construction shall be completed in accordance with Z.R. §72-23. ”

(DOB 101700358/98)

Adopted by the Board of Standards and Appeals, December 11, 2001.

***The resolution has been corrected in the part of the plans date, which read: “July 23, 2001...” now reads: “August 31, 2001...”. Corrected in Bulletin Nos. 34-35, Vol. 92, dated September 20, 2007.**

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*CORRECTION

This resolution adopted on November 14, 2006, under Calendar Nos. 42-06-BZ and printed in Volume 91, Bulletin Nos. 43-44, is hereby corrected to read as follows:

42-06-BZ

APPLICANT – Steven Sinacori, Stadtmauer Bailkin, LLP for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §24-33, §24-34, and §24-35. 42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1, 19, 21, 24, 25, 26, 28, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Sinacori.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 28, 2006, acting on Department of Buildings Application No. 402270047, reads, in pertinent part:

- “1. Proposed building does not comply with the required rear yard equivalent requirements of Z.R. 24-382.
2. Proposed building does not comply with the height [and] setback requirements of Z.R. 24-522.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of the Queens campus of the New York Hospital, within an R6 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of a five-story Use Group 4 hospital building, (the “Proposed Building”), which does not comply with applicable zoning requirements concerning rear yard equivalent, and height and setback, contrary to ZR §§ 24-382 and 24-522; and

WHEREAS, the Proposed Building is five stories and has a total height of 73’-5” at its Main Street frontage; it will

occupy 97,219 sq. ft.; and

WHEREAS, a new 2,098 sq. ft. entrance and lobby to the Hospital campus will be integrated with the Proposed Building; and

WHEREAS, the non-complying parameters are as follows: (1) a 20’-0” encroachment into the required rear yard equivalent at a height of 14’-6” (a full 30 ft. rear yard equivalent is required for the full height of the building); and (2) a varying encroachment into the required setback of 15’-0” at a height of 60’-0” (a full setback of 15 ft. must be provided at a height of 60 ft. for the length of the building); and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in the *City Record*, and then to decision on November 14, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, former Vice-Chair Babbar, and current Vice-Chair Collins; and

WHEREAS, Community Board 7, Queens, recommends conditional approval of this application, and appeared at hearing to support it; and

WHEREAS, the Coalition to Preserve Queenboro Hill and certain neighbors appeared in opposition to this application; and

WHEREAS, as to the instant application, the only stated objection was an unfounded concern about the proximity of the adjacent gas station to oxygen tanks that allegedly will be located within the Proposed Building; and

WHEREAS, however, most of the concerns expressed by the opposition at hearing related to a separate variance application (described below) and therefore are discussed in the resolution for that application; and

WHEREAS, this application was brought on behalf of the New York Hospital - Queens (hereinafter, the “Hospital”), a not for profit institution; and

WHEREAS, the Hospital’s campus (the “Campus”) occupies two separate zoning lots: (1) the majority of the subject block, encompassing 235,964.35 square feet of lot area and bounded by Main Street to the west, Booth Memorial Avenue to the south, 141st Street to the east, and 56th Avenue to the north; and (2) the majority of the block to the south across Booth Memorial Avenue (Block 6401), encompassing 44,199 square feet of lot area, and bounded by Main Street to the west, 58th Avenue to the south, 141st Street to the east and Booth Memorial Avenue to the north; and

WHEREAS, the subject block is currently occupied by the following Hospital components: (1) the eight-story Main Building, which was the original Booth Memorial Hospital; (2) the eight-story North Building; (3) the three-story Ancillary Building; and (4) the two-story East Building; and

WHEREAS, the applicant states that the Hospital occupies almost the entire subject block but for a non-conforming gasoline station located at the northwest corner of the block on a separate tax lot; and

WHEREAS, the applicant states that other actions relative to development on the Campus are being pursued as

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well; and

WHEREAS, specifically, the instant application was brought concurrently with another variance application (BSA Cal. No. 41-06-BZ), also granted the date hereof, for a construction of a predominantly below-grade parking structure (the "Garage") for the Hospital on an adjacent part of the Hospital campus, which does not comply with applicable front [and side yard] requirements; and

WHEREAS, additionally, the applicant notes that the Hospital is also seeking the following actions through CPC: (1) a zoning map change, pursuant to New York City Charter § 197(c), rezoning the subject block from an R4 zoning district to an R6 zoning district, and permitting increased floor area necessary for Proposed Building; (2) an authorization for a large-scale community facility development pursuant to ZR § 79-21; (3) an authorization, pursuant to ZR § 79-31, permitting the location of the proposed Garage to be located across Booth Memorial Avenue from the subject block but within the proposed large-scale community facility development; and (4) a special permit, pursuant to ZR § 74-53, permitting the Garage to have 222 parking spaces in excess of the 150 parking space maximum for group parking facilities permitted by ZR § 25-12; and

WHEREAS, the zoning map change was approved by the City Council on October 25, 2006; the proposed floor area and other bulk parameters of the Proposed Building (aside from rear yard equivalent and setback) comply with the new R6 zoning requirements; and

WHEREAS, the specific portion of the Hospital campus to be developed with the Proposed Building is located at on the far west side of the subject block, along Main Street, adjacent and to the south of the above-mentioned gas station (the "Development Site"); and

WHEREAS, the Development Site is currently occupied by a two-level 150 space parking structure that will be demolished; parking will occur within the proposed Garage to be constructed on the adjacent block; and

WHEREAS, the applicant states that the proposed non-complying bulk of the Proposed Building is due to the Hospital's need to enhance its quality of services and to meet the need of increasing community demand for clinical services; and

WHEREAS, more specifically, the waivers are necessary to create a building with floor plates that will meet the programmatic needs of the Hospital; and

WHEREAS, the Proposed Building will allow the Hospital to expand its cardiology and surgery services, increase the number of critical care beds, and consolidate acute care services currently located throughout the Hospital campus to a new and efficient facility; the increase in beds is from 439 to 519; and

WHEREAS, specifically, the applicant states that the Proposed Building will involve the following components: (1) an upgrade to cardiovascular services including the replacement and enlargement of the cardiac catheterization suite; (2) more cardiac related procedure rooms and increased recovery space to meet current and projected needs; (3) a new and enlarged suite for non-invasive

cardiology programs will also be constructed as the entire second floor of the Hospital will be devoted to a state-of-the-art cardiology center; (4) upgrades to the ambulatory surgery facilities including the consolidation of operating rooms and cystoscopy rooms into a large modern suite; (5) the number of operating rooms and recovery beds will be increased; (6) a separate endoscopy suite will be established; and (7) two additional inpatient units will be created, providing a total of 80 additional beds; and

WHEREAS, additionally, the applicant notes that the Hospital seeks to develop a new multi-purpose Main Street entrance to the Hospital complex that includes a new off-street, canopied drop-off area for inpatients, visitors and ambulatory outpatients, as well as providing covered access to the Hospital auditorium; and

WHEREAS, the applicant states that the new entrance and off-street drop-off area, located immediately south of the Proposed Building, will serve to eliminate street congestion caused by cars queuing for sidewalk access, will provide shelter from the elements for patients entering and exiting the Hospital, and will further enhance hospital security and efficiency by providing a central entrance to the Hospital complex; and

WHEREAS, the applicant argues that the new Main Street entrance cannot be built and integrated into the Hospital's modernization/expansion plan without the requested rear yard equivalent variance; and

WHEREAS, specifically, in order to provide a complying rear yard equivalent for the Proposed Building, it would be necessary to move it south into the area to be occupied by the new Main Street entrance and drop-off area, thereby eliminating a crucial element to the proposed Hospital development and exacerbating current patterns of patient and vehicle congestion that the new entrance is designed to eliminate; and

WHEREAS, as to setback, the applicant notes that the Proposed Building's roof top mechanical room encroaches into the required 15'-0" setback, as indicated above; and

WHEREAS, the applicant states that the mechanical room has been placed at the front of the roof within the setback to optimize mechanical system efficiency and usable interior space; and

WHEREAS, the applicant notes that the design also results in a cost savings of at least two million dollars; and

WHEREAS, the applicant further states that the setback encroachment of the mechanical room will allow a floor plate that permits more efficient use of the Hospital space, more efficient use of Hospital staff, greater patient comfort and substantially reduced construction and operating costs; and

WHEREAS, at hearing, the applicant amplified upon the above arguments; and

WHEREAS, specifically, the applicant noted that a complying building, constructed without the requested waivers, would result in the loss of 18 of the additional hospital beds, three of the proposed treatment rooms, and one-third of the required mechanicals; and

WHEREAS, the applicant explains that the

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implementation of the required 30 ft. rear yard equivalent and compliance with the required setback would diminish the floor plates and result in these losses; and

WHEREAS, the Board credits the applicant's statements as to the Hospital's programmatic needs and the limitations of a complying development; and

WHEREAS, the Board also notes that the Proposed Building must be constructed at a location within the subject block such that it can integrate with the other Hospital components and the new entrance; the Development Site is the most efficient and logical location; and

WHEREAS, based upon the above, the Board finds that the adjacency of the existing Hospital buildings to the Development Site constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of the Hospital to construct the Proposed Building, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its mission; and

WHEREAS, the applicant represents that the Proposed Building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes the immediate surrounding neighborhood (within a 400-foot radius) is developed with a mix of attached and unattached dwellings and apartments ranging from one to three-stories, one-story commercial buildings, the Kissena Corridor Park, and the Queens Botanical Gardens; and

WHEREAS, the applicant observes that north of the subject block, the immediate surrounding neighborhood consists primarily of Kissena Corridor Park and the Queens Botanical Gardens; east of the site, the immediate surrounding neighborhood consists of attached and unattached residential brick buildings ranging in height from one to three-stories and three-story brick apartment buildings; west of the site, the immediate surrounding neighborhood consists primarily of one-story commercial buildings and attached and unattached residential brick buildings ranging in height from one to three-stories; and south of the site, the immediate surrounding neighborhood consists of attached and unattached residential brick buildings ranging in height from one to two-stories; and

WHEREAS, the applicant further observes that the surrounding neighborhood within a quarter-mile of the Hospital is developed with a mix of attached and unattached residential buildings ranging from one to three-stories high, three to fifteen-story high apartment buildings, public educational facilities, the Horace Harding Expressway, and the Kissena Corridor Park; and

WHEREAS, the Board notes that the proposed rear yard equivalent waiver only affects the non-conforming gas station adjacent to the north; and

WHEREAS, however, the Board observes that any residential redevelopment of this adjacent site can offset the

effect of the rear yard equivalent waiver since the site is on a corner and has two frontages from which sufficient light and air can be drawn; and

WHEREAS, further, the Board notes that the proposed setback encroachment will only be visible from another Hospital building; and

WHEREAS, the Board also notes that the modest increase in street wall height is along Main Street, which is a wide street where such an increase will have minimal impact; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of the Hospital; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Proposed Building is designed to address the Hospital's present programmatic needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, CPC, as Lead Agency, has conducted an environmental review (CEQR No. 05DCP066Q) of the subject actions before the BSA and of related actions approved by CPC, noted above; and

WHEREAS, CPC issued a Conditional Negative Declaration (CND) for CEQR No. 05DCP066Q, on September 25, 2006.

Therefore it is Resolved, that the Board of Standards and Appeals adopts the CPC CEQR determination and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of the Queens campus of the New York Hospital, within an R6 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of a five-story Use Group 4 hospital building, which does not comply with applicable zoning requirements concerning rear yard equivalent and setback, contrary to ZR §§ 24-382 and 24-522; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 11, 2006"- sixteen (16) sheets; and *on further condition*:

THAT rear yard equivalent and height and setback shall be as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

MINUTES

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
November 14, 2006.

***The resolution has been corrected in the part of the plans date, which read: “October 12, 2006...” now reads: “October 11, 2006...”. Corrected in Bulletin Nos. 34-35, Vol. 92, dated September 20, 2007.**

BULLETIN

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September 27, 2007

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Tuesday, September 18, 2007**

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515-89-BZIII	50 East 78 th Street, Manhattan
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323-06-A	389 College Avenue, Staten Island
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319-06-BZ	211/283 63 rd Street, Brooklyn
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DOCKETS

New Case Filed Up to September 18, 2007

212-07-BZY

163 Charles Street, Charles Street and Charles Lane, between Washington and West Streets, Block 637, Lot 42, Borough of **Manhattan, Community Board:2**. Extension of time (11-332) – To complete construction of a minor development commenced prior to the amendment of the zoning district regulations on November 16, 2005. R6A Zoning District.

213-07-BZ

1217 East 26th Street, between Avenue L and Avenue M, Block 7644, Lot 38, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622- enlargement of a single family dwelling. R2 Zoning District.

214-07-BZ

3217 Irwin Avenue, Located on the North side if West 232nd Street between Riverdale and Irwin Avenues., Block 5759, Lot(s) 356,358,362, Borough of **Bronx, Community Board: 8**. Under 72-21- To permit transient parking (UG8) in the garage of a residential and community facility building.

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

OCTOBER 16, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 16, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

841-76-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6)

PREMISES AFFECTED – 651 Fountain Avenue, north east corner of Fountain Avenue and Wortman Avenue, Block 4527, Lots 61, 64, 77, 78, 80, 85, 11, Borough of Brooklyn.

COMMUNITY BOARD #5BK

78-79-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6)

PREMISES AFFECTED – 671 Fountain Avenue, north east corner of Fountain Avenue and Stanley Avenue, Block 4527, Lots 94 and 110, Borough of Brooklyn.

COMMUNITY BOARD #5BK

189-99-BZ

APPLICANT – Kenneth H. Koons, for 460 Quincy Avenue Realty Corporation, owner.

SUBJECT – Application September 12, 2007 – Extension of Term for a variance previously granted for the operation of a UG6 grocery store (Nana Food Center), with a one family dwelling above, in an R3-A zoning district which expired on November 14, 2005; for the Extension of Time to obtain a C of O which expired on February 3, 2004; for an amendment to legalize the increase in signage and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 460 Quincy Avenue, southeast corner of Dewey Avenue and Quincy Avenue, Block 5578, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEALS CALENDAR

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for North Seven Associates, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application September 7, 2007 - ZR 11-411 for the Extension of Term of a previously granted variance for a UG8 parking garage (Rapid Park Industries) in an R8B zoning district which will expire on March 3, 2008

PREMISES AFFECTED – 148-150 East 33rd Street, southside of East 33rd Street, east of East 33rd Street and Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #6M

CALENDAR

OCTOBER 16, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 16, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

331-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Putnam Holding Corp., owner.

SUBJECT – Application December 27, 2006 – Variance under § 72-21 to allow a three-family dwelling to violate front yard (§ 23-45) and side yard (§ 23-462(a)) requirements. R4 district.

PREMISES AFFECTED – 3647 Palmer Avenue, south side of Palmer Avenue, between Needham Avenue and Crawford Avenue, Block 4917, Lot 17, Borough of Bronx.

COMMUNITY BOARD #12BX

68-07-BZ

APPLICANT – Jeffrey A. Chester, Avram Babadzhyanov, owner; Congregation Ruben Ben Issac Haim, lessee.

SUBJECT – Application March 22, 2007 – Under §72-21 – Proposed community facility synagogue, which does not comply with front and side yard requirements.

PREMISES AFFECTED – 102-48 65th Road, southwest corner Yellowstone Boulevard and 65th Road, Block 2130, Lot 37, Borough of Queens.

COMMUNITY BOARD #6Q

121-07-BZ

APPLICANT – Juan D. Reyes, III, for 400 Victory Boulevard Trust, owner.

SUBJECT – Application May 11, 2007 – Variance (§72-21) to permit the legalization of a Physical Culture Establishment on the first and second floors of an existing nonconforming warehouse building. The proposal is contrary to section 22-00. The Premises is located in an R3-2 zoning district within the Special Hillside Preservation District.

PREMISES AFFECTED – 400 Victory Boulevard, between Austin Place and Cobra Avenue, Block 579, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

151-07-BZ

APPLICANT – Harold Weinberg, P.E., for John Perrone, owner.

SUBJECT – Application June 8, 2007– Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage, open space (23-141) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 1133 83rd Street, north side, 256’ east of 11th Avenue between 11th Avenue and 12th Avenue, Block 6301, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #10BK

175-07-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Kingsbridge Associates LLC, owner; Planet Fitness, lessee.

SUBJECT – Application June 28, 2007 – Special Permit (§73-36) to allow a Physical Culture Establishment in a two-story and cellar retail building in a strip mall. The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 90 West 225th Street, south side of 225th Street between Exterior Street and Broadway, block 2215, Lot 665, Borough of Manhattan.

COMMUNITY BOARD #7M

180-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 47 Development LLC, owner; Rituals Spa LLC d/b/a Silk Day Spa, lessee.

SUBJECT – Application July 17, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on a portion of the first floor and cellar of a nine-story mixed-use building. The proposal is contrary to section 32-10. C6-2/C6-2M districts.

PREMISES AFFECTED – 47 West 13th Street, a/k/a 48 West 14th Street, north side of West 13th Street between Fifth and Sixth Avenues, Block 577, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 18, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

153-07-BZY

APPLICANT – Mitchell A. Korbey, Esq., for 20 Bayard Views, LLC, owner.

SUBJECT – Application June 8, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2 /R6B & M1-2 /R6A.

PREMISES AFFECTED – 20 Bayard Street, a/k/a 27-35 Richardson Street, a/k/a 17 Richardson Street, Bayard Street between Union Avenue and Lorimer Street, Block 2721, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jennifer Dickson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in *The City Record*, and then to decision on September 18, 2007; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject premises is located on a through lot with frontage on Bayard Street and Richardson Street, between Union Avenue and Lorimer Street; and

WHEREAS, the premises is currently located partially within an M1-2/R6B (MX-8) zoning district and partially within an M1-2/R6A (MX-8) zoning district; and

WHEREAS, the development complies with the prior R6 (M1-2) zoning district regulations; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint Williamsburg Rezoning; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may

continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

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WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 301495077-01 NB, (hereinafter, the "New Building Permit"); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes all framing, exterior brick work, wiring, plumbing, pipe work, HVAC, roofing, and the installation of the majority of the windows; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing the completed building form for the 16-story building with completed façade work and the majority of the windows in place on both building frontages; mechanicals and building infrastructure; floors; ceilings; and partial interior wall construction; a statement from the project manager stating the estimated completion date; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant represents that delays resulted due to a replacement of the window manufacturer/installer in early 2007; and

WHEREAS, the project manager estimates that all work can be completed in approximately five months; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$14,867,887.65, or 75 percent, out of the \$19,656,764.00 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to

satisfy the finding in ZR § 11-332; and

WHEREAS, at hearing the Board asked the applicant to address any violations associated with the construction of the building; and

WHEREAS, in response, the applicant submitted a statement describing each violation and explaining that each has been corrected or the current owner is in the process of resolving any defaults incurred by the prior owner; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 301495077-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on September 18, 2009.

Adopted by the Board of Standards and Appeals, September 18, 2007.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Samuel H. Valencia and Peter Antioco.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

MINUTES

515-89-BZIII

APPLICANT – Sheldon Lobel, P.C., for 50 East 78th Street, L.P., owner.

SUBJECT – Application July 20, 2007 – Extension of Term of a Special Permit for a (UG6) commercial art gallery in the basement portion of a residential building which expires on October 16, 2007 in an R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 78th Street, East 78th Street, between Madison Avenue and Park Avenue, Block 1392, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

63-07-A

APPLICANT – Moshe M. Friedman, P.E., for Constantine Ganginis, owner.

SUBJECT – Application March 12, 2007 – Proposed construction of a three family dwelling located within the bed of a mapped street (50th Street) which is contrary to General City Law Section 35. R5 Zoning district.

PREMISES AFFECTED – 49-23 28th Avenue, a/k/a Vandeventer Avenue, a/k/a 25-98 50th Street, a/k/a Old Bowery Bay Road, northwest corner of 28th Avenue and 50th Street in the bed of 50th Street, Block 745, Lot 81, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 26, 2007, acting on Department of Buildings Application No. 402526352, reads in pertinent part:

“Proposed new building is located in the bed of a mapped street and is contrary to General City Law Section 35”; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, by letter dated April 11, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated August 10, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated July 18, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 26, 2007, acting on Department of Buildings Application No. 402526352, 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 August 21, 2007”-(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 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, September 18, 2007.

323-06-A

APPLICANT – Vito J. Fossella, P.A., for Michael Sidnam, owner.

SUBJECT – Application December 14, 2006 – Proposed enlargement of an existing one family dwelling located within the bed of mapped street (North Avenue) which is contrary to Section 35 of the General City Law. R3X Zoning.

PREMISES AFFECTED – 389 College Avenue, Northside of College Avenue; 140.08' east of the corner formed by the intersection of College Avenue and Lockwood Place, running thence east 111.38', thence north 168.99', thence s/w 82.20', thence west 64.92', thence south 89.27'. Block 391, Lot 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 10 A.M., for deferred decision.

MINUTES

326-06-A

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10’ west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: David L. Businelli and Oleg Amayev.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 18, 2007

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

319-06-BZ

CEQR #07-BSA-044K

APPLICANT– Sheldon Lobel, P.C., for 211 Service LLC, owner.

SUBJECT – Application December 8, 2006 – Special Permit pursuant to §73-49 to allow seventy-five (75) accessory parking spaces for an automotive service establishment (UG 16) on the rooftop of an existing building. M1-1 district.

PREMISES AFFECTED – 211/283 63rd Street, located on the north side of 63rd Street, between 2nd and 3rd Avenues, Block 5798, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 5, 2006, acting on Department of Buildings Application No. 302234794, reads:

“Proposed roof parking is not permitted as per section 44-11 of the Zoning Resolution and requires a Special Permit from the Board of Standards and Appeals pursuant to Section 73-49 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 73-49 to permit accessory parking for 75 vehicles on the rooftop of a building used for automotive servicing and offices and located in an M1-1 zoning district, contrary to ZR § 44-11; and

WHEREAS, the application is brought on behalf of 211 Service LLC, which operates part of the premises as a Life Quality BMW service center and leases portions of the premises to other automobile servicing entities; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in the *City Record*, with continued hearings on July 24, 2007 and August 21, 2007, and then to decision on September 18, 2007; and

WHEREAS, Community Board 7, Brooklyn, recommends disapproval of this application based on concerns about exhaust from within the building, test-driving of serviced vehicles in the neighborhood, the owner’s past failure to operate the site appropriately, employee parking, design and construction of the facility, hours of operation, lighting, and security; and

WHEREAS, certain neighbors provided testimony in opposition to the proposed facility, citing concerns about pollution, visual impacts, and security; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, the site occupies the entire block front on the north side of 63rd Street between 2nd Avenue and 3rd Avenue; and

WHEREAS, the subject zoning lot is within an M1-1 zoning district; and

WHEREAS, the subject site is a 66,829 sq. ft. zoning lot, improved upon with a two-story 78,722 sq. ft. building; and

WHEREAS, the applicant proposes to park 75 vehicle, in stackers, on the roof of the building; and

WHEREAS, the applicant represents that it requires the 75 rooftop parking spaces so that it can meet certification requirements set by BMW; and

WHEREAS, in order to meet these needs, the applicant seeks a special permit pursuant to ZR § 73-49, to permit roof parking in order to accommodate the requisite number of spaces; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development

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of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant represents that the 75 rooftop parking spaces will help consolidate the required parking currently located within the building, on the street, and in nearby off-site lots; and

WHEREAS, the applicant concludes that the rooftop parking will help relieve any congestion created by the parking demand; and

WHEREAS, further, the ramps to the roof level will be located within the building; and

WHEREAS, at hearing the Board expressed concern about the location of the stackers with respect to the adjacent residences and the visual impact on neighboring residences, as well as their potential conflict with aisle space and circulation on the roof; and

WHEREAS, the applicant relocated the stackers away from the residences and toward the edge of the roof along 63rd Street to address the noted concerns; and

WHEREAS, the applicant also agreed to raise the height of screens from seven feet to ten feet to minimize visual impacts on the adjacent residences; and

WHEREAS, the applicant states that the hours of operation of the facility will be 7:00 a.m. to 7:00 p.m. Monday through Friday, and that vehicular movement on the rooftop will occur only within those hours; and

WHEREAS, the Board notes that other concerns raised by the Community Board are not relevant to the findings required for the special permit, but concern operational issues at the premises; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA044K, dated June 18, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals makes each and every one of the required findings application under ZR § 73-49 to permit rooftop parking for a maximum of 75 vehicles on a building located in an M1-1 zoning district, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2007"- twelve (12) sheets; and *on further condition*:

THAT the maximum number of parking spaces on the rooftop shall not exceed 75, as approved by DOB;

THAT the hours of operation of the roof level shall be from 7:00 a.m. to 7:00 p.m., Monday through Friday and the rooftop parking area shall be properly secured at all other times;

THAT all lighting on the roof shall be directed down and away from adjacent residential use;

THAT all rooftop lighting, except for one security light above the entrance, shall be shut off between 7:00 p.m. and 7:00 a.m., weekdays and all day, Saturday and Sunday;

THAT the rooftop parking shall be screened from neighboring residences as per the BSA-approved plans;

THAT an acoustic baffle enclosure shall be constructed around the rooftop mechanicals and that acoustic baffling materials shall be provided along the proposed fencing;

THAT the site shall be maintained safe and free of debris;

THAT the above conditions shall appear on the certificate of occupancy;

THAT no building permit for the proposed roof-top parking shall be issued until all ECB and DOB violations have been cured;

THAT the parking layout shall be reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, September 18, 2007.

118-07-BZ

CEQR #07-BSA-083R

APPLICANT – Rothkrug Rothkurg & Spector LLP, for A Very Special Place, Incorporated, owner.

SUBJECT – Application May 11, 2007 – Special Permit (§73-44) to allow the proposed two-story, Use Group 6B office development which has less than the required parking. The proposal is contrary to section 36-21. C1-1/R3-2 district.

PREMISES AFFECTED – 49 Cedar Grove Avenue, Between Wavecrest Street and Seaform Street. Block 4087, Lot 1 & 70, Borough of Staten Island.

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COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 14, 2007, acting on Department of Buildings Application No. 500904113, reads in pertinent part:

“BSA special permit required for reduced parking:

1 space per 400 FA in Cat. B1 10800/400=27

spaces required 27 spaces provided”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C1-1 (R3-2) zoning district, a reduction in the required number of accessory parking spaces for a proposed two-story Use Group 6 office building from 72 to 27, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 21, 2007, after due notice by publication in *The City Record*, and then to decision on September 18, 2007; and

WHEREAS, this application is brought on behalf of A Very Special Place, a § 501(c)(3) tax-exempt charitable organization; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Cedar Grove Avenue, between Wavcrest Street and Seafoam Street, and has a lot area of 13,200 sq. ft.; and

WHEREAS, the site is currently occupied by an eating and drinking establishment with two accessory parking lots, which will be cleared to permit construction of the proposed building (Lot 1), and by vacant land (Lot 70); and

WHEREAS, specifically, the applicant proposes to construct a 10,200 sq. ft. (0.81 FAR), two-story office building with 27 accessory parking spaces located on the ground level; and

WHEREAS, the proposed building will be used for the executive offices of A Very Special Place; and

WHEREAS, applicant represents that there will be approximately 35 employees (both full and part-time) working at the premises (not all of whom will drive to work), and the anticipated number of daily visitors is 12, many of whom will arrive in a single vehicle; and

WHEREAS, based on the anticipated usage of the premises, the applicant represents that 27 accessory parking spaces will provide sufficient parking; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C1-1 (R3-2) zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the

applicable ZR provision, for Use Group 6 uses in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 150 sq. ft. of floor area to one space per 400 sq. ft. of floor area; and

WHEREAS, pursuant to Z.R. § 36-21 the total number of required parking spaces for all office use at the site is 72; and

WHEREAS, the applicant represents that the site cannot accommodate 72 accessory parking spaces and that the contemplated development of the site for the executive offices of A Very Special Place does not require 72 accessory parking spaces; and

WHEREAS, the proposed office building (Use Group 6) on the premises will occupy 10,800 sq. ft., and under the special permit authorized by ZR § 73-44 the number of parking spaces could be reduced to 27 for the proposed use; and

WHEREAS, the applicant proposes to provide a total of 27 parking spaces; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the Executive Director of A Very Special Place stating that the premises will be used exclusively for the organization’s executive offices and agreeing to a condition in the Board’s resolution requiring that the Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in limiting the use of the premises to executive offices for A Very Special Place; and

WHEREAS, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, to address concerns of the residents of adjoining dwellings, the applicant has agreed to plantings to screen the parking area from the residences; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.07BSA083R, dated July 12, 2007; and

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WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit, within a C1-1 (R3-2) zoning district, a reduction in the required number of accessory parking spaces for a proposed Use group 6 office building from 72 to 27, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received July 17, 2007"-(7) sheets and "Received September 18, 2007"-(1) sheet and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 27 parking spaces shall be provided in the accessory parking lot for the proposed use;

THAT the applicant shall incorporate plantings to screen the parking area from adjacent residences;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

THAT the layout and design, including landscaping and screening, of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant

laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 18, 2007.

142-07-BZ

APPLICANT – Moshe M. Friedman, for Steven Weinberger, owner.

SUBJECT – Application May 29, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and side yards (§23-461) & (§23-48) in an R3-2 zoning district.

PREMISES AFFECTED – 2216 Avenue R, 56'-0" west of intersection formed by Avenue R and East 23rd Street. Block 6828, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 2, 2007, acting on Department of Buildings Application No. 302342748, reads in pertinent part:

“Proposed extension of an existing dwelling is contrary to:

ZR Sec. 23-141 Floor Area Ratio

ZR Sec. 461, 23-48 Side Yards

And requires a Special Permit from the Board of Standards and Appeals as per Sec. 73-622”; and

WHEREAS, this is an application under ZR § 73-622 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, floor area ratio and side yards, contrary to ZR §§ 23-141, 23-461 and 23-48; and

WHEREAS, a public hearing was held on this application on August 21, 2007, after due notice by publication in *The City Record*, and then to decision on September 18, 2007; and

WHEREAS, the subject site is located on the north side of Avenue R, between East 22nd Street and East 23rd Street; and

WHEREAS, the subject site has a total lot area of 2,800 sq. ft., and is occupied by a 1,728.39 sq. ft. (0.62 FAR) single-family home; and

WHEREAS, the site 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 1,728.39 sq. ft. (0.62 FAR) to 2,442.81 sq.

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ft. (0.87 FAR); the maximum floor area permitted is 1,680 sq. ft. (0.60 FAR); and

WHEREAS, the proposed enlargement will maintain the existing one side yards of 7'-2" and 3'-9" (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the Board notes that the enlargement will consist of extensions at both the second story and attic, resulting in a side wall height of 21 feet and a total height of 35 feet, both of which are permitted as of right in the R3-2 zoning district; 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 the City Environmental Quality Review and makes the required findings under ZR § 73-622 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, FAR and side yards, contrary to ZR §§ 23-141, 23-461 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 August 14, 2007"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 2,442.81 sq. ft., an FAR of 0.87, and side yards of 7'-2" and 3'-9", 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 302342748)

Adopted by the Board of Standards and Appeals, September 18, 2007.

378-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for deferred decision.

342-05-BZ& 343-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Kingsbridge Terrace, LLC, owner.

SUBJECT – Application November 29, 2005 – Zoning variance (§72-21) to allow six (6) three-family buildings (18 dwellings) and six (6) accessory parking spaces; contrary to regulations for use (§ 22-12), FAR (§ 23-141), lot coverage (§23-141), number of dwelling units (§23-22), building height (§23-631), side yards (§ 23-461), minimum number of accessory parking spaces (§25-23), and special requirements for developments with private roads (§26-21). PREMISES AFFECTED – 1, 3 & 5 Maya Drive, southeast corner of Kingsbridge Terrace and Perot Street, Block 3253, Lot 204, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

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THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for decision, hearing closed.

39-06-BZ

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§ 72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 zoning district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for deferred decision.

114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (§23-141); provides less than the minimum required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Klapper and Judith ?

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for decision, hearing closed.

134-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under § 72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking spaces. Proposal is contrary to regulations for use (§ 22-12), floor area and FAR (§ 23-141), open space (§ 23-141), front

yard (§ 23-45), height and setback (§ 23-631) and maximum number of dwelling units (§ 23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Councilmember Tony Avella, Marc Bresky, Joseph Hellmann, Marie Marsina, Joseph Sollano, William S. Evers, Andrew Mandell, Joanne Martell, Stuart Hersh, Albert J. Hanft, Arthur F. Kelley, Margaret M. Nihan, Louis Paussills, Elliott Socci and Judith Schoeck.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for continued hearing.

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (§24-162a), side yards (§24-35), and the number of stories (§24-33).

PREMISES AFFECTED – 1847 60th Street, north side of 60th Street, between 18th Avenue and 19th Avenue, Block 5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for decision, hearing closed.

297-06-BZ & 298-06-A

APPLICANT – Glen V. Cutrona, AIA, for John Massamillo, owner.

SUBJECT – Application November 13, 2006 – Variance under (§ 72-21) to allow a proposed four (4) story residential building with ground and cellar level retail use to violate applicable lot coverage (§ 23-145) and rear yard requirements (§ 23-47). C4-2 district (Special Hillside Preservation District); building is located within the bed of a mapped street, contrary to GCL§35.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

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For Applicant: Glen V. Cutrona.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for decision, hearing closed.

311-06-BZ thru 313-06-BZ

APPLICANT – Rothkrug, Rothkrug, & Spector, LLP, for White Star Lines LLC.

SUBJECT – Application December 4, 2006 – Zoning variance under §72-21 to allow three, four (4) story residential buildings containing a total of six (6) dwelling units, contrary to use regulations (§42-10); M1-1 district.

PREMISES AFFECTED – 300/302/304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lots 38, 39, 40. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for decision, hearing closed.

328-06-BZ

APPLICANT – Francis R. Angelino, Esq., for Okada Denki Sanyo Company Limited, owner.

SUBJECT – Application December 20, 2006 – Zoning variance under ZR §72-21 to allow an eight (8) story residential building containing six (6) dwelling units and ground floor retail use; contrary to regulations for use (§42-00, §111-104(e), and §111-102(b)). M1-5 district (Area B-2 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 50-52 Lighthouse Street, Between Hudson and Greenwich Streets, Block 219, Lots 2 & 3, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Francis R. Angelino, Esq.

ACTION OF THE BOARD – Laid over to September 25, 2007, at 1:30 P.M., for decision, hearing closed.

16-07-BZ

APPLICANT – Juan D. Reyes, III, for Daytop Village, Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit (§73-44) to permit a reduction in required parking for a Use Group 4A ambulatory and diagnostic treatment center located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue, Halperin

Avenue between Blandell Avenue and Williamsburg Road, Block 4074, Lot 11, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Juan D. Reyes, III, Amy Sliorra, John Strauss and Steve Winston.

For Opposition: Mark A. Varrichio, Meghan K. Lynch, Marianne LaCroce, Jeff Jones, Marie Lacroce, Anthony LaCroce, William Rivera, and others.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for continued hearing.

135-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Ester Loewy, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141(a)); less than the required side yards (23-461) and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 920 East 24th Street. West side of East 24th Street, 140' north of Avenue L, Block 7587, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Krystal Forde.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

136-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Leora Fenster, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1275 East 23rd Street, East side of East 23rd Street, 160' north of Avenue M, Block 7641, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Krystal J. Forde

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

146-07-BZ

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA

MINUTES

action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77th Street, North side of East 77th Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stuart Beckerman and ?.

For Opposition: Francine Olk and Judy Baron.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

164-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Rouse SI Shopping Center, LLC, owner; ME Clinic Two LLC, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to allow a Physical Culture Establishment that will occupy one storefront within a multiple-store mall containing retail stores and eating and drinking establishments (Use Group 6). The proposal is contrary to section 32-10. C4-1 district.

PREMISES AFFECTED – (280 Marsh Avenue) The Crossings @ Staten Island Mall, north of Platimum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.

COMMUNITY BOARD # 2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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October 5, 2007

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

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Tuesday, September 25, 2007**

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New Case Filed Up to September 25, 2007

215-07-BZ

69-02 64th Street, Southwest corner of the intersection of Catalpa Avenue and 64th Street., Block 3631, Lot(s) 6, Borough of **Queens, Community Board: 5**. Under 72-21 – To permit the enlargement of an existing community facility building.

216-07-BZ

255 East 74th Street, Corner of East 74th Street and Second Avenue., Block 1429, Lot(s) 21, Borough of **Manhattan, Community Board: 8**. (SPECIAL PERMIT) 73-36 – For a proposed Physical Culture Establishment.

217-07-BZ

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218-07-BZ

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219-07-BZ

11 West 36th Street, 2nd Floor, Located on the North side of West 36th Street, between 5th and 6th Avenues., Block 838, Lot(s) 35, Borough of **Manhattan, Community Board: 5**. (SPECIAL PERMIT) 73-36 – To legalize the operation of a Physical Culture Establishment on the second floor of a building located in an M1-6 zoning district.

220-07-BZ

847 Kent Avenue, East side of Kent Avenue distant 300' north of intersection of Kent Avenue and Myrtle Avenue., Block 1898, Lot(s) 10, Borough of **Brooklyn, Community Board: 3**. Under 72-21 – Proposed Multiple Dwelling (UG2). There are no applicable bulk, parking or yard regulations.

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

OCTOBER 23, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 23, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application September 7, 2007 – ZR 11-411 for the Extension of Term of a previously granted variance for a UG8 parking garage (Rapid Park Industries) in an R8B zoning district which will expire on March 3, 2008

PREMISES AFFECTED – 148-150 East 33rd Street, southside of East 33rd Street, east of East 33rd Street and Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #6M

197-05-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: B & E 813 Broadway, LLC and Broadway Realty Associates, LLC.

SUBJECT – Application August 17, 2006 – To consider dismissal for lack of prosecution – Proposed 11-story residential building with ground floor retail to violate regulations for FAR (§ 23-145), height and setback (§ 35-24), and maximum number of dwelling units (§ 23-22). C6-1 district.

PREMISES AFFECTED – 813-815 Broadway, East 12th Street and East 11th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD # 2M

109-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Vincent Mazzone

SUBJECT – Application June 2, 2006 – To consider dismissal for lack of prosecution – Proposed three-story enlargement to an existing one-story building; contrary to bulk regulations. R5 district.

PREMISES AFFECTED – 1201 Avenue Z, north east corner of East 12th Street, Block 7433, Lot 148, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

233-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Syful Islam.

SUBJECT – Application September 11, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the legalization of an enlargement to a single family home, which required front yard 23-47 and less than the required side yard 23-461 in an R-5 zoning district; and also to change the occupancy from a one family to a two family home.

PREMISES AFFECTED – 2342 Haviland Avenue, Haviland Avenue bounded by Zerega Avenue and Havemeyer Avenue, Block 3827, Lot 51, Borough of Bronx.

COMMUNITY BOARD # 9BX

293-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Veronica Nicastro.

SUBJECT – Application November 6, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the enlargement of an existing one-family dwelling which exceeds the permitted floor area and does not provide the required open space (23-141) in an R1-2 zoning district.

PREMISES AFFECTED – 54-07 254th Street, east side of 254th Street, 189' north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§ 22-10). R7-1 district..

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100' north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx

COMMUNITY BOARD # 6BX

304-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Khan Shahnawaz.

SUBJECT – Application November 21, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the construction of a detached single family home on a vacant corner lot which does not provide the required

CALENDAR

front yard (23-45(a)) located in an R3-2 zoning district.
PREMISES AFFECTED – 106-02 Astoria Boulevard,
southeast corner of Astoria Boulevard and 106th Street,
Block 1639, Lot 1, Borough of Queens.
COMMUNITY BOARD # 3Q

APPEALS CALENDAR

347-05-A

APPLICANT – NYC Board of Standards and Appeals
OWNER: Douglaston Realty Associates, owners.
SUBJECT – To consider dismissal for lack of prosecution.
PREMISES AFFECTED – Vacant Lot, 242-22 61st
Avenue, south side of 61st Avenue, Block 8266, Lot 186,
Borough of Queens.
COMMUNITY BOARD #11Q

324-06-A

APPLICANT – NYC Board of Standards and Appeals
OWNER: Al Muhammad & Deborah Muhammad, owners.
SUBJECT – To consider dismissal for lack of prosecution.
PREMISES AFFECTED – 1449 Rosedale Avenue, a/k/a
1447 Cross Bronx and Rosedale Avenue, Block 3895, Lot
77, Borough of Bronx.
COMMUNITY BOARD #9BX

105-07-A thru 108-07-A

APPLICANT – Paul Bonfilio Architect, P.C., for Tom and
Angelika Davis, owners.
SUBJECT – Application May 2, 2007 – Proposed
construction of four two family semi detached dwellings
located within the bed of mapped street (199th) contrary to
General City Law Section 35. R3-2 Zoning district.
PREMISES AFFECTED –
198-24 47th Avenue, south side of 47th Avenue, 165.37'
west of Francis Lewis Boulevard, Block 5618, Lot 49.
198-28 47th Avenue, south side of 47th Avenue, 165.37'
west of Francis Lewis Boulevard, Block 5619, Lot 20.
47-17 199th Avenue, south side of 47th Avenue, 165.37'
west of Francis Lewis Boulevard, Block 5618, Lot 49.
47-18 199th Street, south side of 47th Avenue, 165.37' west
of Francis Lewis Boulevard, Block 5618, Lot 49, Borough
of Queens
COMMUNITY BOARD #11Q

OCTOBER 23, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing,
Tuesday afternoon, October 23, 2007, at 1:30 P.M., at 40
Rector Street, 6th Floor, New York, N.Y. 10006, on the
following matters:

ZONING CALENDAR

48-07-BZ

APPLICANT – Alfonso Duarte, for Jerry Trianafillou,
owner.
SUBJECT – Application February 20, 2007 – Variance
(\$72-21) for the enlargement of an existing single family
residence on an undersized lot which seeks to vary (23-47)
less than the required rear yard and (23-141(b)) for lot
coverage in an R2A zoning district.
PREMISES AFFECTED – 7-12 126th Street, west side 90'
south of 7th Avenue, Block 3970, Lot 11, Borough of
Queens.
COMMUNITY BOARD #7Q

110-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby
Landmark Corporation, owner.
SUBJECT – Application May 3, 2007– Special Permit
under § 73-63 to allow the enlargement of a non-residential
building. M1-5B district.
PREMISES AFFECTED – 53 Crosby Street, east side of
Crosby Street between Spring Street and Broome Street,
Block 482, Lot 7, Borough of Manhattan.
COMMUNITY BOARD #2M

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for 8701 Fourth Avenue,
LLC, owner.
SUBJECT – Application June 8, 2007 – Special Permit
(\$73-36) to allow the legalization of a Physical Culture
Establishment on the second floor of a two-story commercial
building. The proposal is contrary to section 32-00 of the
Zoning Resolution. C4-2A zoning district.
PREMISES AFFECTED – 8701 Fourth Avenue, southeast
corner of Fourth Avenue and 87th Street, Block 6050, Lot 8,
Borough of Brooklyn.
COMMUNITY BOARD #8BK

CALENDAR

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center, Inc., owner.

SUBJECT – Application June 12, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to 32-00. C8-2 district.

PREMISES AFFECTED – 2402 86th Street, south corner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

211-07-BZ

APPLICANT – Eric Palatnik, P.C., for Dave Weiss, owner.

SUBJECT – Application September 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1149 East 22nd Street, north of Avenue K, south of Avenue J, Block 7604, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 25, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

517-68-BZ

APPLICANT – Alfonso Duarte, for 1667 Rental Depot Incorporated, owner.

SUBJECT – Application November 15, 2006 – Extension of Term/Amendment/Waiver of a variance previously granted pursuant to §72-21 permitting in an R3-2 district open automobile sales (UG 16A) with accessory office and automobile repairs on cars for sale. The application seeks to legalize the rental of automobiles and trucks (UG 8C). The term of the variance expired on October 7, 2005.

PREMISES AFFECTED – 1667 East Gun Hill Road, East side 175' south of Tiemann Avenue, Block 4802, Lot 21, Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, and a reopening to legalize the addition of automobile and truck rental (Use Group 8C) to the permitted use of car sales (Use Group 16A), and to extend the term which expired on October 5, 2005; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in the *City Record*, with a continued hearing on September 11, 2007, and then to decision on September 25, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the north side of East Gun Hill Road between Tiemann and Barton Avenues, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,979 sq. ft.; and

WHEREAS, the site is currently occupied by an accessory office and auto repair building and a car sales area with parking for cars for sale and accessory customer parking; and

WHEREAS, on May 27, 1975, under the subject

calendar number, the Board granted a variance to permit the change in occupancy from a store and parking lot to an open auto sales lot and accessory office; and

WHEREAS, on October 7, 1980, under the subject calendar number, the Board granted an amendment to permit a change in use to minor auto repair shop accessory to auto sales and office, and to grant an extension of five years; and

WHEREAS, the grant was subsequently extended twice for terms of five years and once for a term of ten years, which expired on October 5, 2005; and

WHEREAS, the applicant now seeks an amendment to permit auto and truck rental and to extend the term for a period of ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, at hearing, the Board directed the applicant to address the following conditions: (1) signage must comply with C1 zoning district regulations; (2) the site is overcrowded and has an inefficient traffic flow; and (3) the fencing and landscaping around the site must be compatible with adjacent residential uses; and

WHEREAS, as to the signage, the applicant removed any non-complying signage to bring the signage into compliance with C1 zoning district regulations; and

WHEREAS, the applicant also presented evidence that the site had been cleaned up and that the fencing is in good repair; and

WHEREAS, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and 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 under ZR §§ 11-411 and 11-413, to permit the legalization of automobile and truck rental (UG 8C) at the premises in addition to sale of cars (UG 16A), and grants an extension of term for a period of ten (10) years, to expire on October 5, 2015; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received July 10, 2007"-(2) sheets; and *on further condition*:

THAT this grant shall be for a term of ten (10) years, to expire on October 5, 2015;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT all exterior lighting shall be directed away from adjacent residential uses;

THAT all signage shall comply with C1 zoning district regulations;

THAT the hours of operation shall be limited to Monday through Saturday, 8:00 a.m. to 5:30 p.m. and Sunday, 8:00 a.m. to 1:00 p.m.;

MINUTES

THAT the above conditions shall be listed on the certificate of occupancy;

THAT construction shall be completed and a new certificate of occupancy obtained within six months of the date of this grant, by March 25, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the parking layout shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, September 25, 2007.

244-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Parkwood Realty Assoc., LLC, owner; AGT Crunch New York, lessee.

SUBJECT – Application July 6, 2007 – Extension of Term/Time/Amendment/Waiver for a Physical Cultural Establishment "Crunch Fitness" filed pursuant to §§ 73-11 and 73-36 to reopen the resolution for a special permit for a physical culture establishment "Crunch Fitness" adopted November 4, 1998, amended December 21, 1999, and corrected January 20, 2000: for a waiver for an extension of term which expires November 4, 2008; for the extension of time to obtain the Certificate of Occupancy; and for an amendment to the Resolution for an enlargement of the total PCE floor area within an existing two story commercial building, which the PCE will fully occupy, located in a C2-5/R-8B zoning district.

PREMISES AFFECTED – 162 West 83rd Street, south side of West 83rd Street, between Columbus and Amsterdam Avenues, Block 1213, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and amendment for an enlargement of floor area, an extension of

time to obtain a certificate of occupancy, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expires on November 4, 2008; and

WHEREAS, a public hearing was held on this application on September 11, 2007, after due notice by publication in *The City Record*, and then to decision on September 25, 2007; and

WHEREAS, Community Board 7, Manhattan, recommends approval of the application; and

WHEREAS, the subject premises is located on the south side of West 83rd Street between Columbus Avenue and Amsterdam Avenue; and

WHEREAS, the site is located within a C2-5 (R8-B) zoning district, and is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies a total of 14,998 sq. ft. on the cellar level, first floor, and second floor of the premises; and

WHEREAS, the PCE is operated as Crunch Fitness; and

WHEREAS, on November 4, 1998, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the existing PCE in the cellar and first floor of the subject building; and

WHEREAS, on December 21, 1999, under the subject calendar number, the Board amended the resolution to permit the legalization of PCE use on the second floor of the building; and

WHEREAS, under BSA Cal. No. 243-07-BZ, the Board granted a new special permit to allow a PCE to occupy 6,852 sq. ft. of space in the adjacent building at 150 West 83rd Street, connected to the subject PCE; and

WHEREAS, however, the lease for the space in the adjacent building will be terminated in September 2007, and the PCE space will be vacated; therefore no application has been filed with respect to extending the term of the special permit in effect at 150 West 83rd Street; and

WHEREAS, to compensate for the loss of space at 150 West 83rd Street, the applicant proposes to expand into the remainder of the building at 162 West 83rd Street, so that it will occupy the entire building, totaling 18,279 sq. ft. of floor space (6,093 sq. ft. in the cellar, 6,093 sq. ft. on the first floor, and 6,093 sq. ft. on the second floor); and

WHEREAS, the instant application seeks to amend the special permit to reflect the new configuration of the PCE, occupying the entire building (cellar and two stories) at 162 West 83rd Street; and

WHEREAS, the instant application also seeks to extend the time to obtain a certificate of occupancy and to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant proposes no change in operating hours of the PCE, which will be from 5:30 a.m. to 11:00 p.m. Monday through Thursday, 5:30 a.m. to 10:00 p.m. Friday, and 8:00 a.m. to 9:00 p.m. Sunday; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a

MINUTES

Certificate of Occupancy and extension of term are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 4, 1998, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the prior grant to expire on November 4, 2018; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 6, 2007”– (5) sheets and “September 5, 2007”-(1) sheet; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on November 4, 2018;

THAT a Certificate of Occupancy shall be obtained within one year of this grant;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application No. 104813613)

Adopted by the Board of Standards and Appeals, September 25, 2007.

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for continued hearing.

844-86-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Fred Lynn Associates, owner; Pyramida Billiards, lessee.

SUBJECT – Application February 12, 2007 – Extension of Term of a previously granted Special Permit (§73-50) for the enlargement of a one (1) story building, in a C8-2 zoning district, that encroaches into the open area required along a district boundary which expired on April 28, 1997; an Amendment to legalize the change in use from an auto repair shop (UG16) and custom clothing manufacturer (UG11) to a billiard parlor (UG12) and eating and drinking establishment (UG6) and to permit the addition of a 979. sq. ft. mezzanine in the UG6 portion of the building; an Extension of Time to obtain a Certificate of Occupancy which expired on May 4, 1999 and a Waiver of Rules of Practice & Procedure.

PREMISES AFFECTED – 1828/1836 McDonald Avenue, west side of McDonald Avenue, between Avenue P and Quentin Road, Block 6632, Lots 17 & 20, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for decision, hearing closed.

223-90-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Frank A. Burton, Jr., owner.

SUBJECT – Application April 3, 2007 – Amendment of a previous grant under the General City Law Section 36 to remove a Board condition requiring that no permanent Certificate of Occupancy shall be issued until a Corporation Counsel Opinion of Dedication has been obtained for Kresicher Street and to approve the enlargement of the site and building. M1-1 Zoning district.

PREMISES AFFECTED – 114 Kreischer Street, west side of Kreischer Street, 140.8’ north of Androvette Street, Block 7408, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

16-92-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §§72-01 & 72-22 to permit a waiver of the rules of practice and procedure, a re-opening, an amendment, and an extension of the term of the variance. The requested application would permit the legalization from the change in use from auto repair and warehouse to a charity auto

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donation facility (Use Group 16 automotive storage), container storage (Use Group 16), a woodworking and metal working company (Use Group 16) and a legalization of a 2,420 square foot mezzanine addition. The premises is located in a R5/C1-1 zoning district.

PREMISES AFFECTED – 115 King Street/78 Sullivan Street, lot front King Street and Sullivan Street, between Richardson and Van Brunt Street, Block 556, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Opposition: Michael Goodall, Molly Hash Rouzie, Amy Helfard, Adam Armstrong, Jorsee Keindl, Richa Horig, Louis Sones, Harrieg Zvakar, Maria Mackin and John McGettrick.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for continued hearing.

8-05-BZ

APPLICANT – Sheldon Lobel, P.C., for James Pi, owner.
SUBJECT – Application January 18, 2005 – To consider dismissal for lack of prosecution – propose use, bulk and parking variance to allow a 17 story mixed-use building in R6/C1-2 and R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, a/k/a 51-35 Reeder Street, entire frontage on Queens Boulevard between Reeder Street and Broadway, Block 1549, 41 (a/k/a 41 & 28), Borough of Queens.

COMMUNITY BOARD # 4Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

323-06-A

APPLICANT – Vito J. Fossella, P.A., for Michael Sidnam, owner.

SUBJECT – Application December 14, 2006 – Proposed enlargement of an existing one family dwelling located within the bed of mapped street (North Avenue) which is contrary to Section 35 of the General City Law. R3X Zoning.

PREMISES AFFECTED – 389 College Avenue, Northside of College Avenue; 140.08' east of the corner formed by the intersection of College Avenue and Lockwood Place, running thence east 111.38', thence north 168.99', thence s/w 82.20', thence west 64.92', thence south 89.27'. Block 391, Lot 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 12, 2006, acting on Department of Buildings Application No. 500855693, reads in pertinent part:

“Objection #1 – The proposed extension of detached residential building in R3-X Zoning District is located within the bed of a mapped street contrary to Section 35 of General City Law and therefore referred to the Board of Standards and Appeals for approval”; and

WHEREAS, this application requests permission to build a two-bay garage with a loft within the bed of a mapped street (North Avenue); and

WHEREAS, a public hearing was held on this application on August 21, 2007 after due notice by publication in the *City Record*, and then to decision on September 25, 2007; and

WHEREAS, by letter dated April 18, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter dated January 17, 2007, the Fire Department states that it has reviewed the above application and states that all proposals to build in the bed of a mapped street be disapproved due to the increasing burden of overdevelopment on the Fire Department; and

WHEREAS, by letter dated March 24, 2007, in response to the Fire Department’s concerns, the applicant has submitted a revised site plan which provides for a 38’-0” wide portion of the mapped portion of North Avenue to be maintained free of any permanent obstructions in the event that the portion of said street will be opened in the future; and

WHEREAS, by letter dated April 5, 2007, the Fire Department states that it has reviewed the applicant’s revised submission and has no further comments; and

WHEREAS, by letter dated April 26, 2007, the Department of Environmental Protection (DEP) states that it reviewed the above application and advises the Board that there is an adopted Drainage Plan #PRD-1B & 2B, which calls for a future 10-in. diameter sanitary sewer and a 12-in. diameter storm sewer starting in North Avenue, north of College Avenue; and

WHEREAS, DEP also states that there are two 20-in. diameter pipe drains crossing the mapped street (North Avenue), between College Avenue and the northwestern portion of North Avenue; and

WHEREAS, therefore, DEP asked that the applicant conduct a televised inspection of the referenced drains in the presence of a DEP representative to see if they are active; if yes

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then DEP requires a minimum 34'-0" corridor north of College Avenue for the purpose of installation, maintenance, and/or reconstruction of these existing two 24-in. diameter pipe drains; and

WHEREAS, in response to DEP's request, the applicant proposes a 42'-0" wide corridor (which includes space for a 38'-0" road and a 4'-0" sidewalk) on North Avenue already being provide at the request of the Fire Department for access and maintenance; and

WHEREAS, by letter dated August 22, 2007, DEP states that it has reviewed the applicant's proposal and states that, while the July 17, 2007 proposal will provide for a 38'-0" wide sewer corridor in the bed of the southeasterly portion of North Avenue, north of College Avenue for the installation and maintenance of the future 10-in. diameter sanitary sewer and 12-in. diameter storm sewer, DEP still requires the applicant to provide a televised inspection to confirm the existence of the two 20-in. or 24-in. drains crossing the property; and

WHEREAS, if these pipes exist, DEP will require an access corridor north of College Avenue for the purpose of maintaining them; and

WHEREAS, on September 15, 2007, the applicant provided a revised site plan which reflects a future easement north of College Avenue for purposes of maintaining the two pipe drains; and

WHEREAS, by letter dated September 22, 2007, DEP states that it has reviewed the revised site plan finds it acceptable; and

WHEREAS, 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 December 12, 2006, acting on Department of Buildings Application No. 500855693, 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 September 24, 2007" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT a 42'-0" wide portion of the mapped portion of North Avenue be maintained free of any permanent obstructions, as reflected on the BSA-approved plans;

THAT a sewer corridor/easement with a width from 26'-2" to 33'-8" for DEP access be provided north of College Avenue, as reflected on the BSA-approved plans;

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, September 25, 2007.

190-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Patricia & John Dalton, lessees.

SUBJECT – Application August 7, 2007 – Reconstruction and enlargement of an existing one family house not fronting on a mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 7 Chester Walk, east side of Chester Walk, 44', south of Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 26, 2007, acting on Department of Buildings Application No. 402582399, reads in pertinent part: "The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the official map of the City of New York, Therefore :

A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

B) the existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A-2 - The proposed upgraded private disposal system is in the bed of a service road contrary to Department of Buildings Policy"; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated August 13, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the Board finds that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 26, 2007, acting on Department of Buildings Application No. 402582399, is

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modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 7, 2007"-(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 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, September 25, 2007.

105-06-A

APPLICANT – Rothkrug Rothkrug and Spector, for Yafa Development, LLC, owner.

SUBJECT – Application May 23, 2006 – Proposed development of a single family home which will lie partially in the bed of a mapped street (Hook Creek Boulevard contrary to General City Law Section 35. Premises is located within an R2 zoning district.

PREMISES AFFECTED – 240-23 128th Avenue, corner of 128th Avenue and Hook Creek Boulevard, Block 12866, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for continued hearing.

162-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Egdewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for continued hearing.

165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Egdewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2848 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for continued hearing.

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for deferred decision.

157-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Blue Diamond Development, LLC, owner.

SUBJECT – Application June 11, 2007 – Extension of time (11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2/R6A, M1-2/R6B and MX-8.

PREMISES AFFECTED – 55 Eckford Street, western side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to October

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23, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, SEPTEMBER 25, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

154-05-BZ

CEQR 05-BSA-142M

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to §42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, §42-13 (There are no residential bulk regulations in a M1-5B zoning district), and §13-12 (The proposed public parking garage is not permitted in a residential development.)

PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ken Lowenstein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 24, 2005, acting on Department of Buildings Application No. 104129890, reads in pertinent part:

“ZR 42-10 – Commercial (Use Group 6) and Residential (Use Group 2) use are not permitted in an M1-5B district

ZR 42-13 – There are no residential bulk regulations in an M1-5B district”; and

WHEREAS, this is an application under ZR § 72-21, to

permit, within an M1-5B zoning district, the construction of a nine-story, 39-unit residential building with ground floor retail use, which is contrary to ZR §§ 42-10 and 42-13; and

WHEREAS, a public hearing was held on this application on April 24, 2007, after due notice by publication in the *City Record*, to continued hearings on June 19, 2007 and August 14, 2007, and then to decision on September 25, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan, provided recommendations for two iterations of the proposal: (1) 51 residential units and 280 parking spaces and (2) the current proposal; in both instances, the Community Board recommends disapproval of the application, citing concerns about neighborhood character, potential threats to nearby buildings during construction, the demolition of the pre-existing buildings at the site, and that the bulk is not compatible with neighborhood character; and

WHEREAS, additionally, if the application is approved, the Community Board recommends (1) that the ground floor use be restricted to Use Group 6 and that no eating and drinking establishment be permitted, (2) that every effort be made to minimize the impacts of construction on nearby buildings, and (3) that pile foundations be drilled and not hammered and that the underpinning of the surrounding buildings be carefully monitored; and

WHEREAS, City Council Speaker Christine Quinn provided testimony in opposition to this application and in support of the Community Board’s recommendation; and

WHEREAS, certain neighbors, some of whom were represented by counsel or neighborhood organizations, (the “Opposition”) appeared and made submissions in opposition to this application; the Opposition contends that (1) the subsurface conditions are insufficient to support a uniqueness finding and are not evident on both portions of the zoning lot, (2) the building plans and floor area calculations are unclear and do not accurately reflect the proposal, (3) the financial calculations are arbitrary and lack support, (4) the applicant should have analyzed the feasibility of retaining the pre-existing parking garage, (5) the proposed construction will endanger nearby buildings, and (6) the building is not compatible with neighborhood character; and

WHEREAS, the site is located on the north side of Broome Street, between Sullivan Street and Thompson Street, with frontage on all three streets, and is within an M1-5B zoning district; and

WHEREAS, the site comprises two tax lots, Lot 1 and Lot 41, which form a single zoning lot; and

WHEREAS, Lot 1 is a small L-shaped lot at the west of the site, with 21 feet of frontage on Sullivan Street and 80 feet of frontage on Broome Street; and

WHEREAS, Lot 41 has 120 feet of frontage on Broome Street and 100 feet of frontage on Thompson Street; and

WHEREAS, the zoning lot has a total lot area of 14,024

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sq. ft.; and

WHEREAS, the site was formerly occupied by a two-story garage and a one-story automotive repair building, which have been or will be demolished; and

WHEREAS, the site has a stepped rear lot line which results in varying depths; and

WHEREAS, the Board notes that the application was revised several times throughout the hearing process; and

WHEREAS, at the time of the first hearing, the applicant proposed a nine-story building with 5.0 FAR, 51 dwelling units, and four cellar levels to accommodate public and accessory parking for 280 vehicles; the proposal included 10,000 sq. ft. of recreational space that was erroneously deducted from floor area calculations; and

WHEREAS, an interim iteration provided for a nine-story 5.0 FAR building with 41 dwelling units, 41 accessory parking spaces, and a wing at the corner of Broome Street and Sullivan Street reduced to three stories; and

WHEREAS, the Board notes that iterations which included public parking required an additional waiver for that use; and

WHEREAS, the current proposal is for a building with a total floor area of 70,120 sq. ft. (5.0 FAR), a residential floor area of 59,662 sq. ft. (4.3 FAR), a commercial floor area of 10,458 sq. ft. (0.70 FAR), a maximum street wall height of 80'-5", a total height of 101'-11", without bulkheads, a total height of 118'-11", with bulkheads (all heights are measured from the average base plane); 39 dwelling units, and no parking; and

WHEREAS, the building will have two parts, (1) a portion with sections which are one, six, seven, and nine stories at the corner of Thompson Street and Broome Street (the "Main Building") and (2) a three-story wing on the narrow portion of the lot at the corner of Sullivan Street and Broome Street (the "Sullivan Wing"); and

WHEREAS, as to the Main Building, (1) the cellar level will be occupied by storage and accessory use, (2) the first floor will be occupied by retail use and a residential entrance on Thompson Street, and (3) the second through ninth floors will be occupied by a total of 38 residential units; and

WHEREAS, further, the first floor will occupy the entire site, except for a partially-enclosed garden connecting the two wings, and will provide a rear yard of at least 30 feet on the second through sixth floors of the Main Building; the Main Building will provide a setback above the sixth floor at its northern property line and 15'-0" setbacks at a height of 80'-5" (above the seventh floor) on both the Thompson Street and Broome Street frontages and will reach a total height of 101'-11" above the ninth floor; and

WHEREAS, as to the Sullivan Wing, it will be occupied by one triplex unit; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is characterized by a combination of unique subsurface conditions including a high water table, deep bedrock due to a location on the edge of a small bowl-shaped

depression in the bedrock, a location along the edge of marshlands, a location within a flood plain, and poor soil conditions; and (2) the site is adjacent to several full lot buildings, which are historic in nature and require extra measures for protection during construction, including underpinning; and

WHEREAS, as to the water table, the applicant represents that groundwater was found at approximately 8.4 feet below grade; and

WHEREAS, the applicant represents that a dewatering system will be required to stabilize this condition and protect the subject building and those around it during construction; and

WHEREAS, as to the bedrock, the applicant represents that the bedrock is at a depth of 100 to 110 feet; and

WHEREAS, further, the applicant represents that the site is located within a small bowl-shaped depression in the bedrock; and

WHEREAS, the applicant represents that this is the deepest measured bedrock within the district and submitted a geotechnical map reflecting the location of the bowl-shaped depression; and

WHEREAS, the applicant represents that the site is situated at the edge of a marsh, which means that there are marsh and non-marsh conditions, which may need to be accommodated by different construction methods; and

WHEREAS, the applicant submitted a geotechnical report which reflects that the marsh does not extend north of Broome Street and is not a typical condition of the SoHo neighborhood; and

WHEREAS, as to the flood plain, the applicant represents that the site is located within 100-year and 500-year flood zones; and

WHEREAS, the applicant submitted a geotechnical report which reflects that most of SoHo is not in either of the flood zones; and

WHEREAS, as to the soil conditions, the applicant represents that there is a level of fill materials five to eight feet below the surface containing organic silt consistent with marsh deposits; and

WHEREAS, throughout the hearing process, the applicant submitted additional evidence supporting its assertions about the noted subsurface conditions and documenting that significant tests were made to analyze the subsurface conditions, which reflect that the site is unique when compared to the majority of sites within the area; and

WHEREAS, the applicant's geotechnical consultant provided testimony at hearing and in writing which states that the combination of all the noted conditions at the site is highly unusual and distinguished this site from others in the area; and

WHEREAS, specifically, the consultant represents that areas to the north, east, and west of the site do not share these subsurface conditions and the conditions in these areas may be characterized as favorable for construction; and

WHEREAS, the applicant notes that sites located to the south of the subject site have some of the same noted

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subsurface conditions present, but distinguishes those because they do not have the confluence of factors described above; and

WHEREAS, the applicant has identified premium construction costs associated with the noted conditions, namely the extraordinary foundation requirements; and

WHEREAS, the Opposition has raised the concern that the noted site conditions are not unique, however it has not provided any evidence into the record to support the claim that these conditions are more common or to refute the applicant's evidence that the conditions are unique to this site; and

WHEREAS, the Board notes that the court in Douglaston Civic Association v. Klein, 51 N.Y.2d 963 (1980) does not require that a site be the only one affected by the condition which creates the hardship in order to meet the uniqueness finding, but rather that "the hardship condition be not so generally applicable throughout the district as to require the conclusion that if all parcels similarly situated are granted variances the zoning of the district would be materially changed"; and

WHEREAS, notwithstanding the absence of a requirement that a site be the only one so situated in order to meet the standard for uniqueness, the Board notes that the applicant has submitted evidence to support the assertion that the combination of the noted site conditions is in fact unique to this site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant also claimed that the safety measures and construction considerations required to protect the five adjacent buildings – four with frontage on Sullivan Street (57, 59, 61, and 63 Sullivan Street) and one with frontage on Thompson Street (57 Thompson Street) - represented additional unique conditions and hardship on the site; and

WHEREAS, specifically, the applicant represents that without additional measures, not present at all construction sites, the five buildings, which are all approximately one-hundred years old, could potentially be damaged; and

WHEREAS, the applicant represents that construction practices such as drilling piles rather than driving piles must be employed and careful underpinning of adjacent buildings must be performed; and

WHEREAS, the applicant has also agreed to follow construction protection plans approved by the Landmarks Preservation Commission (LPC) even though the noted buildings are not designated landmarks; and

WHEREAS, the applicant has identified premium costs associated with this condition; and

WHEREAS, the Board notes that the applicant has agreed to follow the Construction Protection Plan and that there are premium construction costs associated with its methods, but it has determined that the noted adjacent building conditions are common conditions associated with development in New

York City and has not considered them in its analysis of unique site conditions; and

WHEREAS, the Opposition has raised a concern that the site comprises two lots and that there is no evidence that Lot 1 (the small lot at the corner of Sullivan Street and Broome Street) is subject to the same unique conditions and hardship as Lot 41; and

WHEREAS, the applicant responded that the geotechnical report reflects that there is no significant difference between the subsurface conditions present at Lot 1 and those present at Lot 41, as described above; and

WHEREAS, further the applicant notes that Lot 1 is L-shaped and has a lot area of 2,520 sq. ft. with a 21'-0" by 60'-0" horizontal portion at the corner of Sullivan Street and Broome Street and a 20'-0" by 62'-0" portion in the midblock running perpendicular to Broome Street; and

WHEREAS, the applicant asserts that the small size and unusual configuration of the lot would not support a complying building for a conforming commercial or manufacturing use; and

WHEREAS, specifically, the applicant notes that the required core and two means of egress would constrain the use of the building to the point of being impractical, given the unique shape of the site; and

WHEREAS, the Board agrees that the hardship from Lot 41 is not being spread to Lot 1, but rather that unique conditions are present at both sites and that they are both constrained when merged, as well as individually; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conforming office development, (2) a conforming hotel, and (3) the earlier iteration of a non-conforming 51-unit residential building with 280 parking spaces; and

WHEREAS, the Board notes that the two conforming uses could have the same 5.0 FAR, 70,120 sq. ft. of floor area, and total building height as the proposed; and

WHEREAS, the applicant concluded that the two conforming scenarios would result in a loss, due to the premium construction costs associated with the unique site conditions; and

WHEREAS, the applicant concluded that the iteration of a non-conforming 51-unit residential building with 280 parking spaces would result in a sufficient return, but the Board disagreed with the assertion that it represented the minimum variance necessary to overcome the hardship at the site; and

WHEREAS, as to the feasibility study, the Opposition asserted that the parking garage which was in prior operation at the site was a viable use of the site and the applicant should have analyzed the economic feasibility of continuing to operate it; and

WHEREAS, the Board disagrees and states that it reviewed the applicant's conforming development scenarios and is not required to analyze the pre-existing business, which was non-conforming in the zoning district; and

WHEREAS, the Board cites to William Israel's Farm v. Board of Standards and Appeals, Index No. 110133/2004, Slip.

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Op. at 5 (Sup. Ct. NY Co. 2004), in which the court limits the required analysis, noting that “the language of ZR § 72-21(b)...requires that it be demonstrated that a reasonable rate of return cannot be had from a conforming use” not an existing non-conforming one; and

WHEREAS, the Board notes that the site at issue in William Israel’s Farm was also within an M1-5B zoning district and formerly occupied with a parking garage, and in its analysis, the court noted that a parking garage is a non-conforming use and, as noted above, need not be analyzed under ZR § 72-21(b); and

WHEREAS, the Board also notes that a case cited by the Opposition, Fayetteville v. Jarrold, 53 N.Y.2d 254, 258 (1981), actually states that “dollars and cents evidence must show that no permissible use will yield a reasonable return” and supports the conclusion in William Israel’s Farm that only conforming uses must be analyzed; and

WHEREAS, further, the Board notes that the garage was underbuilt and did not use all of the available floor area at the site and that a property owner is not prohibited from developing a site just because an existing (in this case, non-conforming) use at the site may generate revenue; and

WHEREAS, the applicant also represents that the garage was in a deteriorated condition and required costly structural repairs, including the replacement of the roof structure, in order to continue to be safely occupied; and

WHEREAS, the applicant submitted a statement from an engineer, which supports this representation; and

WHEREAS, additionally, the Opposition questioned the applicant’s comparables and claimed that they were not legitimate, but did not provide any evidence to discredit them; and

WHEREAS, accordingly, the Board accepted the comparables which are similar to those the Board has accepted in other cases; and

WHEREAS, the Opposition also claimed that the comparable price for the unit in the Sullivan Wing should be that of a townhouse; and

WHEREAS, the applicant represents that the single unit in the Sullivan Wing may have certain aesthetic characteristics of an individual townhouse but it is incorporated into the total development of the site; lacks a rear yard, among other conditions associated with townhouses; and functions as an apartment; and

WHEREAS, therefore, the applicant asserts that a comparison to a standard townhouse is erroneous; and

WHEREAS, based upon its review of the applicant’s submissions, the Board has determined that because of the subject site’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be

detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail use, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 39 dwelling units and ground floor retail use will not impact nearby conforming uses; and

WHEREAS, as to floor area, the applicant notes that the proposed 5.0 FAR is within the zoning district parameters and that no bulk waivers are requested; and

WHEREAS, the applicant submitted an FAR table which reflects that within the immediate vicinity, there are eight buildings which have an FAR of 5.0 or higher and that includes two buildings immediately across Broome Street and a new hotel across the street on Thompson Street; and

WHEREAS, the Board notes that the permitted FAR in the zoning district is 5.0 and that the City Planning Commission special permit for the SoHo Historic District (one block away) contemplates new residential development at the underlying 5.0 FAR; and

WHEREAS, as to height, the applicant states that there is a 12-story building and a seven-story building across Thompson Street from the site; there are also a number of buildings with seven to ten stories in the vicinity; and

WHEREAS, the Board notes that the applicant proposes to provide a three-story portion of the building at the Sullivan Wing in order to be more compatible with the low-rise historic buildings with frontage on Sullivan Street; and

WHEREAS, the applicant also proposes to step the building down to six stories at the north property line on Thompson Street so as to match the height of the adjacent six-story buildings; and

WHEREAS, the Board notes that the applicant has provided a 15’-0” setback above the seventh floor on both the Broome Street and Thompson Street frontages so as to limit the street wall to a maximum height of 80’-5”;

WHEREAS, in response to the opposition, the applicant reduced the number of stories to nine and the total building height, without bulkheads, to 101’-11”;

WHEREAS, further, the Board notes that the applicant reduced the height of the mechanical bulkhead from 130’-0” to 118’-11” and removed the rooftop water tower; and

WHEREAS, as to the Opposition’s claim that the building plans and floor area calculations are unclear, the Board notes that the applicant has revised the plans and clarified any purported inconsistency in the floor area calculations to its satisfaction; and

WHEREAS, as to parking, at the Board’s direction, the

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applicant eliminated the public parking from the site in order to be more compatible with neighborhood character; the applicant ultimately eliminated all parking from the site in order to meet the minimum required variance finding; and

WHEREAS, finally, the Board notes that the applicant has agreed to provide the level of protection during construction that the LPC requires for landmark buildings for the noted adjacent buildings, pursuant to two construction protection plans, which will be approved by LPC and DOB prior to the issuance of any building permits; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, as noted above, the Opposition contends that the applicant created the hardship by (1) demolishing the garage, which was a viable business; and (2) merging the two lots and spreading the unique conditions purportedly present on Lot 41 to Lot 1; and

WHEREAS, as to the demolition of the garage, the Board disagrees with the Opposition and notes, as above, that the garage was a non-conforming use which is not permitted as of right in the zoning district, in a building that the applicant represents was deteriorated, and the applicant did not create a hardship by demolishing it in anticipation of developing the site; and

WHEREAS, as to the lot merger, the Board disagrees with the Opposition and has determined that the applicant has submitted sufficient evidence to reflect that both lots have unique conditions, individually and as merged, which create a hardship in developing the site in conformance with the ZR; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the site; and

WHEREAS, the Board observes that the proposed building with 39 dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, further, the Board notes that the applicant modified the application so as to eliminate (1) a waiver request for public parking, (2) accessory parking, (3) the 10,000 sq. ft. of recreation space initially not included in floor area calculations, and also (4) redistributed the bulk by shifting it away from adjacent buildings; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA142M, dated

February 12, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: July 7, 2006 Phase II Subsurface Investigation Workplan, Health and Safety Plan (HASP), and the October 2006 Environmental Assessment Statement (EAS); and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, DEP approved of the Phase II Workplan and the Health and Safety Plan on July 18, 2006; and

WHEREAS, the New York City Department of Transportation's (DOT) Division of Traffic Planning reviewed the October 2006 EAS and traffic submissions and noted and determined the following:

- (1) The Applicant identified traffic improvement measures for the proposed project at the intersection of Broome Street and Sullivan Street for the 2008 Build Year. The proposed improvement measures involve parking regulation modifications which would address traffic issues at this intersection; and
- (2) DOT will investigate the feasibility of implementing the proposed improvement measures when the project is built and occupied. The Applicant shall inform DOT six months prior to the opening of the proposed project; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district, the construction of a nine-story, 39-unit residential building with ground floor retail use, which is contrary to ZR §§ 42-10 and 42-13, *on condition* that any and all work shall substantially conform to drawings as

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they apply to the objections above noted, filed with this application marked "Received September 21, 2007"–(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: a maximum of nine stories; a maximum street wall height of 80'-5"; a total height of 101'-11", without bulkheads; a total height of 118'-11", with bulkheads (all heights are measured from the average base plane); 70,120 sq. ft. (5.0 FAR); a residential floor area of 59,662 sq. ft. (4.3 FAR); 39 dwelling units; and a commercial floor area of 10,458 sq. ft. (0.70 FAR);

THAT the use on the first floor shall exclude eating and drinking establishments and shall be limited to retail use (Use Group 6);

THAT the above condition shall be listed on the certificate of occupancy;

THAT prior to the issuance of building permits, LPC and DOB shall review and approve the construction protection plans - (1) the LPC protection plan for 57 Sullivan Street and (2) the protection plan for 57 Thompson Street and 59, 61, and 63 Sullivan Street – which describe the protection measures for the adjacent buildings during construction;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, September 25, 2007.

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.
SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 6, 2006, acting on Department of Buildings Application No. 401086285, reads in pertinent part:

"1. Construction of portion of second floor projects into front yard and is contrary to Section 23-45 Z.R."; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the legalization of an enlargement to a single-family home, which does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on March 6, 2007 after due notice by publication in *The City Record*, with continued hearings on May 8, 2007, July 10, 2007, and August 21, 2007, and then to decision on September 25, 2007; and

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southeast corner of 83rd Avenue and 267th Street; and

WHEREAS, the site has a lot area of 4,000 sq. ft., with a width of 40 feet and a depth of 100 feet; and

WHEREAS, the applicant states that the lot has existed in its present configuration since before 1961; and

WHEREAS, the site is currently occupied by a 1,889 sq. ft. (0.47 FAR) two-story single-family home (the "Current Home"); and

WHEREAS, the legal floor area of the home, which was built in approximately 1947, is approximately 922 sq. ft. (0.23 FAR) (the "Original Home"); and

WHEREAS, the applicant proposes to legalize the as-built condition which includes a full second floor; and

WHEREAS, the Current Home complies with all R2 zoning district regulations except for one required front yard; and

WHEREAS, prior to the enlargement, the one and one-half-story Original Home had a pre-existing legal non-complying front yard depth of 5'-3" on 267th Street; and

WHEREAS, the Current Home, with the subject enlargement maintains the non-complying 5'-3" front yard on 267th Street; and

WHEREAS, the Current Home maintains the two complying side yards of 36.39 feet and ten feet and the complying front yard with a depth of 26'-0" on 83rd Avenue (two complying front yards with depths of 15'-0" are the minimum required); and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties

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and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the narrow width of the lot in combination with its location as a corner lot; (2) the pre-existing non-complying front yard on 267th Street; and (3) the underbuilt character of the 60-year-old Original Home; and

WHEREAS, as to lot width and corner location, the applicant analyzed 74 lots within a 400-ft. radius of the site; and

WHEREAS, the applicant represents that of the 74 lots, 13 are corner lots, seven of which have widths of 40 feet or less; and

WHEREAS, further, the applicant represents that only three of the seven sites with widths of 40 feet or less are occupied by homes with only one story; the remaining four have two stories; and

WHEREAS, accordingly, the Board notes that other homes on similarly situated lots, have distributed available floor area onto a second floor; and

WHEREAS, as to the pre-existing non-complying front yard on 267th Street, the applicant notes that due to the location of the Original Home on this narrow corner lot, any vertical enlargement of the building would have required a setback of approximately 9'-9" from the 267th Street frontage; and

WHEREAS, the applicant represents that since the Original Home had a width of 24.77 feet, a setback of 9'-9" at the second floor would have resulted in a second floor with a width of only approximately 15 feet; and

WHEREAS, further, the applicant notes that a second floor built with a setback in compliance with zoning district regulations would require new load-bearing columns and structural support because it could not rest on the exterior walls; and

WHEREAS, this new wall would be in the middle of the home, would disrupt the design of the first floor, and would require the relocation of the staircase; and

WHEREAS, the applicant submitted plans for an as of right development which support this assertion; and

WHEREAS, accordingly, the applicant asserts that this requirement would make a second-floor addition impractical and prohibitively expensive; and

WHEREAS, additionally, due to the size and corner location of the lot, a new home built in strict compliance with front yard regulations would be narrow in width; and

WHEREAS, specifically, the applicant represents that the redevelopment of the site would restrict the width of the home to a maximum of 25 feet, if both required side yards and both required front yards were provided; and

WHEREAS, as to the underbuilt character of the Original Home, the applicant claims that the existing 60-year-old 922 sq. ft. home was very small and did not meet modern standards of habitability; and

WHEREAS, as noted above, the setback scenario is impractical and would also not be able to accommodate the available floor area (2,000 sq. ft. is the maximum permitted floor area); and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions, when considered in the

aggregate, create practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that all yards have been maintained; and

WHEREAS, specifically, a complying 26'-0" front yard has been maintained along 83rd Avenue, a complying 10'-0" side yard has been maintained along the eastern property line, and a complying 36.39 ft. side yard has been maintained along the southern property line; and

WHEREAS, the applicant notes that the non-complying front wall at the second floor on 267th Street extends the legally non-complying front yard with a depth of 5'-3" feet along 267th Street; and

WHEREAS, the applicant represents that all except one of the 11 single family homes occupying corner sites located at the intersection of 83rd Avenue and 266th Street, 267th Street, or 268th Street have at least one non-complying front yard; one site has two non-complying front yards; and

WHEREAS, the applicant submitted a land use map which supports the above representations; and

WHEREAS, additionally, as discussed above, the proposed home is comparable in width to the homes within the immediate vicinity and is within the 0.50 FAR permitted in the R2 zoning district; and

WHEREAS, the Board also notes that the absence of one complying front yard will not negatively impact the adjacent uses as the Current Home provides complying yards along the south and west property lines adjacent to other residences and provides a complying front yard along 83rd Avenue where the front of the home is oriented; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R2 zoning district regulations except for one required front yard; and

WHEREAS, the Board finds that this proposal is for a minor increase in FAR, from 0.23 to 0.47, which is within the zoning district parameters and reflects the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and

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makes the required findings under ZR § 72-21, to permit, within an R2 zoning district, the legalization of an enlargement to a single-family home, which does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 23, 2007”– (8) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: an FAR of 0.47; a floor area of 1,889 sq. ft.; one front yard of 26’-0”, along 83rd Avenue; one front yard of 5’-3”, along 267th Street; one side yard of 36.39 feet; and one side yard of 10’-0”;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, September 25, 2007.

328-06-BZ

CEQR #07-BSA-049M

APPLICANT – Francis R. Angelino, Esq., for Okada Denki Sanyo Company Limited, owner.

SUBJECT – Application December 20, 2006 – Zoning variance under ZR §72-21 to allow an eight (8) story residential building containing six (6) dwelling units and ground floor retail use; contrary to regulations for use (§42-00, §111-104(e), and §111-102(b)). M1-5 district (Area B-2 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 50-52 Laight Street, Between Hudson and Greenwich Streets, Block 219, Lots 2 & 3, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jack Freeman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 8, 2007, acting on Department of Buildings Application No. 104350202, reads in pertinent part:

“ZR 42-00 – Use Group 2 is not permitted in M2-4 district per ZR 111-104(e)”;

WHEREAS, this is an application under ZR § 72-21, to

permit, within an M1-5 zoning district (Area B2), within the Special Tribeca Mixed Use District and the Tribeca North Historic District, the construction of an eight-story, six-unit residential building with ground floor retail, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 21, 2007, after due notice by publication in the *City Record*, and then to decision on September 25, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application on the condition that a bar, club, or restaurant not be permitted in the first floor retail space; and

WHEREAS, the site is located on the north side of Laight Street, between Greenwich Street and Hudson Street, within an M1-5 zoning district (Area B2), within the Special Tribeca Mixed Use District and the Tribeca North Historic District; and

WHEREAS, the site comprises two lots – Lot 2 (50 Laight Street) and Lot 3 (52 Laight Street); each lot has a width of 25’-0”, and depths ranging across the site from 68’-7” on the east property line to 72’-11” on the west property line; and

WHEREAS, the applicant proposes to merge the two lots into Lot 3; and

WHEREAS, the site has a total lot area of 3,552 sq. ft. and was formerly occupied by two one-story garage buildings, which were demolished in anticipation of construction; and

WHEREAS, the proposed building will have a total floor area of 17,739 sq. ft. (5.0 FAR), a residential floor area of 15,341 sq. ft. (4.32 FAR), a commercial floor area of 2,398 sq. ft. (0.68 FAR), a street wall height of 85 feet, and a total height of 97’-5”;

WHEREAS, the first floor will be occupied by retail space and the residential lobby; the second through sixth floors will be occupied by one residential unit per floor; and the seventh and eighth floors will be occupied by one duplex unit; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small and shallow; and (2) the site is irregularly-shaped; and

WHEREAS, as to size, the applicant represents that, with a lot area of 3,552 sq. ft. and a range of depths from 68’-7” to 72’-11”, the site is too small to accommodate a conforming use; and

WHEREAS, additionally, the applicant notes that separately, the lots have lot areas of only 1,752 sq. ft. and 1,800 sq. ft.; and

WHEREAS, as to the uniqueness of this condition, the applicant notes that there are only two other lots wholly within a 400-ft. radius of the site which have a depth of 73’-0” or less and that both of those sites are developed with five-story buildings; and

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WHEREAS, further, the applicant notes that there are only two other sites within the radius that are not occupied with a building of at least five stories; and

WHEREAS, the applicant represents that the small size of the site could not provide efficient floorplates for conforming development at the site; and

WHEREAS, further, the applicant represents that the shallow depth and small size of the site results in a building with a disproportionate amount of space devoted to the building core, which includes the elevator, stairways, and bathrooms and which is comparable in size to a core that could serve a larger building; and

WHEREAS, the applicant represents that this condition results in a higher percentage of lost floor space than for a larger building with the same core; and

WHEREAS, specifically, the applicant represents that an as of right commercial building would provide 2,523 sq. ft. floor plates on the second through sixth floors, and a 1,324 sq. ft. floor plate on the seventh floor, which is too small and fragmented to support a modern conforming use; and

WHEREAS, the applicant represents that the site has been occupied by one-story garage structures since before 1940 and that, due to its small size, has never been occupied by manufacturing or commercial uses; and

WHEREAS, as to the site's shape, the applicant states that the rear lot line is on an angle and results in varying depths from 68'-7" on the east property line to 72'-11" on the west property line; and

WHEREAS, the applicant represents that the irregularity of the depth, coupled with its shallowness, results in premium costs and a loss of valuable space when developing the site with the required rear yard for either a conforming or non-conforming building; and

WHEREAS, specifically, this condition would either result in an underutilization of the already small site and/or an angled rear wall of the building if the required rear yard were provided; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a complying non-conforming building, which sets back on the seventh and eighth floors, and (2) an as of right conforming building; and

WHEREAS, the applicant concluded that (1) the complying non-conforming building would not allow for the use of all of the available floor area and would result in a loss and (2) the as of right scenario would not provide a sufficient return; and

WHEREAS, the applicant provided building plans reflecting the two scenarios noted above and the proposed; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable

possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses, some of which occupy the subject block; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units and ground floor retail will not impact any nearby conforming uses; and

WHEREAS, the applicant also notes that there are several residential buildings which are larger or of comparable size on the subject block and across Laight Street; and

WHEREAS, specifically, the adjacent site to the east is occupied by a six-story residential building with commercial use on the first floor; the site at the northeast corner of Greenwich Street and Laight Street is occupied by an 11-story loft building with first floor commercial use; and across Laight Street are nine-story and five-story building with residential use; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the uses in the immediate vicinity of the site; and

WHEREAS, additionally, the applicant notes that the eighth floor will be set back so as to minimize its visibility from the street and the seventh floor will also have a setback which will be occupied by a partially enclosed terrace; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning district, so the applicant analyzed the bulk based on the R7X residential equivalent; and

WHEREAS, the applicant notes that the shallow depth and irregular shape makes it difficult to provide a rear yard with a depth of 30'-0", which would be required in an R7X equivalent district, and develop a building with viable floor plates for residential use; and

WHEREAS, the Board notes that the building complies with all R7X zoning district parameters except rear yard, as noted, and front setback, which are both attributed to the shallow lot; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated August 21, 2006; and

WHEREAS, at the LPC's direction, the applicant designed the height of the street wall to be compatible with adjacent buildings; the floor to ceiling heights are proportionate to those on adjacent buildings; and the composition of the

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façade is in a traditional arrangement which is characteristic of the multi-story buildings in the district; and

WHEREAS, additionally, the applicant represents that the façade materials have been chosen to be compatible with the district's historic character; and

WHEREAS, the Board notes that the building has been carefully designed to be compatible with neighborhood character; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board observes that the proposed building of six dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Board also notes that the proposed building envelope is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the lot and which has been designed to minimize any effects on adjacent buildings; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA049M, dated July 17, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a August, 2006 Environmental Assessment Statement, (2) a January, 2007 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Restrictive Declaration was executed on September 18, 2007 and submitted for recordation on September 18, 2007 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-5 zoning district (Area B2), within the Special Tribeca Mixed Use District and the Tribeca North Historic District, the construction of an eight-story, six-unit residential building with ground floor retail, which is contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2007" – thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: eight stories, six residential units, a total floor area of 17,739 sq. ft. (5.0 FAR), a residential FAR of 4.32, a commercial FAR of 0.68, a streetwall height of 85 feet, and a total height of 97'-5";

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2007.

126-07-BZ CEQR #07-BSA-090M

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Massachusetts Mutual Life Insurance Co., owner; AGT Crunch New York, LLC, lessee.

SUBJECT – Application May 17, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on a portion of the ground floor, second floor mezzanine, and on part of the second floor in a 43-story residential building. The proposal is contrary to §32-00. C6-4 zoning district.

PREMISES AFFECTED – 555 West 42nd Street, north side of West 42nd Street, at 11th Avenue, Block 1071, Lot 1, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 30, 2007, acting on Department of Buildings Application No. 104737448, reads in pertinent part:

“Proposed Physical Culture Establishment not permitted in C6-4 zoning district within Special Clinton District “CI”. Impermissible use which requires special permit from BSA. Examination to commence thereafter”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4 zoning district, within the Special Clinton District, the establishment of a physical culture establishment (PCE) on portions of the ground floor, the second floor mezzanine, and portions of the second floor of an existing 43-story mixed-use residential and commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on August 7, 2007 after due notice by publication in *The City Record*, and then to decision on September 25, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located at the northeast corner of West 42nd Street and 11th Avenue; and

WHEREAS, the PCE occupies a portion of the ground floor (3,711 sq. ft.), the second floor mezzanine (3,311 sq. ft.), and a portion of the second floor (7,759 sq. ft.) of the building, totaling 14,781 sq. ft. of floor area; and

WHEREAS, the PCE will be operated as Crunch Fitness; and

WHEREAS, on September 14, 1988, under BSA Cal. No. 60-87-BZ, the Board granted a special permit for a term of five years for the conversion of a health establishment accessory to the residential portion of the building to a PCE; and

WHEREAS, after the lapse of the original grant, the Board granted a special permit, under BSA Cal. No. 42-99-BZ, to legalize the existing PCE on the second floor and second floor mezzanine of the building; and

WHEREAS, in or about 2000, the PCE expanded to include part of the ground floor; and

WHEREAS, on September 1, 2003, the special permit under BSA Cal. No. 42-99-BZ lapsed; and

WHEREAS, the applicant represents that the operator of

the PCE changed and the term of the special permit was not extended; and

WHEREAS, the applicant represents that the PCE will offer classes in physical improvement, strength training, weight training, group fitness programs, personal training, cardio-vascular programs, and aquatic programs; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 5:30 a.m. to 12:00 a.m. and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA090M, dated May 15, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4 zoning district,

MINUTES

within the Special Clinton District, the establishment of a physical culture establishment on portions of the ground floor, the second floor mezzanine and portions of the second floor of an existing 43-story mixed-use residential/commercial building, contrary to ZR §§ 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 17, 2007"- (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 25, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 5:30 a.m. to 12:00 a.m. and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2007.

166-07-BZ

CEQR #07-BSA-101K

APPLICANT – Wolf Block, Schorr & Solis-Cohen LLP, for Mindy Guzzone, owner. JCR Fitness, Incorporated d/b/a Fitness Together, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture establishment on the ground floor of a five-story mixed-use building. The proposal is contrary to section 32-00. C2-3 zoning district.

PREMISES AFFECTED – 213 Court Street, between Wyckoff and Warren Streets. Block 390, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Kenneth K. Fisher.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2007, acting on Department of Buildings Application No. 302371715, reads:

"The proposed Physical Culture Establishment is not permitted "As of Right" use in a C2-3 district.

This use is contrary to ZR 32-00"; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R6) zoning district, the legalization of a physical culture establishment (PCE) on the ground floor of an existing five-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 21, 2007 after due notice by publication in *The City Record*, and then to decision on September 25, 2007; and

WHEREAS, Community Board 2, Brooklyn, waived its hearing process on this application; and

WHEREAS, the subject site is located on the east side of Court Street, between Wyckoff Street and Warren Street; and

WHEREAS, the site is currently occupied by a five-story mixed-use residential/commercial building; and

WHEREAS, the PCE occupies 1,355 sq. ft. of floor space on the ground floor of the building; and

WHEREAS, the PCE, is operated as Fitness Together, which offers personal training services; and

WHEREAS, the current hours of operation are: Monday through Friday, 6:00 a.m. to 9:00 p.m. and Saturday 6:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant states that in the future it intends to have Sunday hours of operation; and

WHEREAS, three employees and the operator work at the PCE, and it is used by approximately 14 patrons daily; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that

MINUTES

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA101K, dated June 24, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R6) zoning district, the establishment of a physical culture establishment on the ground floor of an existing five-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 14, 2007"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 25, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other

relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2007.

426-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Expert Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a two-level enlargement of an existing one-story commercial building contrary to FAR regulations (§43-12). M1-1 district.

PREMISES AFFECTED – 57-02/08 39th Avenue and 39-02 58th Street, Block 1228, Lots 48, 52, 57, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

103-06-BZ

APPLICANT – Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district.

PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for continued hearing.

227-06-BZ

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot 90, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for continued hearing.

MINUTES

315-06-BZ

APPLICANT– Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35, 24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Gavin Boldom, Rabbi Harris.

For Opposition: Alex Zelotarev, Alexandra Neotylev and M. Charny.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

65-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Ship Management Corp., owner.

SUBJECT – Application March 15, 2007 – Variance (§ 72-21) to allow a one-story (UG 6) retail building to violate use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 146-93 Guy R. Brewer Boulevard, northeastern intersection of 147th Avenue and Guy R. Brewer Boulevard, Block 13354, Lot 12, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for continued hearing.

69-07-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLP, for 240 West Broadway, LLC, owner.

SUBJECT – Application March 23, 2007 – Variance (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units; contrary to use regulations (§42-10). M1-5 district (Area B-1 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 240 West Broadway, northwest corner of the intersection of North Moore Street and West Broadway, Block 190, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal and Jack Freeman.

For Opposition: Jack Lester and Lee Dary.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for decision, hearing closed.

78-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application April 12, 2007 – Special Permit (§73-36) to allow the operation of a PCE on the first floor of a two-story commercial building. The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for continued hearing.

80-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 319 West LLC, owner. The Lantern Group, Incorporated, lessee.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to community facility floor area (§24-111), wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel, Richard Vitto, Chris Santee.

For Opposition: Aaron Briller and Judith Doell.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for decision, hearing closed.

124-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gino Masci, owner.

SUBJECT – Application May 16, 2007 – Under (§ 72-21) to allow UG 6 (eating and drinking) on the first floor and cellar of an existing seven-story building, contrary to use

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regulations (§ 42-14(d)(2)(b). M1-5B district.
PREMISES AFFECTED – 521 Broome Street, between
Broome and Watts Streets, midblock between Thompson
Street and Sixth Avenue, Block 476, Lot 23, Borough of
Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October
30, 2007, at 1:30 P.M., for continued hearing.

188-07-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Hilton
Hotels Corporation, owner; Spa Chakra, LLC, lessees.

SUBJECT – Application August 2, 2007 – Special Permit
(§§73-03 & 73-36) – To allow a Physical Culture
Establishment in portion of an existing building (19th floor
& p/o lobby level) in a C5-2.5/C5-3/C6-6 ZD.

PREMISES AFFECTED – Waldorf-Astoria, 301 Park
Avenue, entire block bounded by Park & Lexington
Avenues and East 49th & 50th Streets, Block 1304, Lot 1,
Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Shelly Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October
23, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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October 11, 2007

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221-07-BZ

165 Lenox Avenue, Single lot located on the west side of Lenox Avenue, mid-block between West 118th and West 119th Streets., Block 1903, Lot(s) 32, Borough of **Manhattan, Community Board: 10**. Under 72-21-To permit a change in use to allow a music rehearsal studio within the existing building.

222-07-BZ

110 West 26th Street, West 26th Street between Sixth Avenue and Seventh Avenue., Block 801, Lot(s) 49, Borough of **Manhattan, Community Board: 4**. Under 72-21-To legalize the residential use of the 2nd and 3rd floors of the subject premises.

223-07-BZ

12 West 57th Street, South side of West 57th Street between Fifth and Sixth Avenues., Block 1272, Lot(s) 47, Borough of **Manhattan, Community Board: 5**. (SPECIAL PERMIT) 73-36-To legalize a Physical Culture Establishment comprising 5,463 square feet in an existing building.

224-07-BZ

1940 54th Street, Southern side of 54th Street between 19th Avenue and 20th Avenue., Block 5495, Lot(s) 48, Borough of **Brooklyn, Community Board: 12**. Under 72-21-To permit the proposed residential development at the premises.

225-07-BZ

1942 54th Street, Southern side of 54th Street between 19th Avenue and 20th Avenue., Block 5495, Lot(s) 49, Borough of **Brooklyn, Community Board: 12**. Under 72-21-To permit the proposed residential development at premises.

226-07-BZ

1946 54th Street, Southern side of 54th Street between 19th Avenue and 20th Avenue., Block 5495, Lot(s) 50, Borough of **Brooklyn, Community Board: 12**. Under 72-21-To permit the proposed residential development at the premises.

227-07-BZ

1595 Canarsie Road, Subject property fronts the east side of Canarsie Road between Kaufman Place to the north and Avenue N to the south., Block 8277, Lot(s) 9, Borough of **Brooklyn, Community Board: 18**. (SPECIAL PERMIT) 73-30-For a proposes 52-foot non-accessory radio tower and related equipment at grade.

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

OCTOBER 30, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 30, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

426-83-BZ

APPLICANT – Glen V. Cutrona, AIA, for Giuseppe Emmanuele, owner; S & E Landholding, Incorporated, lessee.

SUBJECT – Application November 3, 2006 – Extension of Term/Amendment/Waiver-Request extension of term of an existing retail stores on the first floor and offices on the second floor (UG6 in a R3-1 zoning district), approved pursuant to §72-21. The amendment seeks to legalize a reduction in parking from the 27 to 20 vehicles and approve the change in parking layout. The application also seeks to amend the signage and extend the term for an additional twenty (20) years from its expiration on November 27, 2004. PREMISES AFFECTED – 1880 Hylan Boulevard, Hylan Boulevard and Slater Boulevard, Block 3657, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

OCTOBER 30, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 30, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

48-06-BZ

APPLICANT – Jack A. Adesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under § 72-21 to allow an eight (8) story residential building containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is contrary to use regulations (§ 42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

158-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 184-20 Union Turnpike Realty, LLC, owner.

SUBJECT – Application June 11, 2007 – Variance (§ 72-21) to allow a one-story commercial retail building (UG 6), contrary to use regulations (§ 22-10). R1-2 district.

PREMISES AFFECTED – 184-20 Union Turnpike, 110' west of southwest corner of the intersection of Union Turnpike and Chevy Chase Street, Block 7248, Lot 39, Borough of Queens.

COMMUNITY BOARD #8Q

167-07-BZ

APPLICANT – Harold Weinberg, P.E., for Alex Sirota, owner.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage, floor area (23-141) and less the required rear yard (23-47) in an R3-1 zoning district. This application also seeks to convert from a two family residence to a one family residence.

PREMISES AFFECTED – 220 Amherst Street, west side 140' south of Oriental Boulevard between Oriental Boulevard and Esplande, Block 8738, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #15BK

202-07-BZ

APPLICANT – Cozen O'Connor Attorneys, for Frank J. Martino Revocable Living Trust, owner; Mattan Basseter, lessee.

SUBJECT – Application August 14, 2007 – Special Permit under §73-19 to allow a religious pre-school (UG3). The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2160-2170 McDonald Avenue, west side of McDonald Avenue, 40' north of Avenue T, Block 7087, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #11BK

213-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Eisenreich, owner.

SUBJECT – Application September 18, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (23-141); side yard (23-48) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1217 East 26th Street, East 26th Street between Avenue L and Avenue M, Block 7644, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

215-07-BZ

APPLICANT – Sheldon Lobel, P.C., for YMCA of Greater New York, owner.

SUBJECT – Application September 20, 2007 – Variance (§72-21) to permit an enlargement of the existing community facility building. The proposal requests waivers of lot coverage (24-11) and sky exposure plane (24-521). R5B district.

PREMISES AFFECTED – 69-02 64th Street, southwest corner of the intersection of Catalpa Avenue and 64th Street, Block 3631, Lot 6, Borough of Queens.

COMMUNITY BOARD #5Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 2, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

671-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 24 Pack LLC, owner; Euclide Enterprises, Inc., lessee.

SUBJECT – Application March 21, 2007 – Amendment to a previously granted Variance (§72-21) to convert the existing service bays to an accessory convenience store, an area previously approved for a new bay to a mechanical room and (§11-412) to legalize a UG6 eating and drinking establishment (Texas Chicken); Extension of Time to complete construction and to obtain a Certificate of Occupancy and a Waiver of the rules in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 1249-1265 Sutter Avenue, blockfront from Euclid Avenue to Doscher Street, Block 4249, Lots 55 & 59, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of time to obtain a certificate of occupancy, and an amendment to the previously granted variance for a gasoline service station with accessory uses; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with a continued hearing on September 11, 2007, and then to decision on October 2, 2007; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the premises is located on the north side of Sutter Avenue on a through lot with frontage on Doscher Street and Euclid Street; and

WHEREAS, the site is located within a C1-2 (R5) zoning district and is occupied by a gasoline service station, lubritorium, auto laundry, and a fast food establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 24, 1957 when, under the subject calendar number, the Board granted an application for the

alteration of an existing gasoline service station with a lubritorium, minor auto repairs, auto laundry, office, store, parking, and storage of motor vehicles; and

WHEREAS, subsequently, the grant was amended and extended at various times; and

WHEREAS, most recently, on May 25, 2004, the Board reopened and amended the resolution to allow for certain site modifications, including the re-establishment of the gasoline service station (which had been eliminated in a prior amendment), an enlargement of the service building, the installation of two concrete islands, and the conversion of an existing bay to an accessory convenience store; the term was extended for a period of ten years to expire on September 24, 2012; and

WHEREAS, by letter dated September 22, 2004, the Board permitted several interior layout modifications; and

WHEREAS, the noted changes were not made and the applicant now seeks to modify the plans and to legalize certain existing conditions; and

WHEREAS, the period to complete construction and obtain a certificate of occupancy expired on May 25, 2005; and

WHEREAS, the applicant initially proposed, under this application, to convert the existing service bays and a portion of the area previously approved for a new bay into an accessory convenience store, to convert the remaining portion of the area which had been approved for a new bay to a mechanical room for the carwash equipment, and to legalize the Use Group 6 fast food establishment at the site; and

WHEREAS, the applicant revised the plans to eliminate the convenience store, to convert the proposed new bay into a mechanical room and office, but to maintain the fast food establishment; and

WHEREAS, the applicant also proposes to add a canopy at the entrance to the car wash and a drying area at the exit of the car wash; and

WHEREAS, the Board notes that the proposed enlargement to the service building is approximately 380 sq. ft. and is within the parameters set forth in ZR § 11-412; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for alterations to the site; and

WHEREAS, as noted, the applicant proposes to legalize a change in use of a portion of the site from a convenience store, as approved, to the existing fast food establishment; and

WHEREAS, the applicant represents that this use does not result in any new non-conformance or non-compliance; and

WHEREAS, the Board notes that the fast food establishment is a conforming use; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a change in use at the site to a conforming use; and

WHEREAS, at hearing, the Board directed the applicant to make the following changes to improve the circulation and safety at the site: (1) eliminate one curb cut on Sutter Avenue (closest to Doscher Street), (2) relocate the accessory parking to the west property line, (3) eliminate the curb cut on Euclid Avenue, (4) demarcate a pedestrian pathway between the accessory parking and the fast food establishment, and (5) install

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bollards in front of the entrance to the fast food establishment so that cars cannot cross the pedestrian pathway; and

WHEREAS, additionally, the Board directed the applicant to remove any non-complying signage; and

WHEREAS, the applicant has also requested to legalize the change in hours of operation for the car wash from 8:00 a.m. to 6:00 p.m., daily to 8:00 to 7:00 p.m., daily; and

WHEREAS, the Board agrees that this change is appropriate; and

WHEREAS, based upon its review of the record, the Board finds the proposed amendments are appropriate and that the evidence in the record supports the findings required to be made under ZR §§ 11-412 and 11-413, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waivers* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on December 12, 1939, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, the legalization of a fast food establishment (Use Group 6) on a portion of the site, and other noted site modifications, including the enlargement of the service building, *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked “September 19, 2007”-(5) sheets; and *on further condition*:

THAT construction be completed and a new certificate of occupancy be obtained within 12 months of the date of this grant, on October 2, 2008;

THAT the hours of operation of the car wash shall be limited to 8:00 to 7:00 p.m., daily;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all signage shall comply with C1 zoning district regulations;

THAT DOB shall review and approve all signage;

THAT DOB shall review and approve the layout of the onsite parking;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application Nos. 301664429 & 301658882)

Adopted by the Board of Standards and Appeals, October 2, 2007.

919-57-BZ

APPLICANT – Cullen and Dykman LLP by Gary Goldman, owner; Stanley Halpern, lessee.

SUBJECT – Application August 20, 2007 – Extension of Term, ZR11-411 of a previously granted variance for the continued operation of a UG6 take out restaurant in an R3-2 zoning district which expired on March 25, 2003.

PREMISES AFFECTED – 4912 Avenue K, south side of Avenue K between East 49th Street and Utica Avenue, Block 7829, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Gary Goldman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for decision, hearing closed.

382-80-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Full Gospel New York Church, owners.

SUBJECT – Application June 29, 2007 – Extension of Term of a previously granted variance, which expired on July 1, 2005, to allow the operation of a theater (Playhouse 91) on the mezzanine and second floors located in an R8b zoning district.

PREMISES AFFECTED – 316 East 91st Street, south side of East 91st Street, 250’ east side of Second Avenue, Block 1553, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker and Kenneth Shin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for decision, hearing closed.

214-96-BZ

APPLICANT – Rampulla Associates Architects, for Colonial Funeral Home, owner.

SUBJECT – Application July 2, 2007 – Extension of Term of a previously granted Variance (§72-21) which expires on April 7, 2008, to permit in an R3-1 zoning district, a UG7 (Colonial Funeral Home) and the existing accessory parking on the adjacent lot (Lot 30) which houses a conforming UG1 single family home.

PREMISES AFFECTED – 2819 Hylan Boulevard, North side Hylan Boulevard east corner of Hylan Boulevard and Tysens Lane. Block 4256, Lot 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

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APPEARANCES –

For Applicant: Phil Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for decision, hearing closed.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to November 30, 2007, at 10 A.M., for continued hearing.

2-07-A thru 5-07-A

APPLICANT – Sheldon Lobel, P.C., for Ron Karo, owner.

SUBJECT – Application January 8, 2007 – To allow construction of four-3story 2 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED– 3212, 3214, 3216, 3218, Tiemann Avenue, northeast corner of Tiemann Avenue and unnamed Street, Block 4752, Lots 128, 129, 132, 133, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for continued hearing.

39-07-BZ thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of a 3 story, 3 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED –3248, 3250, Givan Avenue, unnamed street between Wickham and Givan Avenue,, Block

4755, Lots 65 & 66, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for continued hearing.

73-07-A

APPLICANT– Fire Department of The City of New York

OWNER – L. W. Equity Associates Incorporated

LESSEE – Fabco Shoe Store

SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.

PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

For Opposition: Otis Allen and David Wienman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for decision, hearing closed.

156-07-A

APPLICANT – Jorge F. Canepa, for Victor Battaglia, owner.

SUBJECT – Application June 11, 2007 – Proposed construction a swimming pool and equipment room, located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 60 Chipperfield Court, 433.95' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 337, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Jorge F. Canepa.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

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Adjourned: 12:15 P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 2, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

23-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 1, 2006, acting on Department of Buildings Application No. 402265320, reads in pertinent part:

“Proposed side yards of 0’-0” and 8’-0” for a corner lot, occupied as community facility is contrary to ZR 24-35.

The proposed front yards for a corner lot is contrary to ZR 23-34”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R4 zoning district, the legalization of an enlargement to a three-story Use Group 4 synagogue, which does not comply with front yards and side yards, contrary to ZR §§ 24-35 and 23-34; and

WHEREAS, a public hearing was held on this application on January 30, 2007, after due notice by publication in *The City Record*, with continued hearings on April 17, 2007, August 21, 2007 and September 18, 2007, and then to decision on October 2, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-

Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of the application with the condition that (1) an independent engineer certify that the building meets all Building Code and fire safety standards and that the applicant install fire alarm and smoke detection devices throughout the building, (2) the applicant obtain required supervision of programs for children, (3) the applicant maintain the rear driveway, and (4) the applicant meet with neighbors to resolve concerns; and

WHEREAS, this application is being brought on behalf of Kehilat Saphardim of Ahavat Achim, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the southwest corner of 153rd Street and 78th Road, and is occupied by a three-story synagogue, which has been enlarged contrary to applicable zoning regulations; and

WHEREAS, the site has a total lot area of 2,500 sq. ft. and is located within an R4 zoning district; and

WHEREAS, the applicant represents that the former building did not meet the Synagogue’s programmatic needs and that the Synagogue enlarged the building at the front and rear of the former building; and

WHEREAS, the existing building provides for a three-story synagogue with the following parameters: a street wall and total height of 35’-0”, 4,217 sq. ft. of floor area, and an FAR of 1.68, with Use Group 4 synagogue use in the entire building; and

WHEREAS, additionally, the building, which is attached to a residential building at its western wall provides for a single side yard with a width of 14.06 feet at the rear of the building (two side yards with a minimum width of 8’-0” are required for a community facility in the zoning district), and front yards of 15’-0” (on 78th Road) and 5’-4” (on 153rd Street) (front yards with depths of 10’-0” and 15’-0” are the minimum required); and

WHEREAS, the proposed building has the following program: (1) a multi-purpose study hall, a lobby, and an accessory office on the first floor; (2) the primary worship space on the second floor; and (3) the accessory rabbi’s apartment on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to provide sufficient space to accommodate the congregation of more than 100 members; and (2) to provide space for services and programs other than worship services; and

WHEREAS, the applicant states that the prior space was insufficient to accommodate the existing congregation and that, even with the enlargement, high holiday services cannot be held at the site; and

WHEREAS, the applicant represents that meeting space is required for services and programming accessory to the Synagogue and for groups to meet outside of the worship space; and

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WHEREAS, specifically, the applicant represents that the Synagogue provides social service programming including (1) acculturation for the largely immigrant congregation, (2) a food pantry, (3) City and State agencies' social service programs, (4) religious instruction, and (5) youth programs; and

WHEREAS, additionally, the applicant represents that the prior building, which was a single-family home dating back to 1951, before its conversion to a synagogue in 1997, was obsolete in that it lacked adequate space and facilities for modern community facility use; and

WHEREAS, the applicant states that the existing floor area, which complies with zoning district regulations, cannot be accommodated within the as-of-right yard parameters and allow for efficient floor plates that would accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the existing non-complying yard parameters enabled the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating sufficient floor plates, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

WHEREAS, the Board notes that, if the second required side yard of 8'-0" and a second required front yard (on 153rd Street) of 10'-0" were provided, the building would only have a width 4'-0" and would be too narrow to accommodate any viable building; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the building does not alter the essential character of the neighborhood or substantially impair the appropriate use or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant notes that the synagogue use is

permitted in the subject zoning district and that the Synagogue has existed at the site for approximately ten years; and

WHEREAS, additionally, the applicant represents that the use of the building reaches a maximum capacity of approximately 70 visitors at one time, on a weekly basis; and

WHEREAS, the applicant represents that the immediate area is characterized by two- and three-story attached and detached homes; and

WHEREAS, at hearing, the Board expressed concern about a number of site conditions, which it did not find compatible with the neighborhood character; and

WHEREAS, specifically the Board directed the applicant to remove or modify the following conditions: (1) the garbage stored in the yard, (2) the shed at the east side of the site, (3) the parking space at the front of the building on 78th Road, (4) the masonry wall on the east property line, (5) the brickfacing on the front portion of the building, which is a different color than the rest of the building and others in the vicinity, (6) the cinderblock portion of the wall along the west property line, and (7) the protruding bay at the second floor on the east side of the building; and

WHEREAS, in response, the applicant has agreed to (1) keep the site maintained free of excess garbage and keep the garbage in the first floor storage area, (2) remove the shed, (3) eliminate the parking space at the front of the building, (4) replace the masonry wall with fencing that is compatible with the residential character of the neighborhood, and (5) replace the portions of the masonry and brickfacing with brick that more closely resembles that of buildings in the vicinity; and

WHEREAS, at hearing, the Board directed the applicant that it complete all of the noted site modifications and obtain a new certificate of occupancy within a short timeframe; and

WHEREAS, in response to the Community Board's concerns, the Board notes that the applicant has agreed to implement fire safety measures and has noted such on the proposed plans; and

WHEREAS, as to the remaining Community Board concerns, the applicant has stated that the Synagogue will work with the community to address issues as they arise and resolve them in a timely manner; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR

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§ 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06BSA084Q, dated November 14, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R4 zoning district, the legalization of an enlargement to a three-story Use Group 4 synagogue, which does not comply with front yard and side yards, contrary to ZR §§ 24-35 and 23-34, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 7, 2007" – (6) sheets and "Received September 26, 2007" – (1) sheet; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT landscaping, including two street trees on 78th Road, and shrubbery and plantings within the fenced enclosure on the 153rd Street frontage, shall be provided and maintained as per the BSA-approved plans;

THAT no parking shall be permitted onsite;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

THAT garbage shall be stored in the indoor storage area on the first floor, as noted on the BSA-approved plans, except when in the designated area for pick-up;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all site work shall be completed within nine months of the date of this grant (by July 2, 2008) and a new certificate of occupancy shall be obtained within 15 months of the date of this grant (by January 2, 2009);

THAT the building parameters shall remain: three stories, a street wall and total height of 35'-0", 4,217 sq. ft. of floor area (1.68 FAR), a side yard with a width of 14.06 feet at the rear of the building, one front yard of 15'-0" (on 78th Road), and one front yard of 5'-4" (on 153rd Street);

THAT DOB shall confirm that the building complies with all Building Code and safety measures;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 2, 2007.

286-06-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (§24-162a), side yards (§24-35), and the number of stories (§24-33).

PREMISES AFFECTED – 1847 60th Street, north side of 60th Street, between 18th Avenue and 19th Avenue, Block 5512, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 7, 2007, acting on Department of Buildings Application No. 301908853, reads:

"Proposed Community Facility: Side yards are

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contrary to ZR 24-35(a)”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district within the Special Borough Park District, a proposed one-story addition to the rear of an existing three-story residential building currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises, which does not comply with side yards, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in *The City Record*, with continued hearings on June 5, 2007, June 19, 2007, August 7, 2007, and September 18, 2007, and then to decision on October 2, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Otley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application with the following condition: that there be two 8’-0” side yards in the rear portion of the premises and that only one floor be built as part of the addition; and

WHEREAS, this application is being brought on behalf of Avrohom Horowitz, owner, and Congregation Darkei Chaim, Inc., lessee, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the north side of 60th Street between 18th and 19th Avenues, and is currently occupied by a partially constructed residential building; and

WHEREAS, Congregation Darkei Chaim is a new congregation, incorporated in 2006 and created to provide an outlet for the younger congregants and their families from Congregation Givath Shoul, which has outgrown its facilities located at 5102 11th Avenue, Brooklyn; and

WHEREAS, this application originally sought waivers with respect to ZR §§ 24-162a (floor area) and 24-33 (number of stories for a community facility) in addition to the remaining waiver with respect to ZR § 24-35 (side yards); and

WHEREAS, during the hearing process, the proposal was revised several times; the current proposal provides for a one-story and cellar synagogue with two accessory apartments on the second and third floors with the following parameters: total building height of 34’-0” at the front of the building and 23’-0” at the portion of the building built within the rear yard, 7,744 sq. ft. of total floor area, an FAR of 1.93 (2.4 FAR is the maximum permitted), and one side yard of 4’-0” in the portion of the building built in the rear yard, with Use Group 4 synagogue space on the cellar level and first floor, and accessory residential space and a Succoh on the second and third floors; and

WHEREAS, the proposed building will have the following program: (1) a multi-purpose room, mikvahs, shower and dressing rooms, and a laundry and storage room in the cellar; (2) Use Group 4 synagogue space with women’s gallery on the first floor; (3) a rabbi’s apartment accessory to the synagogue on the second floor; and (4) a Balkora’s apartment accessory to the

synagogue and a Succoh on the third floor; and

WHEREAS, the applicant states that the primary programmatic need of the Synagogue is to accommodate the growing congregation; and

WHEREAS, the applicant states that Congregation Givath Shoul, of which Congregation Darkei Chaim is an offshoot, has experienced growth of 150 percent over the last three years, and has outgrown its current facility; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution’s application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, however, the applicant also presents the following site condition which create an unnecessary hardship in developing the site in compliance with applicable side yard regulations: if both required 8’-0” side yards for community facilities were provided, the complying building would have a width of only twenty-four feet, which would not be sufficient to accommodate the needs of the congregation; and

WHEREAS, the applicant states that the permissible floor area cannot be accommodated while complying with the as-of-right side yard parameters and allow for efficient floor plates that will accommodate the Synagogue’s programmatic needs, thus necessitating the requested waiver of these provisions; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the synagogue will be housed in a building already under construction and that the addition at the rear to accommodate the synagogue within this building will not further alter the street façade of the building, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant initially proposed a 8,767 sq. ft. three-story building (2.19 FAR) with a height of 34’-0” at the front of the building and 23’-0” at the part of the building built within the rear yard, and one side yard of 4’-0” at the part of the

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building built within the rear yard; and

WHEREAS, at hearing, the Board asked the applicant to justify the programmatic need for the floor area sought originally, especially with respect to the second-floor prayer room, and whether the activities intended for the prayer room could be accommodated in other spaces when they were not otherwise occupied; and

WHEREAS, in response, the applicant eliminated the prayer room and provided a 5'-0" rear yard; and

WHEREAS, as to traffic impact and parking, the applicant noted that the traffic impact would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted, through the hearing process, the applicant revised the proposal to eliminate the waivers for floor area and number of stories for a community facility, partly by moving the function of the second-floor prayer room to the cellar multi-purpose room; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.07BSA032K, dated February 1, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district within the Special Borough Park District, a proposed three-story and cellar Use Group 4 synagogue, which does not comply with side yards requirements for community facilities, contrary to ZR § 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 5, 2007" – five (5) sheets and "Received September 20, 2007" – four (4) sheets; and *on further condition:*

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: a floor area of 7,744 sq. ft. (1.93 FAR), three stories, a total height of 34'-0" at the front of the building and 23'-0" at the part of the building built within the rear yard, and one side yard of 4'-0" at the part of the building built within the rear yard;

THAT the use shall be limited to a Use Group 4 house of worship;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 2, 2007.

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164-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Rouse SI Shopping Center, LLC, owner; ME Clinic Two LLC, lessee.

SUBJECT – Application June 15, 2007 – Special Permit (§73-36) to allow a Physical Culture Establishment that will occupy one storefront within a multiple-store mall containing retail stores and eating and drinking establishments (Use Group 6). The proposal is contrary to section 32-10. C4-1 district.

PREMISES AFFECTED – (280 Marsh Avenue) The Crossings @ Staten Island Mall, north of Platinum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.

COMMUNITY BOARD # 2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 24, 2007, acting on Department of Buildings Application No. 510001258, reads in pertinent part:

“Proposed physical culture or health establishment (massage establishment) in C4-1 district, is contrary to Section 32-10 ZR and requires a special permit from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-1 zoning district, the establishment of a physical culture establishment (PCE) in a one-story commercial unit within a shopping mall complex, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in *The City Record*, and then to decision on October 2, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located within The Crossings at Staten Island Mall, which is north of Platinum Avenue, west of Marsh Avenue, and east of Staten Island Mall Drive; and

WHEREAS, the PCE will occupy a 3,081 sq. ft. commercial unit within a one-story mall building with a total floor area of 75,909 sq. ft.; and

WHEREAS, the PCE will be operated as Massage Envy; and

WHEREAS, the applicant represents that the PCE will

offer massage treatments, including trigger point therapy, Swedish massage, deep tissue massage, sports massage, reflexology, and cranial sacral therapy; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 8:00 a.m. to 10:00 p.m.; Saturday, 8:00 a.m. to 6:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA100R, dated August 17, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-1 zoning district, the establishment of a physical culture establishment in a one-story commercial unit within a shopping mall complex,

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contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 20, 2007"- three (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 2, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the hours of operation shall be limited to: Monday through Friday, 8:00 a.m. to 10:00 p.m.; Saturday 8:00 a.m. to 6:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 2, 2007.

10-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Samuel Benitez, owner.

SUBJECT – Application January 20, 2005 – Zoning variance under §72-21 to allow a five (5) story residential building containing twenty-seven (27) dwelling units and fifteen (15) parking spaces contrary to use regulations (§42-00); M1-2 district.

PREMISES AFFECTED – 443 39th Street, a/k/a 459 39th Street, 39th Street between 4th Avenue and 5th Avenue, Block 705, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M, for decision, hearing closed.

315-05-BZ

APPLICANT – David L. Businelli, AIA, for Diggy's LLC, owner.

SUBJECT – Application October 28, 2005 – Zoning variance under §72-21 to allow a two-story horizontal extension of an existing three-story mixed commercial retail (UG 6) and residential building containing one (1) dwelling unit. Twenty (20) open accessory parking spaces are proposed. Proposed commercial use is contrary to use regulations (ZR §22-10). R3X district (Special South Richmond District).

PREMISES AFFECTED – 862 Huguenot Avenue, South side of Huguenot Avenue, 0' east from Hawley Avenue. Block 6815, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli and John Piscopo.

For Opposition: Janet Sullivan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M, for decision, hearing closed.

59-06-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Paul Schillace, owner, Carvel Ice Cream, lessee.

SUBJECT – Application April 3, 2006 – Zoning variance under §72-21 to allow a one-store retail building (UG 6) with thirteen (13) unenclosed accessory parking spaces contrary to use regulations (§ 22-00); R4 district.

PREMISES AFFECTED – 1006 East 233rd Street, Southeast corner of Paulding Avenue, Block 4879, Lot 40, Borough of The Bronx.

COMMUNITY BOARD # 12BX

APPEARANCES –

For Applicant: Carl A. Sulfaro.

For Opposition: Nedra P. Thomas, Audrey Edwards.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M, for decision, hearing closed.

83-06-BZ

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.

SUBJECT – Application May 2, 2006 – Variance (§72-21) to allow the conversion and two (2) story enlargement of an existing four story industrial building. The proposed multi-family building will contain six (6) floors, ground floor retail use, and fourteen (14) dwelling units. No parking spaces are proposed. The proposal would exceed the maximum floor area ratio (§123-64 (a)) and applicable height and setback

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requirements (§123-662). The project site is located within the Hunters Point Subdistrict of the Special Long Island City Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of 5th Street, between 48th Avenue and 47th Road, Block 30, Lot 26, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for decision, hearing closed.

306-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (§72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (§42-00), floor area and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), and front wall (§24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36’ east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

33-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (§72-21) to permit the conversion of the upper four floors of an existing five-story manufacturing building for residential use. The Premises is located in a M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of Carroll Street, 200’ east of intersection with Van Brunt Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P. M., for continued hearing.

71-07-BZ

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR §11-411 and §73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in anC1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21st Street, south side 21st Street blockfront between Broadway and 33rd Avenue, Block 555, Lot 16, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan and Ted Zorbas.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M., for decision, hearing closed.

79-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Power Test Realty Company, LP, owner.

SUBJECT – Application April 12, 2007 – under §11-411 to re-establish the previously granted variance permitting the operation of an automotive service station with accessory uses which is not permitted as-of-right in a C2/2R3-2 zoning district as per section 32-10 of the zoning resolution. The prior BSA grant was under calendar number 711-53-BZ and expired on July 24, 2001.

PREMISES AFFECTED – 114-05 Farmers Boulevard, east side of Farmers Boulevard between Murdock Avenue and 114th Road, Block 11007, Lot 5, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P. M., for continued hearing.

114-07-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Sullivan Mountain RE, LLC, owner.

SUBJECT – Application May 7, 2007 – Special Permit (§73-19) to allow a day-care center (school), (UG3). M1-1 district.

PREMISES AFFECTED – 7-05 152nd Street, 152nd Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino, Timothy O’Sullivan, Christopher Commarota and Neil Colmenares.

For Opposition: Councilmember Tony Avella, Wan Yu Tam,

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Maria H. Stern, Helen A. Paladino and James J. Raymon
ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P. M., for continued hearing.

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Kingswood Partners, LLC, owner; TSI Midwood LLC, owner.

SUBJECT – Application May 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on portions of the first and second floors of a three-story commercial building. The proposal is contrary to section 32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, westerly side of East 15th Street, 50’ north of Kings Highway, Block 6777, Lots 17 and 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Lyra J. Altman and Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P. M., for continued hearing.

148-07-BZ

APPLICANT – Ivan Khoury, for Kerry Riorden, owner; Tribeca Spa of Tranquility, lessee.

SUBJECT – Application June 6, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment. The proposal is contrary to section 42-10. M1-5 zoning district within the Tribeca Mixed-Use Special District.

PREMISES AFFECTED – 462 Greenwich Street, 49’-8.5” south from the corner of Greenwich and Watts Streets, Block 224, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P.M, for decision, hearing closed.

176-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Fei Guo, owner.

SUBJECT – Application June 29, 2007 – Variance (§72-21) to permit the alteration and enlargement of an existing one-story single family home for commercial use. The proposal is contrary to sections 22-12 (use), 23-45(a) (front yard), and 23-461(a) (required 5’ side yard). R4 district.

PREMISES AFFECTED – 50-34 69th Street, a/k/a 68-18 Garfield Avenue, southwest corner of the intersection of

Garfield Avenue and 69th Street, Block 2425, Lot 33, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam W. Rothkrug and Chris Yee.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P. M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on September 11, 2007, under Calendar No. 80-54-BZ,II and printed in Volume 92, Bulletin Nos. 34-35, is hereby modified to read as follows:

80-54-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates LLC, owner.

SUBJECT – Application July 2, 2007 – ZR §11-411 for the Extension of Term of a previously granted variance which, which expired on July 2, 2006, to permit commercial uses on the first floor and cellar of an existing residential building located in an R8B zoning district; the Extension of Time to obtain a Certificate of Occupancy which expired on April 24, 2002 and a Waiver of the rules.

PREMISES AFFECTED – 150 East 39th Street, Located on south side of 39th Street between Third and Lexington Avenues, Block 894, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance to permit commercial uses (Use Group 6) on the first floor and cellar of an existing residential building, which expired on July 2, 2006; and

WHEREAS, a public hearing was held on this application on August 14, 2007, after due notice by publication in *The City Record*, and then to decision on September 11; and

WHEREAS, the subject premises is a 16-story mixed-use building located on the south side of East 39th Street, between 3rd and Lexington Avenues, within an R8B zoning district; and

WHEREAS, on December 13, 1955, under the instant BSA Cal. No., the Board granted a variance to permit office and retail uses on floors 1-5 of the premises; and

WHEREAS, the variance was subsequently amended to convert all floors of the premises except the cellar and first floor to as-of-right residential use; and

WHEREAS, the term of the variance was last extended on July 2, 1996 for a period of ten (10) years, expiring on July 2, 2006; and

WHEREAS, on April 23, 2002, the Board amended the variance to permit the use of a portion of the cellar for a

recreation room with fitness equipment for residents of the premises, and required that an amended Certificate of Occupancy be obtained within one year; and

WHEREAS, this application seeks to extend the term of the variance for an additional ten years and to extend the time to obtain an amended Certificate of Occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 13, 1955, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten (10) years from the expiration of the last grant, to expire on July 2, 2016; to grant a one-year extension of term to obtain a certificate of occupancy; *on condition* that all conditions and drawings associated with the previous grant remain in effect; and *on further condition*:

THAT this grant shall expire on July 2, 2016;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT an amended Certificate of Occupancy shall be obtained by September 11, 2008;

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. 104817352)

Adopted by the Board of Standards and Appeals, September 11, 2007.

***The resolution has been corrected in the Therefore clause. Corrected in Bulletin No. 38, Vol. 92, dated October 11, 2007.**

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*CORRECTION

This resolution adopted on September 11, 2007, under Calendar No. 152-07-BZ and printed in Volume 92, Bulletin No. 33, is hereby corrected to read as follows:

152-06-BZ

CEQR #07-BSA-003K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit (§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 19, 2006, acting on Department of Buildings Application No. 500837810, reads in pertinent part:

“ZR 22-14

Use Group 4–A Community facilities –
***Ambulatory diagnostic or treatment health care facilities.

***Not permitted in R1 or R2 Districts and, in R3A, R3X, R3-1, R4A, R4B or R4-1 Districts, limited to a maximum of 1,500 square feet of *floor area*. Application does not comply with such”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district, the construction of a two-story building with a cellar to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 14 parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on February 27, 2007 after due notice by publication in *The City Record*, and with continued hearings on May 15, 2007, June 12, 2007, and July 17, 2007, and then to decision on August 14, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and
WHEREAS, Councilmember Oddo recommends disapproval of this application based on concerns about traffic and parking; and

WHEREAS, Borough President Molinaro recommends disapproval of this application, based on concerns about traffic and effects on neighborhood character; and

WHEREAS, the New York City Fire Department (FDNY) recommends disapproval of this application, citing, *inter alia*, concerns about the potential impact the proposed use would have on traffic and emergency response by FDNY vehicles; and

WHEREAS, the subject site is located on the west side of Seldin Avenue, between Roman Avenue and Lamberts Lane, within an R3X zoning district ; and

WHEREAS, the site has a lot area of 9,876 sq. ft. and is currently improved upon by a single-family home with a floor area of 1,378 sq. ft., which would be demolished as part of the proposed construction; and

WHEREAS, the proposed facility would contain 5,565 sq. ft. of floor area (0.56 FAR); and

WHEREAS, accordingly, 14 parking spaces will be provided (14 parking spaces are required); and

WHEREAS, the applicant represents that the facility will provide Use Group 4 ambulatory diagnostic and treatment health care services related to the practice of orthopedics, including arthroscopic procedures; and

WHEREAS, a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use is available as-of-right, and

WHEREAS, the special permit pursuant to Z.R. § 73-125 would allow an increase in the floor area of the ambulatory diagnostic/treatment health care facility use from 1,500 sq. ft. up to a maximum of 1.0 FAR (9,876 sq. ft.) on the site; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with zoning in all other respects; and

WHEREAS, approximately eight (8) persons would work at the proposed facility, which would have operating hours of 8 a.m. to 5 p.m. Monday through Friday; and

WHEREAS, the applicant, based on concerns expressed by the board at hearing, changed the roofline of the building to minimize its visual impact; and

WHEREAS, with respect to concerns about traffic, the applicant submitted a traffic analysis based on actual projected operation of the proposed ambulatory diagnostic/treatment health care facility with two doctors that showed that actual traffic from the proposed ambulatory diagnostic/treatment health care facility and incremental traffic generated by the special permit would not exceed City Environmental Quality Review (CEQR) screening levels; and

WHEREAS, at the Board’s request, the applicant analyzed a generic Use Group 4 diagnostic/treatment health care facility, which analysis projected both the total traffic

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increase from the proposed ambulatory diagnostic/treatment health care facility and the incremental traffic increase from the special permit; and

WHEREAS, FDNY requested a full traffic study; and

WHEREAS, however, the applicant's additional traffic analyses demonstrate that neither the incremental nor the actual traffic generated by the proposed ambulatory diagnostic/treatment health care facility would generate enough peak-hour trips to create a significant impact at any intersection; and

WHEREAS, the trip generation levels demonstrated for the proposed building are well below threshold levels under City Environmental Quality Review that would require further analysis to determine whether they might result in significant adverse impacts on traffic; and

WHEREAS, pursuant to CEQR procedures, no further traffic analysis is required; and

WHEREAS, while the Board recognizes that traffic in the area of the proposed diagnostic/treatment health care facility is heavy, any additional traffic generated would be minimal and does not warrant further study; and

WHEREAS, the Board notes that the applicant is providing all of the required parking; and

WHEREAS, in response to assertions of opposition the project within the neighborhood expressed at hearing, the applicant provided evidence in the form of letters and other documentation to demonstrate support for the project by neighbors; and

WHEREAS, approximately 70% of the zoning lot will remain as open space (including landscaping and parking areas); and

WHEREAS, accordingly, the Board finds that the amount of open area and its distribution on the lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, the facility will not interfere with any pending public improvement project; and

WHEREAS, the facility will have a floor area of less than 10,000 square feet; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-125 and 73-03; and

WHEREAS, the project is classified as Unlisted pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA003R, dated November 20, 2006; and

WHEREAS, the EAS documents that the operation of the facility would not have significant adverse impacts on Land

Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, a trip generation analysis dated July 16, 2007 determined that the proposed action would generate less than fifty (50) new vehicle trips in any peak hour (below the CEQR Technical Manual threshold for conducting a detailed analysis of traffic impacts) and therefore the proposed action would not have any potentially significant adverse impacts related to traffic and parking; and

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district, construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 14 parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 31, 2007"—eleven (11) sheets; and *on further condition*:

THAT there shall be no change in use of the facility without prior application to and approval from the Board;

THAT landscaping shall be provided and maintained, as per the approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the parameters of the building shall be as follows: 5,565 sq. ft. of floor area and 14 parking spaces, as per the approved plans;

THAT the curb cuts shall be approved by DOT and/or New York City Transit, as required, prior to the issuance of any permits;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

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Adopted by the Board of Standards and Appeals,
August 14, 2007.

***The resolution has been corrected in the Therefore clause and the fifth THAT clause. Corrected in Bulletin No. 38, Vol. 92, dated October 11, 2007.**

***CORRECTION**

This resolution adopted on September 11, 2007, under Calendar Nos. 264-07-BZ and printed in Volume 92, Bulletin Nos. 34-35, is hereby corrected to read as follows:

264-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28th Street, East 28th Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 28, 2006, acting on Department of Buildings Application No. 302211782, reads in pertinent part:

- “1. Proposed floor area contrary to ZR 23-141.
2. Proposed open space ratio contrary to ZR 23-141.
3. Proposed side yard contrary to ZR 23-461.
4. Proposed rear yard contrary to ZR 23-47.
5. Proposed lot coverage is contrary to ZR 23-141b”; 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, open space ratio, side yards, rear yard, and lot coverage, contrary to ZR §§ 23-

141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 6, 2007, after due notice by publication in *The City Record*, with continued hearings on April 17, 2007, May 15, 2007, June 5, 2007, July 10, 2007, and August 7, 2007, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony at hearing and in writing in opposition to the application (the “Opposition”), citing concerns about the proposal not being compatible with neighborhood character and whether it constituted an enlargement; and

WHEREAS, the subject site is located on the west side of East 28th Street, between Avenue P and Quentin Road; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,230.7 sq. ft. (0.45 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,230.7 sq. ft. (0.45 FAR) to 5,022.2 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 75.81 percent to 56.1 percent (a minimum open space ratio of 65 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3’-4” and the complying side yard of 9’-6” (side yards with a total width of 13’-0” and a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 33’-2” to 20’-0” (the minimum rear yard required is 30’-0”); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the applicant proposes to increase the lot coverage from 24.35 percent to 43.9 percent (35 percent is the maximum permitted); and

WHEREAS, at hearing, the Board asked the applicant to address two issues: (1) which portions of the existing home will be retained and (2) neighborhood character; and

WHEREAS, as to the amount of the building that will be retained, the applicant identified the portions of the building which would be retained and noted that DOB had accepted the plans as an Alteration 1 application; and

WHEREAS, the Board asked the applicant specifically to address how certain floor joists would be retained; and

WHEREAS, the applicant responded that some foundation walls will support floor joists and not walls; and

WHEREAS, as to neighborhood character, the Board

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noted that there are several blocks in the vicinity of the home, occupied by a majority of homes with similar features including both front and rear yards with depths of 30'-0" and a raised or terraced front yard; and

WHEREAS, at hearing, the Board asked the applicant to provide information about the depths of front yards in the noted area; and

WHEREAS, initially, the applicant asserted that since a front yard waiver was not being requested (a 15'-0" front yard is the minimum required and an 18'-8" front yard is proposed), the Board did not have authority to review the front yard and thus the context for front yards was not relevant to the Board's findings; and

WHEREAS, the Board agrees that the applicant has 0.05 FAR of available floor area and could build an as of right enlargement into the existing front yard; and

WHEREAS, however, the Board disagrees with the applicant's interpretation of the Board's authority under the special permit and asserts that it may request information about neighborhood character and evaluate a proposal accordingly, regardless of whether a particular waiver is sought; and

WHEREAS, specifically, ZR § 73-622 provides that "the Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located" and "The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area"; and

WHEREAS, ultimately, the applicant submitted block front plans of adjacent homes, which reflect the front yard depths of approximately 30'-0" on both sides of East 28th Street on the subject block except for at the corner lots; and

WHEREAS, the applicant submitted information which reflects that at least two other homes in the vicinity have yards with depths ranging from 23'-0" to 25'-10"; and

WHEREAS, further, the applicant notes, and the Board agrees, that the Opposition incorrectly included the depth of the area beyond the front property line in measurements of nearby front yards; and

WHEREAS, additionally, the Opposition asserted that the applicant erred by identifying the yards with depths of 4'-0" on the corner lots as front yards, rather than side yards; and

WHEREAS, the Board agrees with the applicant that the noted yards are front yards with depths of 4'-0"; and

WHEREAS, during the hearing process, the applicant increased the depth of the proposed front yard from 17'-8" at its shallowest point and 19'-0" at its deepest point to 18'-8" and 20'-0", respectively; and

WHEREAS, the Board notes that a majority of the front yard will have a depth of 20'-0"; and

WHEREAS, the applicant proposes to provide a stepped front wall to be compatible with the neighborhood character; and

WHEREAS, at the Board's direction, the applicant also ensured that the roof lines comply with all height and sky

exposure plane regulations; and

WHEREAS, the applicant also modified the plans to appropriately indicate which portions of the attic would be considered floor area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, rear yard, and lot coverage, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 25, 2007"-(6) sheets and "July 31, 2007"-(6) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 697 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 5,022.2 sq. ft., a total FAR of 1.0, a perimeter wall height of 21'-0", a total height of 35'-0", a front yard of 18'-8", side yards of 3'-4" and 9'-6", a rear yard of 20'-0", and open space of 2,803.8 sq. ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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

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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, September 11, 2007.

***The resolution has been corrected in the 7th, 11th, 13th, 27th, & 28th WHEREAS clauses. Corrected in Bulletin No. 38, Vol. 92, dated October 11, 2007.**

***CORRECTION**

This resolution adopted on September 11, 2007, under Calendar Nos. 112-07-BZ and printed in Volume 92, Bulletin Nos. 34-35, is hereby modified to read as follows:

112-07-BZ

CEQR #07-BSA-079K

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman, owners.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to permit the construction of a synagogue. The Premises is located in an R2 zoning district. The proposal is contrary to floor area ratio and lot coverage (§24-11), side yards (§24-35), rear yard (§24-36), wall height (§24-521) and parking (§25-31).

PREMISES AFFECTED – 1089-1093 East 21st Street, East 21st Street between Avenue I and Avenue J, Block 7585, Lots 21 & 22 (Tent. 21), Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 5, 2007, acting on Department of Buildings Application No. 302334034, reads in pertinent part:

“Proposed plans are contrary to ZR 24-11 in that the proposed building exceeds the maximum permitted floor area ratio of .5.

Proposed plans are contrary to ZR 24-11 in that the proposed lot coverage is more than the maximum permitted lot coverage of 55%.

Proposed plans are contrary to ZR 24-34 in that the proposed front yard is less than the minimum required front yard of 15’.

Proposed plans are contrary to ZR 24-35 in that the

proposed side yards are less than the minimum required side yards allowed.

Proposed plans are contrary to ZR 24-36 in that the proposed rear yard is less than the minimum required rear yard of 30’.

Proposed plans are contrary to ZR 24-521 in that the proposed wall height exceeds the maximum wall height of 25’.

Proposed plans are contrary to ZR 25-31 in that there are no parking spaces proposed”;

and
WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2 zoning district, the proposed construction of a two-story and cellar Use Group 4 synagogue, which does

not comply with floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in *The City Record*, with a continued hearing on September 11, 2007, and decided on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with the condition that the fence along the north property line be protected and/or restored and that garbage be stored within the building; and

WHEREAS, this application is being brought on behalf of Congregation Bnai Shloima Zalman, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the east side of East 21st Street, between Avenue I and Avenue J, and is occupied by a two-story and cellar synagogue, which will be demolished; and

WHEREAS, the site has a total lot area of 5,500 sq. ft.; and

WHEREAS, on June 7, 1994, under BSA Cal. No. 160-93-BZ, the Board granted a variance to permit the legalization of an enlargement to an existing synagogue at the site; and

WHEREAS, the prior grant provided for waivers of floor area, FAR, lot coverage, wall height, yards, and parking; and

WHEREAS, the applicant represents that the existing building is obsolete, has sustained water damage, and does not meet the Synagogue’s current programmatic needs; and

WHEREAS, the current proposal provides for a two-story and cellar synagogue with the following parameters: a street wall of 24’-0”, a total height of 34’-10”, 7,236.41 sq. ft. of floor area (2,750 sq. ft. is the maximum permitted); and an FAR of 1.32 (0.50 FAR is the maximum permitted for a community facility), with Use Group 4 synagogue use in the entire building; and

WHEREAS, additionally, the applicant proposes 76 percent lot coverage (a maximum of 55 percent is permitted); no side yards (two side yards of 8’-0” feet each are the minimum

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required) a front yard of 7'-9" (a front yard of 15'-0" is the minimum required), no rear yard (a rear yard of 30'-0" is the minimum required), and no parking spaces (36 parking spaces are required); and

WHEREAS, the proposed building will have the following program: (1) a multi-purpose room and mikvah in the cellar; (2) the main sanctuary for men and a library on the first floor; and (3) the women's gallery on the second floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to provide sufficient space to accommodate the congregation of approximately 275 families; (2) to provide separate space for men and women during prayer; and (3) to provide space for meetings and programs other than worship services; and

WHEREAS, the applicant states that the proposed amount of space would accommodate the existing congregation; the existing building can only accommodate approximately 275 people seated, or one seat per family; and

WHEREAS, the applicant states that it is religious tradition to provide separate space for men and women during prayer and that the current size and

configuration of the worship space does not provide sufficient space for both men and women to worship at the same time; and

WHEREAS, the applicant represents that meeting space is required for educational programs accessory to the Synagogue and for groups to meet outside of the worship space; and

WHEREAS, further, the Synagogue requires a space for providing food to congregants somewhere other than in the worship space, which is intended to remain sacred; and

WHEREAS, the applicant notes that the proposed synagogue is designed with a moveable partition on the first floor so that the space can be divided into smaller spaces for meetings, but opened up into a large worship space when needed; and

WHEREAS, additionally, the applicant represents that the current building is obsolete in that it lacks adequate restroom facilities and the cellar is no longer functional due to water damage; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right floor area, lot coverage, and yard parameters and allow for efficient floor plates that will accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard waivers would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating sufficient floor plates, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district and that the Synagogue has existed at the site for several decades; and

WHEREAS, specifically, the applicant represents that the use of the multi-purpose room in the cellar may hold gatherings for members of the congregation approximately once a month for a maximum of approximately 175 people, but will be limited to those parameters for such events; and

WHEREAS, the Board notes that the immediate area is characterized by two- and two-and-a-half-story detached homes, and a number of other community facilities; and

WHEREAS, as to height, the Board notes that the majority of the building will have a street wall height of 24'-0", which is lower than the existing street wall height of 28'-2"; only the center portion of the building will reach a peak of 34'-10"; and

WHEREAS, the applicant represents that the tower, which encroaches into the sky exposure plane is a permitted obstruction because it does not have any floor area in the portion that penetrates the sky exposure plane; and

WHEREAS, the applicant states that this tower, with a pitched roof, was designed to resemble a dormer, which is a permitted obstruction for homes in the area and is compatible with neighborhood character; and

WHEREAS, the Board notes that the proposed building will provide open space with a width of 7'-0" on both sides of the front of the building and will maintain the front yard of 7'-9"; and

WHEREAS, at hearing, the Board asked the applicant to provide an analysis of the requested parking waiver; and

WHEREAS, the applicant represents that this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 83 percent of the

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congregants live within three-quarters of a mile of the site; and

WHEREAS, the Board notes that this exceeds the minimum requirement set forth in ZR § 25-35 that at least 75 percent of the congregants live within three-quarters of a mile of the subject site in order to qualify as a localized congregation; and

WHEREAS, in response to the Community Board's conditions, the applicant agrees to (1) repair and maintain the fence along the north property line at the adjacent neighbor's request; and (2) maintain garbage in a designated area in the cellar until it is removed for collection; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.07BSA079K, dated June 14, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each

and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2 zoning district, the proposed construction of a two-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-521, and 25-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 14, 2007" – six (6) sheets and "Received August 27, 2007" – five (5) sheets; and "Received September 10, 2007" – one (1) sheet; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board, which may be done by letter, if appropriate;

THAT the building parameters shall be: a floor area of 7,236.41 sq. ft. (1.32 FAR), two stories, a street wall height of 24'-0", a total height of 34'-10", lot coverage of 76 percent, and a front yard of 7'-9";

THAT the use shall be limited to a house of worship (Use Group 4) and any classes shall be accessory to this use;

THAT the use of the cellar kitchen shall be limited to warming;

THAT no commercial catering shall take place onsite;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT any rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

***The resolution has been modified in the first and second THAT clauses. Corrected in Bulletin No. 38, Vol. 92, dated October 11, 2007.**

MINUTES

Jeff Mulligan, Executive Director

BULLETIN

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October 25, 2007

DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

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Tuesday, October 16, 2007**

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228-07-A

29 Colon Avenue, Between Colon Avenue and Lindenwood Road approximately 180-220 ft. south of Baltimore Street., Block 5433, Lot(s) 75, Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the Genral City Law.

229-07-A

9 Gotham Walk, East side Gotham Walk 106.78' south of Oceanside Avenue, Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction not fronting a legally mapped street, contrary to Section 36 of the General City Law.

230-07-BZY

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231-07-BZY

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232-07-BZY

87-87 144th Street, Located on the east side of 144th Street between Hillside Avenue and 88th Avenue., Block 9689, Lot(s) 7, Borough of **Queens, Community Board: 12**. Extension of Time-(11-331) to complete construction under the prior zoning district.

233-07-BZ

203 East 86th Street, At the northeast corner of the intersection of 86th Street and Third Avenue., Block 1532, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (73-36) to allow a physical culture establishment.

234-07-A

20 Lindenwood Road, Between Colon Avenue and Lindenwood Road approximately 180-220 feet south of Baltimore Street., Block 5433, Lot(s) 98, Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the General City Law.

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

NOVEMBER 20, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 20, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

146-59-BZ

APPLICANT – Larry Dean Merritt, for Larry Dean Merritt, owner.

SUBJECT – Application June 20, 2007 – Z.R. §11-411 for the Extension of Term of a previously granted variance for the operation of a (UG8) parking lot which expired on May 6, 2007 in an R8 zoning district.

PREMISES AFFECTED – 686-88 Gerard Avenue, east side 180' north of 153rd Street, Block 2473, Lot 8, Borough of Bronx.

COMMUNITY BOARD #

APPEALS CALENDAR

64-07-A

APPLICANT – Stuart A. Klein, Esq., for Sidney Frankel, owner.

SUBJECT – Application March 12, 2007 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.

PREMISES AFFECTED – 1704 Avenue N, a/k/a 1702-04 – 1411-1421 East 17th Street, southeast corner lot at intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

140-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP

Owner: Breezy Point Cooperative, Incorporated

Lessee: Thomas Carroll

SUBJECT – Application May 25, 2007 – Appeals seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 Zoning district.

PREMISES AFFECTED – 607 Bayside Drive, North west intersection of Bayside Drive and zoning street know as Service Lane, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

NOVEMBER 20, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 20, 2007, at 1:30 P.M., at 40 Rector Street, 6th F0-lloor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

68-07-BZ

APPLICANT – Jeffrey A. Chester, Avram Babadzhyanov, owner; Congregation Rubin Ben Issac Haim, lessee.

SUBJECT – Application March 22, 2007 – Under §72-21 – Proposed community facility synagogue, which does not comply with front and side yard requirements.

PREMISES AFFECTED – 102-48 65th Road, southwest corner Yellowstone Boulevard and 65th Road, Block 2130, Lot 37, Borough of Queens.

COMMUNITY BOARD #6Q

111-07-BZ

APPLICANT – Harold Weinberg, P.E., for Javier Galvez, owner .

SUBJECT – Application May 4, 2007 – Special Permit (§73-622) for the In-Part Legalization of an enlargement to a single family home. This application seeks to vary lot coverage, open space and floor area (§23-141) and side yard (§23-461) in an R3-1 zoning district. It is also proposed to remove the non-complying roof and replace with a complying one.

PREMISES AFFECTED – 155 Norfolk Street, east side, 325' north of Oriental Boulevard, between Oriental Boulevard and Shore Parkway, Block 8757, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

173-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gitty Gubitz-Rosenberg, owner.

SUBJECT – Application June 21, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space ratio (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1061 East 21st Street, located on the east side of East 21st Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

181-07-BZ

APPLICANT – Omnipoint Communications Inc., for Pat Quadrozzi, owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application July 20, 2007 – Special Permit (§73-30) For a proposed 20-foot extension to an existing 50-foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 72-18 Amstel Boulevard, north side of Amstel Boulevard between 72nd Street, and Beach 73rd Street, Block 16070, Lot 13, Borough of Queens.

COMMUNITY BOARD # 14Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 16, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

142-70-BZ

APPLICANT – Barbara Hair, Esq., for Target Realty LLC, owner.

SUBJECT – Application December 12, 2006 – Amendment to a variance previously approved pursuant to section 72-21 of the zoning resolution which allowed commercial office space (Use Group 6) on the cellar level of a residential building located in a R7-2 zoning district. The application seeks a change of use in the existing commercial space on the cellar level from Use Group 6 office to Use Group 6 store.

PREMISES AFFECTED – 8 St. Marks Place, south side, 126’ east of 3rd Avenue, Block 463, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Barbara Hair.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson.....4

THE RESOLUTION:

WHEREAS, this is an application for an amendment to an existing variance, which allowed commercial office space on the cellar level of a residential building located in an R7-2 zoning district, seeking a change of use from office use to a Use Group 6 store; and

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings, acting on Department of Buildings Application No. 104586663BSA, reads in pertinent part:

“Change of non conforming use (office in R-2 Zoning District) to store also a non conforming use. BSA approval required.

Proposed Use Group 6 in R7-2 zoning district is contrary to ZR 23-00. BSA variance per 72-00 is required;” and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on May 15, 2007, which was continued on June 19, 2007 and July 17, 2007; after an adjournment of the July 17, 2007 hearing to September 11, 2007, the hearing was then closed, with the record kept open for a final submission, and then to decision on October 16, 2007; and

WHEREAS, the subject site and surrounding area had a

site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 3, Manhattan, recommended disapproval of this application, based on the alleged failure by the landlord to demonstrate an inability to rent the cellar space for office use and the landlord’s alleged prior efforts to rent the cellar space illegally for retail use; and

WHEREAS, numerous local residents and representatives of local elected representatives testified in opposition to the amendment;

WHEREAS, the subject site is located on the south side of St. Marks Place between Third and Second Avenues, Manhattan, within an R7-2 zoning district; and

WHEREAS, the subject site is occupied by a five-story building with cellar; and

WHEREAS, on June 30, 1970, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the conversion of an approximately 1,000 sq. ft. portion of cellar space to office use on condition that there be no business signs on the exterior of the premises other than a non-illuminated name plate not exceeding three sq. ft.; and

WHEREAS, the certificate of occupancy subsequently issued by the Department of Buildings on December 16, 1971 limited the occupancy of the cellar space to eight persons; and

WHEREAS, following its acquisition in 2002, the applicant filed an application with the Department of Buildings to convert the cellar space to restaurant use; and

WHEREAS, subsequent to issuance of the building permit, the Department of Buildings moved to revoke it under ZR Section 52-60 when the applicant failed to provide proof of continuous use; and

WHEREAS, following an appeal to this Board, the Department of Buildings rescinded the revocation in 2004 and reinstated the permit; and

WHEREAS, the applicant then submitted the subject application to amend the variance to change the use of cellar space from office use to Use Group 6 (Retail); and

WHEREAS, the applicant represented that such an amendment was necessary and appropriate due to changes in the market that make office space unmarketable in this community, that a change to retail use would be minimal in light of the small size of space and the prevailing neighborhood character; and

WHEREAS, during the course of the hearing, the Board raised questions as to why it was necessary to broaden the uses on the site to include a UG 6 retail use, whether office space was feasible on the site and what the effect of office rent revenue would be on the financial feasibility of the overall zoning lot; and

WHEREAS, the Board also sought to learn how long the subject site had been vacant, and about the outcome of efforts to market the site for office space allowed under the variance or community facility use, which would be permitted under the zoning; and

WHEREAS, the applicant contended that the change in use was necessitated by the lack of market demand for office space, as evidenced by the site’s longstanding vacancy – conceded to be at least 26 years, and

WHEREAS, the applicant further represented that the

MINUTES

conversion of two pre-existing offices on the block to retail and restaurant use in 1991 and 2002, respectively, and the nonexistence of any current cellar office space evidenced the lack of demand for office space; and

WHEREAS, the Board neither agrees that the conversion of two former office spaces is dispositive, nor that a lack of current offices nearby demonstrates that no market exists for office or community facility use at the subject site; and

WHEREAS, the applicant claimed that "substantial efforts" were made to market the site during a four month period from February 2005 until May 2005 -- by affixing an advertising sign to the exterior of the building and a web posting -- and that no inquiries resulted from either office tenants or community facilities; and

WHEREAS, the applicant further questioned the Board's authority to inquire as to the history of marketing of the site in this case, inasmuch as other applicants for amendments were not asked to document prior marketing efforts; and

WHEREAS, it is within the Board's authority to evaluate an amendment to a previous grant as it may implicate the findings made by the Board at that time; and

WHEREAS, the Board evaluates each case individually and the question of marketing is indisputably relevant to any case in which an applicant claims that an amendment is necessary because no market exists for the use permitted by a variance; and

WHEREAS, the Board was not persuaded that four months of marketing during a 26-year period of vacancy was substantial enough to prove that no market existed for office or community facility use at the subject site; and

WHEREAS, as opposed to proving the lack of an office space market at the subject site, the 26-year vacancy suggests instead that the former hardship may have been eliminated or, at a minimum, significantly reduced; and

WHEREAS, the Board therefore asked whether economic hardship still existed on the site or whether there had been a change in its financial return of the zoning lot since the variance was granted; and

WHEREAS, the applicant insisted that the original variance was based on a finding of practical difficulty, rather than a demonstration of unnecessary financial hardship, and

WHEREAS, the applicant further argued that the practical difficulty was in complying with the expiration of the 1967 Multiple Dwelling Law, which allegedly made residential occupancy of the cellar space illegal; and

WHEREAS, the Board's records, however, note that the original basis for relief instead included the occupancy of rent controlled units on the above floors and financial analyses showing that the revenues generated by the cellar would offset the low rents of the apartments; and

WHEREAS, testimony by the applicant, as well as testimony and documents submitted by other witnesses, indicated that the present status of the building includes a mix of rent-stabilized and market rate apartments; and

WHEREAS, in the absence of evidence otherwise, the Board questions why the claimed hardship that was the basis for the original grant is not relieved by the addition of these market rate units; and

WHEREAS, the applicant further argued that the Board lacked authority to assess whether there had been a change in the site's financial return since the variance was granted, based on the Court of Appeals holding in St. Onge v. Town of Colonie; and

WHEREAS, the St. Onge case concerns a revocation of a variance, and no such revocation is contemplated in this case; and

WHEREAS, the Board finds that the applicant entirely misapplied the decision in St. Onge, which did not address the financial basis underlying the grant of a variance, but in fact held that conditions on the grant of a variance must relate to the use of the property that is the subject of the variance without regard to the person who owns or occupies that property (71 N.Y.2d 507 (1988)); and

WHEREAS, the Court in St. Onge further held that "a zoning board may, where appropriate, impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and aimed at minimizing the adverse impact to an area that might result from the grant of a variance" (71 N.Y.2d 515-16); and

WHEREAS, the Board concludes that St. Onge therefore imposes a duty on the Board to review the original findings, because the amendment would allow a greater number of uses on the site, and increase the occupancy of the cellar space and the number of hours in which it would be occupied; and

WHEREAS, the amendment would affect the minimum variance finding which requires the Board to grant the minimum relief necessary to make a reasonable financial return; and

WHEREAS, the Board determines that the applicant has failed to establish that the proposed addition of retail use to the subject site would be the minimum relief necessary; and

WHEREAS, the applicant contends that the change in use is appropriate because a variance for such a change would not have been necessary had the office use been as of right under ZR Section 52-34; and

WHEREAS, the Board finds, however, that application of ZR Section 52-34 would be entirely useless to the applicant, since (a) ZR Section 52-34 would not apply to a case involving a variance, and (b) had the office use actually qualified as a grandfathered non-conforming use under ZR Section 52-34, then any Use Group 6 non-conforming use have been extinguished by the discontinuance of the use for a period in excess of two years by under ZR Section 52-60; and

WHEREAS, based on a thorough review of the record and testimony, the Board finds that the applicant has failed to establish that the amendment is appropriate and necessary.

Therefore it is Resolved that the Board of Standards and Appeals denies the application to reopen and amend the resolution, said resolution having been adopted on June 30, 1970; and

THAT all conditions from the prior resolution shall remain in effect.

Adopted by the Board of Standards and Appeals, October 16, 2007.

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515-89-BZIII

APPLICANT – Sheldon Lobel, P.C., for 50 East 78th Street, L.P., owner.

SUBJECT – Application July 20, 2007 – Extension of Term of a Special Permit for a (UG6) commercial art gallery in the basement portion of a residential building which expires on October 16, 2007 in an R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 78th Street, East 78th Street, between Madison Avenue and Park Avenue, Block 1392, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for an art gallery, which expired today, October 16, 2007; and

WHEREAS, a public hearing was held on this application on September 18, 2007 after due notice by publication in *The City Record*, and then to decision on October 16, 2007; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject premises is located on the south side of East 78th Street, between Madison Avenue and Park Avenue; and

WHEREAS, the site is located within an R8B zoning district, within the Limited Height 1a district, and is occupied by an 11-story residential building; and

WHEREAS, on July 17, 1962, under the subject calendar number, the Board granted a variance to permit a change in use of a portion of the basement to an art gallery for a term of five years; and

WHEREAS, the grant was subsequently amended and extended at various times; and

WHEREAS, most recently, on May 11, 1999, the grant was extended for a period of ten years, to expire on October 16, 2007; and

WHEREAS, the instant application seeks to extend the term of the variance; and

WHEREAS, the applicant does not propose any other changes; and

WHEREAS, based upon its review of the record, the Board finds that a ten-year extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 17,

1962, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the last grant to expire on October 16, 2017; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted; and *on further condition*:

THAT this grant shall expire on October 16, 2017;

THAT the above condition shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT 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. 104798710)

Adopted by the Board of Standards and Appeals, October 16, 2007.

841-76-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4 zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6).

PREMISES AFFECTED – 651 Fountain Avenue, north east corner of Fountain Avenue and Wortman Avenue, Block 4527, Lots 61, 64, 77, 78, 80, 85, 11, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 10 A.M., for continued hearing.

78-79-BZ

APPLICANT – Anthony M. Salvati, for HJC Holding Corporation, owner.

SUBJECT – Application December 5, 2006 – Extension of Term/Amendment for previously approved variance, under BSA calendar numbers 841-76-BZ and 78-79-BZ, granted pursuant to §72-21 which permitted on the premises auto wrecking and junk yard for auto parts (UG 18), sale of new and used cars and auto repair shop (UG 16), and sale of new and used parts (UG 6) not permitted as of right in a R4

MINUTES

zoning district. The amendment seeks to legalize the change in use from the previously mentioned to open commercial storage bus parking, repairs and sales (UG 16 & 6).

PREMISES AFFECTED – 671 Fountain Avenue, north east corner of Fountain Avenue and Stanley Avenue, Block 4527, Lots 94 and 110, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 10 A.M., for continued hearing.

997-84-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for 222 Union Associates, owner.

SUBJECT – Application March 2, 2007 – Extension of Term/Amendment/Waiver for a special permit which expired on September 10, 2005, to revise the BSA plans to reflect existing conditions utilizing the Board’s formula for attended parking of one space per 200 square feet, and the legalization of the existing automobile lifts within the parking garage.

PREMISES AFFECTED – 800 Union Street, southside of Union Street, between 6th and 7th Avenues, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing.

223-90-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Frank A. Burton, Jr., owner.

SUBJECT – Application April 3, 2007 – Amendment of a previous grant under the General City Law Section 36 to remove a Board condition requiring that no permanent Certificate of Occupancy shall be issued until a Corporation Counsel Opinion of Dedication has been obtained for Kresicher Street and to approve the enlargement of the site and building. M1-1 Zoning district.

PREMISES AFFECTED – 114 Kreischer Street, west side of Kreischer Street, 140.8’ north of Androvette Street, Block 7408, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with

dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53’ east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Dianna C. Valencia.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0’ east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

APPEARANCES –

For Applicant: Alan Sigman and Frank Williams.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing.

189-99-BZ

APPLICANT – Kenneth H. Koons, for 460 Quincy Avenue Realty Corporation, owner.

SUBJECT – Application September 12, 2007 – Extension of Term for a variance previously granted for the operation of a UG6 grocery store (Nana Food Center), with a one family dwelling above, in an R3-A zoning district which expired on November 14, 2005; for the Extension of Time to obtain a C of O which expired on February 3, 2004; for an amendment to legalize the increase in signage and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 460 Quincy Avenue, southeast corner of Dewey Avenue and Quincy Avenue, Block 5578, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Kenneth Koons.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for decision, hearing closed.

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8-05-BZ

APPLICANT – Sheldon Lobel, P.C., for James Pi, owner.
SUBJECT – Application January 18, 2005 – To consider dismissal for lack of prosecution – propose use, bulk and parking variance to allow a 17 story mixed-use building in R6/C1-2 and R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, a/k/a 51-35 Reeder Street, entire frontage on Queens Boulevard between Reeder Street and Broadway, Block 1549, 41 (a/k/a 41 & 28), Borough of Queens.

COMMUNITY BOARD # 4Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236th and East 237th, Block 5047, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Administration: Mark Davis, Department of Buildings.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a denial from the Bronx Borough Commissioner, dated August 22, 2005 and updated June 23, 2006 and November 14, 2006 (the “Denial”); and

WHEREAS, the Denial was issued in response to a request by the owner of 4368 Furman Avenue (the “Appellant,” and the “Subject Building”), that DOB reconsider the stop work order it issued for the Subject Building; and

WHEREAS, this appeal challenges DOB’s interpretation of ZR § 23-49 and a DOB memo, dated September 2, 1986, (the “1986 Memo”), and the resultant determination that the Subject Building does not comply with zoning district regulations; and

WHEREAS, the Denial reflects DOB’s position that a side yard with a minimum width of 8’-0” is required along the northern property line due to the existing adjacent built conditions on that lot line; and

WHEREAS, as reflected in the Denial, DOB refuses to reinstate the permits associated with the Subject Building; and

WHEREAS, the Denial reads in pertinent part:

These issues were discussed with technical affairs and at previous BCTM [Borough Commissioners Technical Meeting]:

- Intent of memo is to cover both party walls and independent walls, as also indicated in ZR 23-49(a).
- Current design of the project is not in compliance with the memo “. . . 50% or more of the depth of the building. . .”
- If X [the portion of the existing building on the lot line] ≥ 50% of Y [the full depth of the existing building] then proposed building may enjoy party/independent wall of ZR 23-49.

As a result, your current design is not in compliance. This reconsideration is denied; and (A sketch of this interpretation and the noted calculations was included with the Denial.)

HEARINGS

WHEREAS, a public hearing was held on this appeal on May 8, 2007, after due notice by publication in *The City Record*, with Continued hearings on June 5, 2007, July 24, 2007, and August 21, 2007, and then to decision on September 25, 2007; the decision was deferred to October 16, 2007; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, the Appellant and DOB were represented by counsel in this proceeding; and

WHEREAS, the Appellant and DOB made submissions to the Board on the interpretation of ZR § 23-49 and applicable standards for interpreting the ZR; and

WHEREAS, the drafter of the 1986 Memo, George Berger, provided testimony on the intent of the memo on the Appellant’s behalf; and

WHEREAS, at DOB’s request, counsel to the Department of City Planning (DCP) submitted a letter dated July 9, 2007 (the “DCP Letter”) discussing the legislative intent of the provisions of the Zoning Resolution in question and the reasonableness of DOB’s interpretation; and

THE SITE

WHEREAS, the site comprises one zoning lot, Lot 12, which is proposed to be subdivided into two tax lots; tax lot 12 (4368 Furman Avenue, the Subject Building) is located on the north side of the site and tax lot 11 (4366 Furman Avenue) is located on the south side of the lot; and

WHEREAS, the combined site is irregularly shaped, with a width ranging from 41.93 feet to 55.78 feet and a

1 Headings are utilized only in the interest of clarity and organization.

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depth of 97.5 feet along the subject northern lot line; it is located within an R5 zoning district; and

WHEREAS, the plans provide for the construction of two semi-detached three-story, three-family buildings – the Subject Building and its mirror image at 4366 Furman Avenue; and

WHEREAS, only the Subject Building at 4368 Furman Avenue has been determined to be non-complying and is at issue in this appeal; 4366 Furman Avenue has been completed and has obtained its certificate of occupancy; and

WHEREAS, semi-detached buildings are permitted within the zoning district and the side yard regulations require that there be one side yard with a minimum width of 8'-0" for each semi-detached building; and

WHEREAS, the building at 4366 Furman Avenue provides one side yard with a width of 8'-0" at its south lot line; the Subject Building is built to the northern lot line and does not provide any side yard for the entire length of the building; and

WHEREAS, the adjacent site to the north, 4382 Furman Avenue, is occupied with a six-story multiple dwelling building (the "Existing Building"), constructed in approximately 1931; and

WHEREAS, the Existing Building is built to its front property line and extends along the subject side property line to a depth of 30 feet (as per the Appellant's representations), at which point it sets back at the side to provide a side yard for the remaining depth of the building; the depth of its lot is also approximately 97.5 feet; and

WHEREAS, the Appellant represents that the Subject Building provides the required front yard with a depth of 18 feet and the required rear yard with a depth of 30 feet; and

WHEREAS, the Appellant represents that the proposal complies with all zoning district regulations except those raised in the Denial; and

PRE-BOARD PROCEDURAL HISTORY

WHEREAS, on October 24, 2003, the owner filed an application at DOB to develop the site; and

WHEREAS, on or about December 5, 2003, DOB issued an Objection Checklist for New Buildings and Alterations (the "Checklist"); and

WHEREAS, the Checklist cites to "marked up zoning calculations," but does not reference ZR § 23-49 or the 1986 Memo; and

WHEREAS, the Appellant represents that the project architect states that a side yard issue was raised on the "marked up" plans noted on the Checklist, that the issue was then discussed with a DOB examiner, resolved by December 5, 2003, and the plans were ultimately approved; and

WHEREAS, the Appellant represents that the noted "marked up" plans were not retained by the architect; and

WHEREAS, the Board notes that no evidence was submitted into the record to document these earlier plans and communication about this objection or any other objections; and

WHEREAS, DOB records reflect that plans were approved on December 12, 2003 and work permits were issued on February 20, 2004; and

WHEREAS, the Appellant represents that construction

commenced shortly thereafter; and

WHEREAS, the Appellant represents that construction continued on both buildings until May 2005 when, in response to a complaint that the building did not comply with zoning district regulations, DOB audited the plans; and

WHEREAS, as a result of the audit, DOB issued stop work orders against the Subject Building and 4366 Furman Avenue; and

WHEREAS, the stop work order against 4366 Furman Avenue was lifted, but remained on the Subject Building; and

WHEREAS, as noted, DOB rejected a proposed reconsideration on August 22, 2005 (the Denial) and determined that the proposed lot line condition did not comply with the 1986 Memo; and

WHEREAS, on December 1, 2006, the applicant obtained a certificate of occupancy for 4368 Furman Avenue; and

WHEREAS, the applicant now seeks to complete construction of the Subject Building pursuant to the approved plans and to obtain a certificate of occupancy; and

ISSUES PRESENTED

WHEREAS, the Appellant makes the following primary arguments in support of its position that DOB should reinstate the permit for the Subject Building: (1) the plans comply with a prior DOB interpretation of the 1986 Memo, (2) ZR § 23-49 is ambiguous and does not provide specific guidance as to when the side yard waiver applies, (3) DOB is arbitrary in its application of interpretations of ZR § 23-49 and the 1986 Memo, and (4) the doctrine of statutory interpretation dictates that an ambiguous statute be resolved in favor of the property owner; and

WHEREAS, these arguments will be addressed below; and

WHEREAS, the Board notes that the Appellant modified its arguments throughout the hearing process and that the arguments noted above reflect the current iteration; and

WHEREAS, the Appellant also advanced a supplementary argument that, if the Board were to uphold DOB's interpretation, then the Appellant has a vested right to complete construction under an alternate interpretation of ZR § 23-49; this argument is also discussed below; and

ZR § 23-49 AND THE 1986 MEMO

WHEREAS, ZR § 23-49 - Special Provisions for Party or Side Lot Line Walls – sets forth the exceptions for side yards on a lot adjacent to a lot with a side lot line wall in certain zoning districts; and

WHEREAS, ZR § 23-49 addresses exceptions to the side yard provisions for residential buildings with more than two dwelling units, like the Subject Building, set forth in ZR § 23-462 - Side Yards for All Other Residential Buildings; and

WHEREAS, the conditions for the exceptions to the side yard requirements as set forth in ZR § 23-49 are "a residence may be constructed so as to: (a) utilize a party wall or party walls, or abut an independent wall or walls along a *side lot line*, existing on December 15, 1961 or lawfully erected under the terms of this Resolution . . . If a

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residence is so constructed, the *side yard* requirements shall be waived along that boundary of the *zoning lot* coincident with said party wall or party walls, or independent wall or walls along a *side lot line*, and one *side yard* shall be provided along any *side lot line* of the *zoning lot* where such a wall is not so utilized, at least eight feet wide”; and

WHEREAS, the 1986 Memo has the subject heading Special Provision for Party or Side Lot Line Walls Section 23-49 Zoning Resolution; the portion of the memo at issue reads: “[t]he special provisions of Section 23-49(a) & (c) are applicable when the party walls are utilized or shared for 50% or more of the depth of the building”; and

WHEREAS, only § 23-49(a), and not § 23-49(c), is relevant to this appeal; and

The Compliance of the Subject Building

WHEREAS, the Appellant contends that the Subject Building complies with an interpretation of the 1986 Memo which provides that a new building need only share the lot line wall of an existing adjacent building for 50 percent of the depth of that lot line wall in order to be able to extend the new building’s wall along the shared lot line for its entire length; and

WHEREAS, DOB disagrees that this is the relevant interpretation and finds that the Subject Building does not comply with ZR § 23-49, under its interpretation (the “Proffered Interpretation”), which follows the 1986 Memo; and

WHEREAS, the Board agrees with DOB that the Subject Building does not comply with the Proffered Interpretation; and

The Interpretation of ZR § 23-49

WHEREAS, all parties agree that the text of ZR § 23-49 does not set parameters under which the side yard exception is applicable; specifically, it does not state what minimum amount of an existing building, by linear dimension or percentage, must be on the lot line or what linear dimension or percentage of a new building’s lot line wall must overlap the existing adjacent lot line wall; and

- Appellant’s Argument

WHEREAS, the Appellant initially argued that the owner began construction based on the plain meaning of ZR § 23-49 that if a portion of an adjacent existing building is along the lot line, then the side yard may be waived along that entire side lot line, “coincident” to that lot line wall, in order for the exception to apply; and

WHEREAS, the Appellant ultimately adopted the interpretation of ZR § 23-49 as interpreted by the drafter of the 1986 Memo, Mr. Berger (the “Berger Interpretation”), which is described below; and

WHEREAS, the Board notes that at the first hearing, the Appellant conceded that, although the language of the statute is broad, the drafters did not intend for a new building that abuts an existing adjacent building, which only has a very small portion (such as one or two feet), of its side wall built to the lot line, to be able to take advantage of the ZR § 23-49(a) exception; and

- Legislative Intent

WHEREAS, since the statute is ambiguous in that it

does not set forth guidelines for the applicability of the side yard exemption, DOB looks to the legislative intent; and

WHEREAS, DOB asserts that the legislative intent of the ZR is to have side yards and provide access to light and air and that there are few limited exceptions to side yard requirements; and

WHEREAS, DOB cites to the report which preceded the 1961 ZR - Voorhees, Walker, Smith, and Smith, Zoning New York City 54 (1958), which states

[t]he proposed yard regulations. . . are designed to provide a minimum amount of open space between building wall and lot lines in order to provide a basic supply of light and air to all required windows. In addition, by separating buildings, yards add to the privacy of occupants of a given lot as well as adjacent lots; and

WHEREAS, in its letter, DCP agrees that DOB’s interpretation is “consistent with the objectives of side yard zoning requirements, which are intended to ensure sufficient light and air to new developments and to adjacent properties”; and

WHEREAS, DOB agrees that the plain language of the ZR does not prohibit approval of the Subject Building; and

WHEREAS, however, DOB does not agree that, in the absence of specific parameters, the Appellant should follow a broad interpretation of the section as was done here; and

WHEREAS, DOB argues that the result of applying a broad interpretation to the Subject Building leads to a result contrary to the spirit of the ZR; and

WHEREAS, DOB notes that although the ZR does not specify that the existing wall measure a certain depth, a rational interpretation of the statute requires DOB to apply a minimum dimension to ensure that the waiver provides relief only where a substantial amount of the existing building is located on the lot line and where the new building is designed to share a substantial portion of the existing wall, thereby preventing misuse of the waiver where just a small portion of the walls are on the lot line; and

WHEREAS, the Board agrees with DOB and finds that the Appellant’s interpretation of ZR § 23-49 is unconvincing, inconsistent, and fundamentally contrary to legislative intent; and

WHEREAS, further, as noted above, the Board notes that, at the first hearing, the Appellant conceded that although no specific guidelines are set forth in ZR § 23-49, there are reasonable limits to the applicability of the exception; and

WHEREAS, the Board has determined that there is substantial evidence to reflect that certain lower density zoning districts require side yards except in very limited situations; and

WHEREAS, the Board notes that the ZR generally permits three exceptions to the side yard requirement in certain low density residential zoning districts; these exceptions are: (1) reduced side yards for narrow lots; (2) modified rules for lot subdivisions; and (3) waivers when there are adjacent existing buildings along the lot line with

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no side yards, pursuant to ZR § 23-49; and

WHEREAS, accordingly, the Board concludes that a broad interpretation of ZR § 23-49 is not consonant with the text of the ZR and cannot be supported; and
The Interpretation of the 1986 Memo

WHEREAS, because the statute does not provide a clear guideline, DOB, and ultimately the Appellant, have turned to the 1986 Memo to try to help identify and quantify which walls would be eligible for the side yard waiver under ZR § 23-49; and

WHEREAS, the Board notes that in its initial submission, the Appellant contended that DOB had no authority to draft the Memo and that it was not required to explain the text, as will be discussed in more detail below; and

WHEREAS, however, at the first hearing, the Appellant modified his argument to state that the Subject Building complies with the Berger Interpretation; and

WHEREAS, the Berger Interpretation, as articulated at hearing by the memo's drafter, is that the phrase "depth of the building" in the memo refers to the depth of only the portion of the existing adjacent building on the lot line; and

WHEREAS, the DOB's Proffered Interpretation is that "depth of the building" refers to the full depth of the existing adjacent building; and

WHEREAS, accordingly, the Appellant asserts that since there is no definition of the phrase "depth of the building" in the 1986 Memo and the drafter represents that the relevant interpretation of the phrase is that the depth refers only to the measurement of the portion of the adjacent wall on the lot line; and

WHEREAS, the Appellant claims that his interpretation is the common interpretation applied to the 1986 Memo from 1986 to 2005 (or even later) based on the testimony of the drafter and assumptions about DOB practice; and

WHEREAS, accordingly, the Appellant notes that, although 50 percent of the Existing Building's total depth is not along the shared lot line, 50 percent of the depth of the Existing Building's lot line wall is overlapped by the Subject Building's lot line wall; and

WHEREAS, specifically, the Appellant claims that the adjacent existing wall is built to the lot line for a depth of 30 feet, and 20 feet (67 percent) of it is overlapped by the lot line wall of the Subject Building; and

WHEREAS, as noted above, the Board questions whether the Appellant's calculation is accurate, given that the required front yard is 18 feet and the Existing Building is built to its front lot line, leaving only 12 feet (40 percent) of the Subject Building, which could potentially overlap with the Existing Building since any permitted obstruction in the Subject Building's front yard could not contribute to the purportedly required side wall overlap (any wall or other obstruction within the required front yard would be subtracted from the calculation); and

WHEREAS, compliance with the Berger Interpretation would require an overlap of at least 15 feet (50 percent), or potentially three feet more than what the Subject Building

provides; and

WHEREAS, additionally, photographs the Appellant submitted into the record on October 9, 2007 reflect that the portions of the Subject Building's side wall as indicated on Appellant's submitted plans appear to not have been built; and

WHEREAS, the Board notes that it is unclear whether the drawings illustrating the overlap meet the Appellant's interpretation of the 1986 Memo or whether the built conditions reflect the drawings associated with the permits; and

WHEREAS, DOB understands "depth of the building" to have the customary meaning which is the measure of the distance between the front of the building and the back of the building; and

WHEREAS, the Board agrees with DOB's interpretation that "depth of the building" means the distance from the front of the building to the rear of the building, notwithstanding any portion of the building which is located on the side lot line; and

- DOB's History of Interpretation

WHEREAS, George Berger, who was then the Assistant Commissioner of Building Construction and Special Projects at DOB, drafted the 1986 Memo with the subject heading "Special Provision for Party or Side Lot Line Walls § 23-49 ZR" to help clarify the ambiguity in the statute and provide guidelines for when it should apply; and

WHEREAS, the Appellant contends that from the time of the distribution of the memo on September 2, 1986 until approximately the time of the issuance of the Denial, DOB followed the interpretation that "50% of the depth of the building" meant 50 percent of the depth of the existing adjacent lot line wall; and

WHEREAS, Mr. Berger provided testimony stating that this had been DOB's interpretation; and

WHEREAS, DOB denies that this interpretation was followed in the approval of the Subject Building; and

WHEREAS, on April 28, 2005, a DOB Borough Commissioners Technical Meeting ("BCTM") addressed the provisions of ZR § 23-49 and determined that "where the party or side lot line wall of the existing building is less than 50% of the total depth of the existing building, ZR § 23-49 . . . cannot be applied and the side yard requirement cannot be waived per ZR § 23-49"; and

WHEREAS, DOB did not have a record reflecting that these notes had been distributed, but, during the hearing process provided evidence that they were distributed to borough commissioners and other DOB staff on July 9, 2007; and

WHEREAS, additionally, DOB states that the Bronx Borough Commissioner disseminated the information to Bronx plan examiners after the 2005 BCTM; and

WHEREAS, the Appellant questioned the timing of the recordation of these notes, but the Board accepts them as an accurate reflection of the determination at the 2005 BCTM; and

WHEREAS, the Board notes that the August 22, 2005 Denial refers to the BCTM, notes that this matter was also

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discussed with Technical Affairs, and, as noted, reflects the interpretation that “depth of building” means total depth of the existing building, not just the depth of the wall on the lot line; and

WHEREAS, DOB represents that the Proffered Interpretation has been in place since at least April 28, 2005 when the 1986 Memo was discussed at the BCTM; and

- DOB’s Authority to Issue Memos

WHEREAS, as noted, before the Appellant articulated his support for the Memo, he initially questioned DOB’s authority to issue memos; and

WHEREAS, although the Appellant now espouses the Berger Interpretation, in the first submission to the Board, the Appellant disagreed with the Memo, as interpreted in the Denial, and found the Memo was unnecessary and an abuse of DOB’s authority; and

WHEREAS, the Appellant asserted that DOB does not have the authority to draft memos because memos, explicating the ZR are de facto amendments to the ZR and that DOB’s application of the Memo is arbitrary and capricious; and

WHEREAS, but, the Appellant now asserts that if DOB does have the authority to issue memos to clarify the text, it should rely on the interpretation of the 1986 Memo articulated by the Appellant; and

WHEREAS, DOB asserts that memo-drafting is a reasonable and established exercise of DOB’s authority to enforce zoning regulations; and

WHEREAS, in response to the Board’s question about the history and function of memo-drafting at DOB, DOB responded that memos precede the current PPN’s and were issued and bound to aid DOB and practitioners; and

WHEREAS, DOB provided evidence that the 1986 Memo was issued and bound in a volume which was distributed at DOB and offered for sale to practitioners; and

WHEREAS, the Board agrees that DOB has the authority to interpret the ZR and the issuance of memos and PPNs are within its authority to memorialize clarification of specific issues; and

WHEREAS, DOB provided other examples of where it has adopted quantitative standards in order to clarify the ZR; these include a maximum floor area figure for accessory automotive uses and a definition of “substantial” when measuring the proportion of adult content material to other material in a particular establishment; and

WHEREAS, the Board concurs that sometimes it is necessary for DOB to clarify ambiguous terms in the ZR and to establish measurements which are not clearly stated within the text; and

- BCTM Discussion of the 1986 Memo

WHEREAS, the Appellant contends that DOB changed its interpretation of the Memo to the interpretation articulated in the Denial (the Proffered Interpretation) after the permit for the Subject Building had been issued; and

WHEREAS, accordingly, the Appellant asserts that DOB is arbitrary to formulate the Proffered Interpretation and objects to a purported change in interpretation post-permitting for the Subject Building; and

WHEREAS, at hearing, DOB responded that it could not ascertain what interpretation of ZR § 23-49 or the 1986 Memo, if any, had been applied at the time the permits were approved, and asserts that the permits were issued mistakenly; and

WHEREAS, however DOB asserts that even if the permits for the Subject Building or for other buildings, were issued under an alternate interpretation of ZR § 23-49 or the 1986 Memo, alternate interpretations are inconsistent with the ZR and are not enforceable; and

WHEREAS, DOB disagrees with the Appellant that it was arbitrary or improper to formally adopt the Proffered Interpretation at the 2005 BCTM; and

WHEREAS, to support this point, DOB cites to Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (N.Y. 1985); in Charles Field, the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained; and

WHEREAS, DOB contends that its interpretation of the 1986 Memo is rational and reflects the legislative intent which is that only when a substantial or significant portion of the existing adjacent building is at the lot line should the issue of compensating an adjacent property owner, through a side yard exemption, for the impact on the new development of his property be permitted; and

WHEREAS, the Board agrees that DOB’s interpretation is the rational construction of the 1986 Memo that reinforces the legislative intent of the ZR by establishing a reasonable amount of the existing adjacent building which must be located on the lot line in order to trigger the exception and exempt the side yard requirement altogether; and

WHEREAS, the Board agrees that Charles Field supports DOB’s assertion that it can refine its statutory interpretation and that “administrative agencies are free, like courts, to correct a prior erroneous interpretation of the law,” 66 N.Y.2d at 519; and

WHEREAS, further, the Board agrees that DOB’s Proffered Interpretation balances the interests of two property owners by ensuring that the requirement of a side yard is reduced (or eliminated) only in rare instances where an adjacent building does not provide its required side yard and the existing condition does not contribute to the open space to be enjoyed by both properties; and

- DOB Practice

WHEREAS, the Appellant has identified two other examples, approved by DOB, where side yards were not provided by a new building which shares a lot line with another building (existing or new) with a lot line wall condition; and

WHEREAS, the first example is Prentiss Avenue, which the Appellant represents was approved after an audit by DOB; it has a new lot line wall contiguous with another new lot line wall for 100 percent of the shallower building’s total depth; and

WHEREAS, the Board notes that since both buildings in the Prentiss Avenue example are proposed new construction, an argument could be made that since the

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deeper building matches 100 percent of the depth of the shallower building it therefore complies with DOB's Proffered Interpretation; additionally, it appears as though these two buildings occupy what was formerly a single shared zoning lot as is not the case with the Existing Building and the Subject Building; and

WHEREAS, the second example is Utopia Parkway, which also does not appear to be analogous because the existing building there is actually two attached two-family buildings and the new building on the adjacent lot does overlap more than 50 percent of the depth of the front building; and

WHEREAS, as noted, DOB distinguishes these examples and states that while it cannot determine which interpretation of the side yard exception was applied, it appears to be neither the Proffered Interpretation nor the Berger Interpretation of the 1986 Memo; and

WHEREAS, the Board agrees with DOB that the Appellant's examples are unpersuasive since neither is analogous and one or both may actually comply with DOB's Proffered Interpretation; and

WHEREAS, further, the Board notes that even if the two examples, which were executed by the same architect as the Subject Building, were approved under an interpretation other than the Proffered Interpretation, DOB may correct its interpretation, pursuant to Charles Field, because it was flawed; and

WHEREAS, additionally, the Board notes that the Appellant failed to provide any evidence, other than Mr. Berger's testimony, to support its claim that the Berger Interpretation was the established practice at DOB from 1986 to 2005; and

STATUTORY INTERPRETATION PRINCIPLES

WHEREAS, as to statutory interpretation, the Appellant makes the following assertions: (1) that any ambiguity in the text should be resolved in favor of the property owner and (2) that DOB was arbitrary in its application of the Proffered Interpretation; and

WHEREAS, as to the first point, the Appellant cites to case law including Sposato v. Zoning Board of Appeals, 287 A.D.2d 639, 639 (2d Dept. 2001) and Hogg v. Cianciulli 247 A.D.2d 474, 474-475 (2d Dept. 1998) to support its position that if a statute is ambiguous, it is to be construed against the administrative agency charged with upholding it; and

WHEREAS, however, DOB notes that the Appellant does not address the countervailing legal principle that "BSA and DOB are responsible for administering and enforcing the zoning resolution (New York City Charter §§ 643 and 666[7]), and their interpretation is neither irrational, unreasonable nor inconsistent with the governing statute," Appelbaum v. Deutsch, 66 N.Y.2d 975, 977 (N.Y. 1985); and

WHEREAS, further, DOB cites to Appelbaum for the point that administrative agencies may turn to the stated purpose of the statute as a whole in interpreting specific provisions; and

WHEREAS, DOB also cites to People v. Ryan, 274 N.Y.149 (N.Y. 1937) for the principle that narrowing the

application of a statutory term is permitted to avoid a result contrary to legislative intent, and to Lee v. Chin, 781 N.Y.S.2d 625 (N.Y. Sup. Ct. 2003) for the principle that New York courts view the ZR as a whole and harmonize the parts to achieve the legislative purpose is a well-established rule of statutory construction; and

WHEREAS, the Board agrees with DOB that the Appellant's citation to a general principle of statutory interpretation does not outweigh the established body of case law which permits administrative agencies to resolve ambiguity and narrow interpretations in light of a clear legislative intent; and

WHEREAS, specifically, the Board notes that the court applied this principle to the interpretation of the ZR in Lee v. Chin, a case in which the court upheld the Board's interpretation of a provision of the ZR related to building height, and stated that "it cannot be said that BSA violated the well-established rule of statutory construction that a statute be viewed as a whole, and all of its parts, if possible, be harmonized to achieve the legislative purpose" 781 N.Y.S.2d 625 at 16 (1st Dept. 2003); and

WHEREAS, accordingly, the Board agrees with DOB and DCP that ZR § 23-49, when read in the context of the ZR as a whole, requires a more narrow interpretation of the lot line wall conditions and resultant side yard exemptions than the Appellant proposes; and

WHEREAS, as to the second point, the Appellant cites to Friend v. Feriolo, 35 Misc. 2d 250 (N.Y. Sup. Ct. 1962); in Friend, where the court held that a proffered interpretation of zoning was strained and that "the Board of Appeals is not vested with despotic and arbitrary powers; it must act intelligently and fairly and within the domain of reason"; and

WHEREAS, DOB disagrees that it has acted arbitrarily and finds that Friend actually supports a more narrow interpretation since the Proffered Interpretation, when read in the context of the ZR, helps eliminate the potential for absurd or unintended results contrary to legislative intent that might otherwise occur under the plain meaning of ZR § 23-49 or under the Berger Interpretation; and

WHEREAS, as to DOB's application of the Proffered Interpretation, the Board notes that the Appellant failed to establish a consistent DOB interpretation in practice that was arbitrarily abandoned at the time the Subject Building's plans were ultimately audited and rejected; and that the two examples discussed above are distinguishable; and

WHEREAS, the Board agrees that DOB has not been arbitrary and concludes that the courts have given great weight to the principle that a particular provision be illuminated by the text as a whole; and

VESTED RIGHTS CLAIM

- The Validity of the Permits

WHEREAS, the Appellant argues that DOB instituted a change in policy and interpretation subsequent to the issuance of the relevant permits and that this is tantamount to a change in the zoning; the appellant asserts the right to vest under a prior interpretation; and

WHEREAS, the Appellant cites to the canon of

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vesting case law to support its assertion; and

WHEREAS, specifically, the Appellant asserts that if the Board upholds the Proffered Interpretation and denies the appeal, then the Board should grant a vested right to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Appellant relies on the following arguments: (1) the permits were valid because the proposal complies with DOB's interpretation at the time of issuance (the Berger Interpretation), and (2) the Appellant relied on the permits in good faith as it completed the majority of construction on the Subject Building; and

WHEREAS, as to the validity of the permits, the Appellant asserts that the permits were valid because they were issued pursuant to DOB's interpretation of the relevant zoning at the time of issuance; and

WHEREAS, the Appellant cites to Friend to support the assertion that it should be permitted to complete construction on the Subject Building because of a good faith reliance on the permit; and

WHEREAS, as discussed above, DOB contends that permits were not ever valid because they were mistakenly issued and cannot be relied on regardless of how much construction had been completed at the time of revocation; and

WHEREAS, DOB distinguishes the subject case from Friend, because (1) intervening case law has held that vested rights cannot be established for the reliance on a permit issued in violation of zoning, (2) unlike in Friend, there is clear evidence that the proposal is in violation of the relevant zoning provision, (3) unlike in Friend, the DOB's interpretation of zoning is not strained, but is supported by the text of the ZR, (4) while the Friend court found the violation of zoning to be minimal, the insufficient depth of the existing wall here is significant, and (5) while the walls at issue in Friend were necessary to prevent soil erosion and block falls, there is no safety issue here; and

WHEREAS, as discussed above, DOB disagrees that the permits were valid whether they were mistakenly accepted after being rejected for failure to comply with ZR § 24-39, or as the Appellant contends, they were accepted after DOB's plan examiner applied the alternate interpretation of the 1986 Memo; and

WHEREAS, DOB asserts that a permit issued based on a plan examiner's incorrect interpretation of ZR § 24-39 is invalid just as a permit issued based on any interpretation of ZR § 24-39 or the 1986 Memo that differs from DOB's Proffered Interpretation would be; and

WHEREAS, DOB maintains that a threshold issue in a vested rights case is that construction proceeded pursuant to valid permits; and

WHEREAS, DOB cites to Asharoken v. Pitassy, 119 A.D.2d 404 (N.Y. App. Div. 1986) where the court stated "[b]asic to traditional vested rights jurisprudence is the tenet that there is no right to reliance upon an invalid building permit"; and

WHEREAS, DOB asserts that the permits were not valid because they do not comply with ZR § 23-49; and

WHEREAS, accordingly, because the permits were not valid, DOB rejects the Appellant's vesting claim; and

WHEREAS, the Board agrees with DOB and concurs that New York State courts have consistently held that vested rights may only be granted for work performed pursuant to valid permits; and

WHEREAS, the Board concludes that because the permits were mistakenly issued, they were not valid, and a vested rights argument is flawed; and

- Constructive Notice

WHEREAS, as to constructive notice that the permit was invalid, DOB notes that New York State courts have held that whether or not a permit holder had constructive notice or could reasonably have determined the invalidity of a permit through due diligence is irrelevant to the determination of a permit's validity for vested rights purposes; and

WHEREAS, specifically, DOB cites to Asharoken where the court rejected a vested rights argument stemming from the revocation of permits mistakenly issued to a riding academy in violation of zoning because the academy was subsequently interpreted not to be a permitted "private school"; and

WHEREAS, DOB notes that the court agreed with a restrictive zoning interpretation only after a careful analysis of the legislative intent behind the zoning ordinance; and

WHEREAS, the Asharoken court stated that building permits "are invalid to the extent that they are in derogation of [zoning] . . . In essence, a permit issued for an invalid use is necessarily invalid"; and

WHEREAS, as to constructive notice, the Board agrees with DOB and adds that (1) side yards are required as a rule, and (2) the Appellant knew that DOB objected to the side yard condition during the review process; and

WHEREAS, further, the Board asserts that the relevant exceptions set forth in ZR § 23-49 are not intended to provide a new building with a benefit out of proportion with any detriment resulting from the adjacent building's existing lot line wall condition; and

WHEREAS, the Board distinguishes Village Green v. Nardecchia, 85 A.D.2d 692 (2d Dept. 1981), which was cited by the Appellant, in that it states that the grant of a permit is not an automatic estoppel against denial of a certificate of occupancy and this actually supports DOB's position; and

WHEREAS, the Board further distinguishes Village Green, because the facts of that case were that the DOB examiner's interpretation was rational, but in the instant appeal it is not clear what interpretation the examiner followed, but, as noted, the approval did not reflect the intent of the ZR; and

WHEREAS, further, the Board notes that, in Village Green, the issuance of permits was preceded by meetings and hearings on the non-compliance, which did not happen in the subject case where the Appellant relied on an approval from a single DOB examiner subsequent to an objection for side yards, also at the examiner level; and

WHEREAS, the Board does not accept the Appellant's

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argument that since the permits were approved by a DOB examiner after plan review, that they are valid; and

WHEREAS, in fact, the Board notes that the applicant conceded that DOB issued an objection to the side yard, but the architect somehow cured it; the Appellant did not provide any record of how it was corrected; and

EQUITABLE RELIEF CLAIM

WHEREAS, the Appellant claims that he relied in good faith on validly issued permits and completed approximately 90 percent of construction on the Subject Building by the time DOB issued a stop work order and issued the Denial; and

WHEREAS, the Board agrees with DOB that the permit was invalid and as such the Appellant's vested rights claim fails, regardless of how much work was completed; and

WHEREAS, further, the Board states that it does not have authority to weigh equity concerns; and

WHEREAS, instead, the Board states that it has analyzed the appeal based on a statutory interpretation of ZR § 23-49, which is the subject of the Denial; and

WHEREAS, accordingly, because the permits were invalid, pursuant to the Proffered Interpretation, the Board concludes that the degree of completion of the Subject Building is irrelevant; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by Appellant and DOB in light of the entire record; and

WHEREAS, based on DOB's Proffered Interpretation, the Board has determined that the Subject Building does not comply with ZR § 23-49, as interpreted by DOB; and

WHEREAS, specifically, the Board concludes that because less than 50 percent of the total depth of the Existing Building is located on the shared lot line, the Subject Building must provide a side yard with a width of at least 8 feet at the northern lot line; and

WHEREAS, accordingly, the Board agrees with DOB's denial of the reconsideration; and

WHEREAS, additionally, the Board does not find that the Appellant has offered a convincing rationale to permit the Subject Building to vest pursuant to its interpretation of the ZR and the 1986 Memo; and

WHEREAS, the Board notes that its decision is limited to the questions raised in this appeal and it has not made a determination as to whether the Subject Building, as built, complies with any alternate interpretation of ZR § 23-49 or the 1986 Memo; and

WHEREAS, the Board notes that the Appellant may request other relief from the Board, pursuant to ZR § 72-01(b) and other applicable provisions of Article VII, Chapter 2 of the ZR, which define the procedures and standards pursuant to which the Board can vary the ZR.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Denial of the Bronx Borough Office of the Department of Buildings, dated August 22, 2005, is hereby denied.

Adopted by the Board of Standards and Appeals,

October 16, 2007.

156-07-A

APPLICANT – Jorge F. Canepa, for Victor Battaglia, owner.

SUBJECT – Application June 11, 2007 – Proposed construction a swimming pool and equipment room, located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 60 Chipperfield Court, 433.95' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 337, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 1, 2007, acting on Department of Buildings Application No. 500902491, reads in pertinent part:

“Objection #1 – Proposed swimming pool in the bed of mapped street is contrary to General City Law”; and

WHEREAS, this application requests permission to build a proposed in-ground swimming pool and equipment room within the bed of a mapped street (Tiber Place); and

WHEREAS, a public hearing was held on this application on October 2, 2007 after due notice by publication in the *City Record*, and then to decision on October 16, 2007; and

WHEREAS, by letter dated July 31, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated June 25, 2007, the Fire Department states that it has reviewed the above application and has no objection; and

WHEREAS, by letter dated July 11, 2007, the Department of Environmental Protection (DEP) states that it reviewed the above application and advises the Board that there is an adopted Drainage Plan PRD-1B & 2B, Sheet 4 of 14 calls for a future 10-in. diameter sanitary sewer and a 15-in. diameter storm sewer starting in Tiber Place off of Ocean Terrace; and

WHEREAS, therefore, DEP requires a minimum of 32'-0" Sewer Corridor on Lot 337 in the bed of Tiber Place for the future drainage plan 10-in. diameter sanitary sewer and a 15-in. diameter storm sewer for the purpose of installation, maintenance, and/or reconstruction of these sewers; and

WHEREAS, in response to DEP's request, the applicant

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has agreed to provide the 32'-0" wide Sewer Corridor on Lot 337 in the bed of Tiber Place for the future drainage plan; and

WHEREAS, by letter dated October 1, 2007, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, 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 June 1, 2007, acting on Department of Buildings Application No. 500902491, 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 August 31, 2007," "BSA-3"–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT a sewer corridor with the width of 32'-0" for DEP access be provided on Lot 337 in the bed of Tiber Place, as reflected on the BSA-approved plans; 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, October 16, 2007.

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for North Seven Associates, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Geis.

For Opposition: Peter Gillespie, Felice Kirby, Paul Leussing, Doris Vila Lidit, Marisa Bowe, Philip Dray, Stephanie Raye, Stephanie Eisenberg and Fergus Grant.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing.

212-07-BZY

APPLICANT – Greenberg Traurig by Deirdre A. Carson, Esq., for 163 Charles St. Realty, LLC, owner.

SUBJECT – Application September 12, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on October 11, 2005. R6A, C1-5 zoning district.

PREMISES AFFECTED – 163 Charles Street, fronting on Charles Street and Charles Lane, between Washington and West Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Margo Phlug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 23, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 16, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

25-06-BZ

CEQR #06-BSA-054K

APPLICANT – Dominick Salvati and Son Architects, for
Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance
(§72-21) to allow an eight (8) story residential building with
ground floor community facility use to violate applicable
regulations for dwelling unit density (§23-22), street wall
height (§23-631 and §24-521), maximum building height
(§23-631), front yard (§24-34), side yards (§24-35 and §24-
551), FAR (§24-11, §24-162 and §23-141) and lot coverage
(§23-141 and §24-11). Project is proposed to include 29
dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block
7690, Lots 79 and 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner
Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, decision of the Brooklyn Borough
Commissioner, dated October 9, 2007, acting on Department of
Buildings Application No. 302022460, reads in pertinent part:

“23-22 ZR - Maximum permitted dwelling units is
contrary to section noted.

23-631(b) ZR - Maximum permitted wall height and
maximum permitted total height is contrary to section
noted.

23-45(a) ZR - Minimum required front yard is
contrary to section noted.

23-462(a) ZR - Minimum required side yards
contrary to section noted.

23-141 ZR - Floor Area Ratio (FAR) and lot
coverage are contrary to section noted.”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, on a site within an R3-2 zoning district, a proposed
four-story residential building with 15 dwelling units and 15
accessory parking spaces, which exceeds the maximum
permitted FAR, lot coverage, wall height, total height, and
number of dwelling units and does not provide the minimum

required front yard or side yards, contrary to ZR §§ 23-141, 23-
462(a), 23-631(b), 23-22, and 23-45(a); and

WHEREAS, a public hearing was held on this
application on January 22, 2007, after due notice by publication
in the *City Record*, with continued hearings on February 27,
2007, April 17, 2007, July 24, 2007, and September 11, 2007
and then to decision on October 16, 2007; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan,
Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn,
recommends approval of this application; and

WHEREAS, certain neighbors provided testimony in
opposition to the application, citing concerns about access to
light and air and parking issues; and

WHEREAS, the subject premises is located on the west
side of Nostrand Avenue, between Avenue P and Kings
Highway; and

WHEREAS, the site comprises two tax lots – Lots 79 &
80 – and has a total lot width of 80 feet and a total lot area of
approximately 8,800 sq. ft.; and

WHEREAS, Lot 80 is occupied with an automobile
storage area and Lot 79 is occupied with a one-story
automobile repair shop, which will be demolished; and

WHEREAS, the Board notes that in 1940, under BSA
Cal. No. 1181-40-A it granted a variance for auto laundry,
greasing, and a garage for storage of five trucks; and

WHEREAS, in 1948, under BSA Cal. No. 410-47-BZ,
the Board granted an amendment to permit an automotive
repair shop, auto laundry, and lubritorium; and

WHEREAS, the applicant initially proposed an eight-
story building with a height of 74'-8", a total floor area of
46,649 sq. ft. (5.30 FAR), a residential floor area of 43,824 sq.
ft., a community facility floor area of 2,825 sq. ft., 29
residential units, and 31 parking spaces; and

WHEREAS, the applicant provided several interim
iterations of the plans along with a financial analysis, which
incrementally reduced the floor area and height; these iterations
also provided for community facility space below grade; and

WHEREAS, the applicant now proposes a four-story
residential building with a streetwall and total height of 36'-0"
(the maximum permitted street wall and total height are 21'-0"
and 35'-0", respectively); 20,856 sq. ft. of residential floor area
(2.37 FAR) (the maximum permitted floor area is 7,040 sq. ft.
and 0.6 FAR); a front yard with a depth of 10'-0" (the
minimum required front yard is 15'-0"); a lot coverage of 64
percent (the maximum permitted lot coverage is 35 percent); 15
dwelling units (the maximum permitted number of dwelling
units is six); no side yards (two side yards with widths of 8'-0"
each are required); and 15 parking spaces; and

WHEREAS, the applicant proposes to provide (1) 13
parking spaces in the cellar and two others slightly below
grade, (2) three residential units on the lower level, and (3) four
residential units on each of the three upper floors; and

WHEREAS, the applicant states that the following are

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unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable zoning district regulations: due to a history of automotive related uses at the site, the soil is contaminated and requires extensive remediation; and

WHEREAS, as to the soil condition, the applicant represents that soil tests reflect that there is contamination by several chemical pollutants as a result of its prior use as an automotive repair shop and vehicle storage facility; and

WHEREAS, the applicant represents that the site has been in constant use for automotive uses since approximately 1930 and until recently; and

WHEREAS, specifically, the soil boring analysis reflects that there are at least eight volatile organic compounds, among other contaminants, present at the site; and

WHEREAS, further, the analysis reflects that the drain, which was used to dispose of paint and auto-body chemical waste, should be removed from the ground and all impacted soils within the zone of contamination (from the ground surface to 22 feet below grade) should be removed and treated and disposed of in accordance with New York State Department of Environmental Conservation approved procedures; and

WHEREAS, the analysis states that these procedures include (1) pumping out all liquids present in the drain using a vacuum truck, (2) removing all contaminated soil with a guzzler truck, (3) removing all fill material present in the subsurface soil in accordance with all relevant regulations, and (4) installing a vapor barrier under the new foundation; and

WHEREAS, the Board notes that the prior approved use of the site for automotive uses pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, as to the uniqueness of the site conditions, the applicant represent that there are no other available underbuilt or vacant lots within a 200-ft. radius of the site; and

WHEREAS, the applicant has documented more than one million dollars in premium construction costs associated with the remediation of the site; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area to overcome the premium construction costs while maintaining a building with a height and yards which are compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a financial analysis for (1) a seven-story building with environmental remediation, (2) a seven-story building without environmental remediation, (3) an eight-story building with environmental remediation, and (4) an eight-story building without environmental remediation; and

WHEREAS, as noted, throughout the hearing process, the Board directed the applicant to reduce the degree of waivers requested and to reflect the minimum variance; thus, the

applicant modified the financial analysis to reflect different scenarios and to respond to the Board's concerns; and

WHEREAS, ultimately, the applicant provided a revised financial analysis which reflects, in addition to the proposed four-story (2.37 FAR) building: (1) an as of right 0.60 FAR scenario if the site were not contaminated, and (2) an as of right 0.60 FAR scenario with the documented environmental remediation; and

WHEREAS, the applicant concluded that none of the as of right scenarios would result in a reasonable return, due to prohibitively high construction costs; and

WHEREAS, thus, the applicant asserts that the additional FAR and height is required to overcome the premium construction costs; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is mixed use with one-story commercial buildings, two- and three-story residential buildings, and six- and seven-story apartment buildings; and

WHEREAS, the site to the south of the subject site is occupied by a seven-story multiple dwelling building and the site to the north is occupied by a one-story commercial building; the majority of sites on the block are occupied by two-story residential buildings, but multiple dwelling buildings with comparable heights occupy several block fronts on Kings Highway; and

WHEREAS, the Board notes that the adjacent seven-story building does not provide a setback and that there is not a strong streetwall context on Nostrand Avenue near the site; and

WHEREAS, at the Board's direction, the applicant reduced the height of the building by sinking the lower level into the ground to make the overall height more compatible with the buildings in the vicinity; and

WHEREAS, throughout the application process, the applicant eliminated several floors and made the building more compatible with adjacent development; and

WHEREAS, specifically, the final iteration provides for a height of 36 feet, which is only one foot higher than what would be permitted; and

WHEREAS, the applicant initially proposed to provide parking for four cars in the rear yard; and

WHEREAS, the applicant revised the plans to provide for all of the parking either in the cellar or at the front of the building so as to provide an open space at the rear with a depth of 30'-0" and to be more compatible with adjacent neighbors at the rear of the site; and

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WHEREAS, the Board notes that the applicant will provide one parking space for each dwelling unit; and

WHEREAS, the Board notes that the proposed residential use is as of right and more compatible with the residential use in the area than the pre-existing non-conforming use; and

WHEREAS, the Board notes that the applicant initially proposed community facility use on the lower level; and

WHEREAS, at the Board's direction, the applicant eliminated the community facility space which increased the floor area and height; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which pre-dates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that additional floor area, height, and dwellings were required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed degree of FAR, height and dwelling count waivers initially proposed are needed to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of floor area and FAR waivers, and to reflect the 2.37 FAR distributed appropriately on the site; and

WHEREAS, the Board notes that the applicant has significantly reduced the number of residential units from the initially proposed 29; and

WHEREAS, the Board notes that the applicant also initially proposed two cellar levels; and

WHEREAS, the applicant represented that the two cellar levels were necessary to accommodate the parking and other uses at the site, yet acknowledged that excavating two levels of earth increased the remediation costs; and

WHEREAS, thus, at hearing, the Board directed the applicant to eliminate the second cellar level in order to reduce the costs associated with the remediation and to minimize the requested waivers; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Part 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No., dated May 3, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: May, 2006 Environmental Assessment Statement (EAS), June, 2006 Phase I Environmental Site Assessment report (Phase I); and August, 2005 Phase II Environmental Subsurface Investigation report (Phase II).

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on October 11, 2006 and submitted for proof of recording on November 30, 2006 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, a proposed four-story residential building with 15 dwelling units and 15 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front yard or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45(a), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application

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marked "Received October 2, 2007"- seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of four stories including any basement, a maximum of 15 dwelling units, a total height and streetwall height of 36'-0", a floor area of 20,856 sq. ft. (2.37 FAR), a front yard depth of 10'-0", a rear yard depth of 30'-0", a lot coverage of 64 percent, and a minimum of 15 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, October 16, 2007.

114-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Aleksandr Levchenko, owner.

SUBJECT – Application June 6, 2006 – Special Permit (§73-622) to allow the legalization of an enlargement to a single family home in an R3-1 zoning district, which exceeds the allowable floor area ratio, open space and lot coverage (§23-141); provides less than the minimum required side yards (§23-48).

PREMISES AFFECTED – 124 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 16, 2007, acting on Department of Buildings Application No. 301863605, reads in pertinent part:

1. Provide minimum side yards as per ZR 23-46
2. FAR exceeds that permitted by ZR 23-141
3. Open space and lot coverage as per ZR 23-141"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the

partial legalization and modification of an enlargement to a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, with continued hearings on June 12, 2007, July 24, 2007, August 21, 2007 and September 18, 2007, and then to decision on October 16, 2007; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the Manhattan Beach Community Group provided testimony in opposition to the application, citing concerns about illegal construction, non-complying perimeter wall and total height, and whether a sufficient portion of the original home had been retained; and

WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard; and

WHEREAS, the subject site has a total lot area of 3,374 sq. ft., and is occupied by a three-story single-family home with a floor area of 3,351.02 sq. ft. (0.99 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes that the owner of the subject premises enlarged the original home (the "Original Home") pursuant to plans which were professionally certified by the project architect and which did not comply with zoning district regulations; and

WHEREAS, the Board notes that after the majority of the construction had been completed, DOB determined that the building was non-complying as to FAR and side yards and revoked the permits on January 20, 2006; and

WHEREAS, the site is currently occupied by a 3,351.02 sq. ft. (0.99 FAR) three-story single-family home (the "Current Home") (1,687.25 sq. ft. and 0.50 FAR are the maximum permitted in the zoning district); and

WHEREAS, prior to the enlargement, the one-story Original Home had pre-existing legal non-complying side yards with widths of 4'-7 1/2" and 0'-11"; and

WHEREAS, the Current Home, with the subject enlargement, maintains these side yards and provides complying front and rear yards; and

WHEREAS, the Current Home provides a lot coverage of 39 percent (35 percent is the maximum permitted); and

WHEREAS, during the hearing process, the Board identified additional non-compliance, as described below; and

WHEREAS, the Current Home has a gambrel roof, which does not provide the required minimum pitch or a discernible perimeter wall (a perimeter wall, as defined by

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DOB, may have a maximum height of 21 feet); and

WHEREAS, the Current Home has a non-complying total height of 35'-10" (a total height of 35'-0" is the maximum permitted in the zoning district); and

WHEREAS, because of the absence of a sufficient pitch and a discernible perimeter wall, the roof condition results in the penetration of the sky exposure plane at the third floor; and

WHEREAS, additionally, the two dormers at the sides of the roof penetrate the sky exposure plane; and

WHEREAS, the applicant initially proposed to legalize the entire enlargement; and

WHEREAS, however, as noted, the Board determined that portions of the enlargement were beyond the parameters of the special permit; and

WHEREAS, the Board notes that it does not have the authority to waive building height and penetration of the sky exposure plane or, generally, perimeter wall height; and

WHEREAS, at the Board's request, the Department of Buildings investigated the site and confirmed that the Current Home fails to comply with ZR § 23-631(b) in that the roof penetrates the permitted building envelope and additionally that the side dormers are not permitted obstructions as per ZR § 23-621; and

WHEREAS, at the Board's direction, the applicant modified the proposal to legalize the elements of the Current Home, which are within the parameters of the special permit and to comply with zoning district regulations for all others; and

WHEREAS, specifically, the Board directed the applicant to modify the plans to comply with all relevant zoning district regulations not requested to be waived and to re-design the roof/attic level to be more compatible with neighborhood character; and

WHEREAS, in response, the applicant (1) re-designed the pitch of the roof so as to provide a complying perimeter wall with a height of 21'-0" and to not penetrate the sky exposure plane, (2) re-designed the entire attic plan, and (3) reduced the dormers so as to not penetrate the sky exposure plane; and

WHEREAS, at hearing, the also Board raised concerns about whether the construction could be documented as an enlargement or whether it was truly new construction; and

WHEREAS, the Board asked the applicant to provide the following in support of the assertion that the construction constitutes an enlargement: (1) a building survey pre-dating the construction of the Current Home and (2) the original plans for the Current Home, reflecting the portions of the foundation and first floor walls that were to be retained; and

WHEREAS, in response, the applicant provided a survey from 2003, that showed the location of the side walls of the Original Home; and

WHEREAS, specifically, the existing side walls match the location of the walls of the Original Home in 2003; and

WHEREAS, secondly, the applicant provided the original drawings approved at DOB on March 29, 2005, through the professional certification process, that reflect an

enlargement with the retention of portions of the foundation and the first floor walls; and

WHEREAS, the Board notes that the drawings initially submitted with the current proposal are the same as the previous drawings approved at DOB and there are not any inconsistencies; and

WHEREAS, further, the Board notes that there were no stop work orders issued that related to the demolition of existing walls or any non-adherence to demolition plans; and

WHEREAS, the Board notes that the Manhattan Beach Community Group contends that the current building is the result of either a tear down and new construction or a new building being built around the Original Home; and

WHEREAS, the Board notes that no evidence has been submitted into the record to substantiate these claims; and

WHEREAS, accordingly, because the applicant provided the following evidence: (1) a survey establishing that the location of the original walls and the current walls is the same, (2) original and proposed building plans which are consistent with each other, and (3) no record of stop work orders related to demolition or not building according to approved plans, the Board is satisfied that the proposed (and existing) construction reflects an enlargement; and

WHEREAS, the Board notes that it may only legalize portions of the construction which either comply with zoning district regulations or are within the parameters of the waivers permitted under the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the enlargement, with the proposed modifications will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, 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 R3-1 zoning district, the partial legalization and modification of an enlargement to a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September

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7, 2007”-(1) sheet and “October 3, 2007”-(6) sheets; and *on further condition:*

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 950.11 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,351.02 sq. ft. (0.99 FAR), a perimeter wall height of 21’-0”, a total height of 35’-0”, a front yard of 24’-0”, side yards of 4’-7 ½” and 0’-11”, and a rear yard of 40.33 feet, as illustrated on the BSA-approved plans;

THAT construction shall be completed by July 16, 2008;

THAT a certificate of occupancy be obtained by October 16, 2008;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT DOB shall review and approve the plans, for compliance with all Building Code and ZR provisions, prior to the issuance of any building permit;

THAT DOB shall review the plans, and the building completed pursuant to these plans, for compliance with total height, perimeter wall height, sky exposure plane, and setback regulations, as per the BSA-approved plan sheet marked “Received September 7, 2007”- Drawing A-15-(1) sheet;

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; 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, October 16, 2007.

297-06-BZ & 298-06-A

APPLICANT – Glen V. Cutrona, AIA, for John Massamillo, owner.

SUBJECT – Application November 13, 2006 – Variance under (§72-21) to allow a proposed four (4) story residential building with ground and cellar level retail use to violate applicable lot coverage (§23-145) and rear yard requirements (§23-47). C4-2 district (Special Hillside Preservation District); building is located within the bed of a mapped street, contrary to GCL § 35.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated November 6, 2006, acting on Department of Buildings Application No. 500855452, reads, in pertinent part:

“Construction is proposed in the bed of a final mapped street contrary to Article III Section 35 of the General City Law. In addition, variance has been sought from Zoning Resolution Section 23-47 (minimum required rear yards) and 23-145 (for residential buildings developed or enlarged pursuant to the quality housing program;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within a C4-2 (R6 equivalent) Zoning District and partially within an R5 Zoning District within the Special Hillside Preservation District, a mixed-use four-story commercial and residential building with four dwelling units and a full cellar which does not comply with the requirements concerning minimum rear yard and lot coverage, contrary to ZR §§ 23-47 and 23-145, and

WHEREAS, a separate application was filed under BSA Cal. No. 298-06-A to permit construction within the bed of a mapped street and the issue is addressed within a separate resolution; and

WHEREAS, the split lot provision of ZR § 77-11 allows for C4-2 development or an R6 residential equivalent to apply to the entire site; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in the *City Record*, and then to decision on October 16, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-

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Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of the application, conditioned on LEED certification and a limitation of rear yard access to tenants; and

WHEREAS, the subject premises is located on the west side of Montgomery Avenue, between Fort Place and Victory Boulevard; and

WHEREAS, the lot is an irregular F-shaped site, with 22'-6" of frontage on Montgomery Avenue, a width ranging from between 23'-0" and 40'-0" and a depth of approximately 77'-0"; and a total lot area of 2,386 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, because of the size of the block and the fact that more than 50 percent of the zoning lots therein are developed with buildings, the site is within an area which can be defined as predominantly built-up, per ZR § 12-10 ("Predominantly built-up area"); and

WHEREAS, the applicant proposes to construct a mixed use four-story building with full cellar with a total floor area of approximately 6,838 sq. ft. (8,051 sq. ft. is the maximum permitted) comprised of approximately 5,137 sq. ft. of residential space and 1,701 sq. ft. of commercial space, a total FAR of 2.82 (an FAR of 3.4 is permitted), a lot coverage of 69 percent (60 percent is the maximum permitted), and an open space ratio of 31 percent (40 percent is the minimum required), and without the required rear yard for the residential units along the entire rear lot line; and

WHEREAS, the applicant notes that the following are unique physical conditions, which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the irregular shape of the lot; (2) fragmentation of the rear lot line; and (3) the uneven, shallow depth of the lot; and

WHEREAS, as to the irregular shape, the applicant states that the lot has a sawtooth shape with many angles; and

WHEREAS, as to the uniqueness of the shape of the lot, the applicant submitted a 400-ft. radius diagram, which reflects that there are is no other lot in the area with as many lot lines; and

WHEREAS, the Board reviewed the submitted diagram and agrees that the subject lot is the only one within the radius with such an irregular shape; and

WHEREAS, the applicant asserts that the lot shape results in inefficient floor plates for residential use, and a corresponding decrease in the value of the units; and

WHEREAS, as to the fragmentation of the rear lot line, the lot line is divided into segments of 23'-0", 5'-8", and 11'-4" in length, with consequently varying depths to the property; and

WHEREAS, the 23'-0" rear lot line is approximately 77'-2' deep, while the 5'-8", and 11'-4" lines are approximately 52'-11" and 43'-0" deep, respectively; and

WHEREAS, the applicant asserts that the combination of the fragmented rear yard and its uneven, shallow depth create a hardship in complying with rear yard requirements of 30 feet for residential units; and

WHEREAS, the applicant also represents that the fragmented rear yard and its uneven, shallow depth result in inefficient floor and restricts the usage of allowable floor area in an efficient manner on the site, thereby creating less marketable units; and

WHEREAS, the applicant represents that the rear yard waiver along the 5'-8" and 47'-2" length rear lot lines would allow the property to utilize its as of right floor area and provide a more efficient floor plate thereby creating units that are marketable given the constraints of the site; and

WHEREAS, such a waiver would result in higher lot coverage; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) two as of right four-story mixed-use buildings with total gross living area of 5,463 sq. ft., (2) an alternate four-story mixed use building with gross living area of 5,463 sq. ft. and (3) the proposed four story mixed use building with approximately 5,137 sq. ft. of residential space and 1,701 sq. ft. of commercial space, for a total of 6,398 sq. ft. of total floor area; and

WHEREAS, the applicant asserts that the two as of right scenarios would not provide a sufficient rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is comprised primarily of mixed use commercial/residential and residential buildings; and

WHEREAS, the applicant notes that the lot coverage of the residential portion of the building will be increased by only 9 percent over the 60 percent requirement; and

WHEREAS, additionally, the Board notes that Lots 118 and 112 abutting the north and south of the subject site are vacant and that Lot 126 to the south and Lots 3 and 4 to the west have full rear yards and would not be affected by the proposed development and the rear yard waivers requested along such lot lines; and

WHEREAS, the Board notes that a 30 foot rear yard is provided over a sufficient portion of the lot to provide light and air to the proposed residential units; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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WHEREAS, the applicant represents that the hardship was not created by the owner, but that the irregular shape of the lot is the result of the City's street design; and

WHEREAS, specifically, Victory Boulevard intersects Montgomery Avenue at an angle, which has resulted in the irregularly-shaped subject lot; and

WHEREAS, further, the applicant represents that a certification obtained from the Staten Island Borough Surveyor indicated that the subject lot has existed in its present configuration since on or before 1917; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the proposal is the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 08BSA004R dated September 17, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit, on a site located partially within a C4 Zoning District and partially within an R5 Zoning District within the Special Hillside Preservation District, a mixed-use four-story commercial and residential building with full cellar which does not comply with the requirements concerning minimum rear yard setback and lot

coverage, and is contrary to ZR §§ 23-47 and 23-145, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 13, 2006" – eleven (11) sheets and "Received August 8, 2007" – one (1) sheet; and *on further condition*:

THAT the parameters of the development shall be: a total floor area of 6,838 sq. ft., a lot coverage of 69 percent and an open space ratio of 31 percent in conformance with the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, October 16, 2007.

**329-06-BZ
CEQR #07-BSA-050Q**

APPLICANT – Wholistic Healthworks, Inc., for Albino J. Testani, owner.

SUBJECT – Application December 21, 2006 – Special Permit (§73-36) to legalize a PCE in C2-2/R2A/R4 zoning districts. The proposal is contrary to Section 32-00.

PREMISES AFFECTED – 34-34 Bell Boulevard, west of Bell Boulevard, 184.07' from 35th Avenue, Block 6112, Lot 39, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 15, 2007, acting on Department of Buildings Application No. 402229487, reads in pertinent part:

“Proposed physical culture establishment on first floor (message therapy) is not permitted as of right in a C2-2/R4/R2-A district. This is contrary to section 32-10 and must be referred to the BSA for approval”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within an C2-2 (R4)

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zoning district and partially within an R2A zoning district, the legalization of a physical culture establishment (PCE) on the first floor of a three-story mixed-use building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with a continued hearing on September 16, 2007, and then to decision on October 16, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, Council Member Tony Avella recommends that the term be limited to two years since this is a legalization of an existing business; and

WHEREAS, the subject site is located on the west side of Bell Boulevard, between 34th Road and 35th Avenue; and

WHEREAS, the PCE occupies the ground floor of a three-story mixed use building with residential use on the second and third floors; the PCE has a floor area of 1,920 sq. ft. and is located entirely within the portion of the site in the C2-2 (R4) zoning district; and

WHEREAS, the PCE is operated as Three Elements Healing Arts Center; and

WHEREAS, the Board notes that the site has been in operation since September 1, 2004; and

WHEREAS, the applicant represents that the services at the PCE include massage treatments and acupuncture; and

WHEREAS, the hours of operation are: Tuesday through Friday, 10:00 a.m. to 8:00 p.m.; Saturday, 11:00 a.m. to 7:00 p.m.; and Sunday and Monday, by appointment; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement, CEQR No. 06BSA050Q, dated May 15, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within an C2-2 (R4) zoning district and partially within an R2A zoning district, the legalization of a physical culture establishment on the first floor of a three-story mixed-use building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 12, 2007"- two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 1, 2014;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the hours of operation shall be limited to: Tuesday through Friday, 10:00 a.m. to 8:00 p.m.; Saturday, 11:00 a.m. to 7:00 p.m.; and Sunday and Monday, by appointment;

THAT all signage associated with the PCE shall comply with underlying zoning district regulations and must be properly permitted by DOB;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2007.

128-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sharon Perlstein and Sheldon Perlstein, owners.

SUBJECT – Application May 18, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); less than the minimum side yards (§23-461 and §23-48) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1382 East 26th Street, west side of East 26th Street, between Avenue M and Avenue N, Block 7661, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 1, 2007, acting on Department of Buildings Application No. 302345497, reads in pertinent part:

“The proposed enlargement of the existing two family residence in an R2 zoning district:

1. Creates non-compliance with respect to the floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to open space ratio and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 and 23-48 of the Zoning Resolution.
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does

not comply with the zoning requirements for floor area, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in *The City Record*, with continued hearings on August 7, 2007 and September 11, 2007, and then to decision on October 16, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue M and Avenue N; and

WHEREAS, the subject site has a total lot area of 3,600 sq. ft., and is occupied by a single-family home with a floor area of 2,187 sq. ft. (0.61 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,187 sq. ft. (0.61 FAR) to 3,943 sq. ft. (1.10 FAR); the maximum floor area permitted is 1,800 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will maintain the existing non-complying front yard of 14'-9" (a front yard with a minimum depth of 15'-0" is required), and one existing non-complying side yard of 4'-0" and one complying side yard of 7'-11" (side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to provide information in support of the assertion that the proposed FAR is compatible with neighborhood character; and

WHEREAS, in response the applicant provided an analysis which reflects that 11 percent of homes within a 200-ft. radius of the site have an FAR of 1.10 or greater; and

WHEREAS, further, the applicant notes that within a 200-ft. radius on East 26th Street, the percentage of homes with such an FAR is the same; and

WHEREAS, the Board notes that the homes with FAR of 1.10 or greater are clustered nearby and include one home two lots away; 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, Board finds that the proposed project will not interfere with any pending public improvement project; and

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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 R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 2, 2007"-(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 833 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,943 sq. ft. (1.10 FAR), a perimeter wall height of 21'-0", total height of 35'-0", a front yard of 14'-9", side yards of 4'-0" and 7'-11", and a rear yard of 20'-0", as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, October 16, 2007.

31-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive

collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00. PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

311-06-BZ thru 313-06-BZ

APPLICANT – Rothkrug, Rothkrug, & Spector, LLP, for White Star Lines LLC.

SUBJECT – Application December 4, 2006 – Zoning variance under §72-21 to allow three, four (4) story residential buildings containing a total of six (6) dwelling units, contrary to use regulations (§42-10); M1-1 district. PREMISES AFFECTED – 300/302/304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lots 38, 39, 40. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for deferred decision.

331-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Putnam Holding Corp., owner.

SUBJECT – Application December 27, 2006 – Variance under § 72-21 to allow a three-family dwelling to violate front yard (§23-45) and side yard (§23-462(a)) requirements. R4 district.

PREMISES AFFECTED – 3647 Palmer Avenue, south side of Palmer Avenue, between Needham Avenue and Crawford Avenue, Block 4917, Lot 17, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

53-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19th Street, Block 888, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

MINUTES

For Applicant: Paul Padlik.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for deferred decision.

58-07-BZ

APPLICANT – Rex Carner c/o Carner Associates, for Mr. Vito Savino, owner.

SUBJECT – Application March 5, 2007 – Variance (§72-21) to permit a new two-family dwelling on a vacant lot. The Premises is located in an R3A zoning district. The proposal is contrary to lot area (§23-32), residential FAR (§23-141), and parking (§25-21).

PREMISES AFFECTED – 18-02 Clintonville Street, North west corner of 18 Avenue and Clintonville Street. Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Rex Carner.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

88-07-BZ

APPLICANT – Eric Palatnik, P.C., for Lisa Roz and Ronnie Roz, owners.

SUBJECT – Application April 19, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (§23-141(b)); side yard (§23-461(a)) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1633 East 29th Street, eastern border of 29th Street, south of Avenue P and North of Quentin Road, Block 6792, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

121-07-BZ

APPLICANT – Juan D. Reyes, III, for 400 Victory Boulevard Trust, owner.

SUBJECT – Application May 11, 2007 – Variance (§72-21) to permit the legalization of a Physical Culture Establishment on the first and second floors of an existing nonconforming warehouse building. The proposal is contrary to section 22-00. The Premises is located in an R3-2 zoning district within the Special Hillside Preservation District.

PREMISES AFFECTED – 400 Victory Boulevard, between Austin Place and Cobra Avenue, Block 579, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Juan D. Reyes, III, Robert Pauls, John Strauss and Jack Kruger.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

135-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Ester Loewy, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141(a)); less than the required side yards (23-461) and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 920 East 24th Street. West side of East 24th Street, 140' north of Avenue L, Block 7587, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

136-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Leora Fenster, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1275 East 23rd Street, East side of East 23rd Street, 160' north of Avenue M, Block 7641, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for continued hearing.

146-07-BZ

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77th Street, North side of East 77th Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stuart Beckerman.

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 20, 2007, at 1:30 P.M., for decision, hearing
closed.

151-07-BZ

APPLICANT – Harold Weinberg, P.E., for John Perrone,
owner.

SUBJECT – Application June 8, 2007– Special Permit (§73-
622) for the enlargement of an existing single family
residence. This application seeks to vary floor area, lot
coverage, open space (23-141) and rear yard (23-47) in an
R3-1 zoning district.

PREMISES AFFECTED – 1133 83rd Street, north side,
256' east of 11th Avenue between 11th Avenue and 12th
Avenue, Block 6301, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, III and Jose
Genao.

For Opposition: Francesco Mancini, Vito Mancini and
Theodore D' Alessandro.

ACTION OF THE BOARD – Laid over to
November 20, 2007, at 1:30 P.M., for continued hearing.

175-07-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Kingsbridge
Associates LLC, owner; Planet Fitness, lessee.

SUBJECT – Application June 28, 2007 – Special Permit
(§73-36) to allow a Physical Culture Establishment in a two-
story and cellar retail building in a strip mall. The proposal
is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 90 West 225th Street, south side
of 225th Street between Exterior Street and Broadway, block
2215, Lot 665, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 20, 2007, at 1:30 P.M., for decision, hearing
closed.

180-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 47 Development
LLC, owner; Rituals Spa LLC d/b/a Silk Day Spa, lessee.

SUBJECT – Application July 17, 2007 – Special Permit
(§73-36) to allow the legalization of a Physical Culture

Establishment on a portion of the first floor and cellar of a
nine-story mixed-use building. The proposal is contrary to
section 32-10. C6-2/C6-2M districts.

PREMISES AFFECTED – 47 West 13th Street, a/k/a 48
West 14th Street, north side of West 13th Street between Fifth
and Sixth Avenues, Block 577, Lot 15, Borough of
Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 20, 2007, at 1:30 P.M., for decision, hearing
closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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November 1, 2007

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Tuesday, October 23, 2007**

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DOCKETS

New Case Filed Up to October 23, 2007

235-07-BZ

1148 East 27th Street, East 27th Street between Avenue K and Avenue L., Block 7626, Lot(s) 65, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) to allow the enlargement of an existing single family residence.

236-07-BZ

53-65 Hope Street, North side of Hope Street between Havemeyer Street and Marcy Avenue., Block 2369, Lot(s) 38,40, Borough of **Brooklyn, Community Board: 1**. Special Permit (73-46) to permit a partial waiver of the accessory off-street parking requirements of ZR 25-23 in order to reduce the number of required parking spaces provided from 46 to 11.

237-07-BZ

718 Avenue S, Located on the south side of Avenue S, midblock between East 7th Street and East 8th Street., Block 7089, Lot(s) 7, Borough of **Brooklyn, Community Board: 15**. Variance to allow the construction of a community facility building.

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

NOVEMBER 27, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 27, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

742-70-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 830 Bay Street LLC, owner.

SUBJECT – Application July 13, 2007 – Application filed pursuant to §§72-01 and 72-22 for an Extension of Term/Amendment/Waiver for a previously approved variance which allowed in a C1-1(R3-2) zoning district the erection and maintenance of an automotive service station with accessory uses. The application seeks to legalize the installation of two storage containers contrary to the previously approved grant. The current term of the variance expired on May 18, 2001.

PREMISES AFFECTED – 830 Bay Street, Southwest corner of the intersection of Bay Street and Vanderbilt Avenue, Block 2836, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #1SI

297-99-BZII

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Co., LLC, owner; Exxon Mobil Corp., lessee.

SUBJECT – Application May 29, 2007 – Extension of Time to obtain a Certificate of Occupancy/Waiver of the rules for an existing gasoline service station (Mobil Station) which expired on September 19, 2004 in a C2-2/R6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

123-07-A

APPLICANT – Eric Palatnik, P.C., for James Colarusso, owner.

SUBJECT – Application May 15, 2007 – Proposed construction of a single family home not fronting on a legally mapped street contrary to General City Law Section 36 . R6 Zoning District.

PREMISES AFFECTED – 723R Driggs Avenue, south corner of Driggs Avenue and South First Street, Block 2407, Lot 141, Borough of Brooklyn.

COMMUNITY BOARD #1BK

NOVEMBER 27, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 27, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

74-07-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for Congregation Shearith Israel a/k/a Trustees of the Congregation Shearith Israel in the City of N.Y. a/k/a the Spanish and Portuguese Synagogue.

SUBJECT – Application April 2, 2007 – Variance (§ 72-21) to allow a nine (9) story residential/community facility building; the proposal is contrary to regulations for lot coverage (§ 24-11), rear yard (§ 24-36), base height, building height and setback (§ 23-633) and rear setback (§ 23-663). R8B and R10A districts.

PREMISES AFFECTED – 6-10 West 70th Street, south side of West 70th Street, west of the corner formed by the intersection of Central Park West and West 70th Street, Block 1122, Lots 36 & 37, Borough of Manhattan.

COMMUNITY BOARD #7M

Jeff Mulligan, Executive Director

CALENDAR

DECEMBER 4, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 4, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

170-47-BZ

APPLICANT – Kenneth H. Koons, for Royal Automation Supplies Corporation, owner.

SUBJECT – Application October 9, 2007 – Extension of Term of a (UG 16) storage warehouse in the cellar, used in conjunction with a (UG 17) factory on the first floor, in an R7-1 zoning district which expired on November 25, 2007. PREMISES AFFECTED – 1982 Crotona Parkway, east side of Crotona Parkway, south of East 178th Street, Block 3121, Lot 11, Borough of Bronx.

COMMUNITY BOARD #6BX

651-60-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Briar Hill Realty LLC c/o Glennwood Management Corporation, owner.

SUBJECT – Application September 14, 2007 – Extension of Term of a variance allowing the conversion of cellar space in an existing multiple dwelling to a valet service, office/stationary store and packaged goods store and to waive the Board's Rules of Procedure to allow the application to be filed more than thirty days after the expiration of the variance. The subject site is located in an R4 zoning district,

PREMISES AFFECTED – 600 West 246th Street, Located on an irregularly shaped lot bounded by the south side of West 246th Street, the east side of Independence Avenue and the north side of Blackstone Avenue, Block 5909, Lot 825, Borough of Bronx.

COMMUNITY BOARD #8BX

83-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Gary S. Chubak and Lillian R. Chubak, owners.

SUBJECT – Application October 3, 2007 – Amendment -To remove the terms set forth in the prior resolution. The proposed amendment would authorize the control operation of the health care facility (UG4) at the premises located in an R1-2 zoning district with out a term.

PREMISES AFFECTED – 214-18 24th Street, south side of 24th Avenue, approximately 142 feet east of the corner formed by the intersection of Bell Boulevard and 24th Avenue, Block 6001, Lot 47, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

196-07-A thru 199-07-A

APPLICANT – Willy C. Yuin, R.A., for Carmine Lacertosa, owner.

SUBJECT – Application August 9, 2007 – Proposed construction of one & two family homes not fronting on a legally mapped street contrary to Article 3 Section 36 of the General City Law. R-5 Zoning district.

PREMISES AFFECTED – 9 Federal Place, west of Federal Place 195.91' south of the corner of Richmond Terrace and Federal Place, Block 1272, Lot 72, 76, 77, 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

DECEMBER 4, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 4, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

160-07-BZ thru 152-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Cannon Tower, LLC, owner.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to allow a three (3), three-story attached residential buildings; contrary to regulations for use (§ 22-12), side yards (§ 23-461(a)), maximum number of dwelling units (§ 23-22), perimeter wall height (§ 23-631), and FAR (§ 23-141). R4A district.

PREMISES AFFECTED – 3880, 3882, 3884 Cannon Place (formerly known at 3918 Orloff Avenue) south side of Cannon Place at the intersection of Cannon Place and Orloff Avenue, Block 3263, Lots 357, 358, 258, Borough of the Bronx.

COMMUNITY BOARD # 8BX

193-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Gonter and Mark Gonter, owners.

SUBJECT – Application August 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3591 Bedford Avenue, eastern side of Bedford Avenue between Avenue N and O, Block 7679, Lot 17, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #14BK

201-07-BZ

APPLICANT – Cozen O’Connor Attorneys, for Kapsin & Dallis Realty, Corp., owner.

SUBJECT – Application August 14, 2007 – Variance (§72-21) to permit a new one-story bank. The proposal is contrary to section 22-00. R3-2 district.

PREMISES AFFECTED – 2317 Ralph Avenue, southwest corner of Ralph Avenue and Avenue M, Block 8364, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD # 18BK

216-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Casa 74th Street, LLC, owner.

SUBJECT – Application September 20, 2007 – Special Permit (§73-36) to allow a physical culture establishment on all five levels of a mixed-use building under construction. The proposal is contrary to section 32-10. C1-9 district.

PREMISES AFFECTED – 255 East 74th Street, aka 1429 Second Avenue, corner of East 74th Street and Second Avenue, Block 1429, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

223-07-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Trigon 57 LLC, owner; Blissworld LLC, lessee.

SUBJECT – Application September 28, 2007 – Special Permit (73-36) to legalize a physical culture establishment on the third floor in an existing commercial building. The proposal is contrary to section 32-10. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57th Street, a/k/a 10-14 W. 57th Street, south side of West 57th Street, between Fifth and Sixth Avenues, Block 1272, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 23, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

844-86-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Fred Lynn Associates, owner; Pyramida Billiards, lessee.

SUBJECT – Application February 12, 2007 – Extension of Term of a previously granted Special Permit (§73-50) for the enlargement of a one (1) story building, in a C8-2 zoning district, that encroaches into the open area required along a district boundary which expired on April 28, 1997; an Amendment to legalize the change in use from an auto repair shop (UG16) and custom clothing manufacturer (UG11) to a billiard parlor (UG12) and eating and drinking establishment (UG6) and to permit the addition of a 979. sq. ft. mezzanine in the UG6 portion of the building; an Extension of Time to obtain a Certificate of Occupancy which expired on May 4, 1999 and a Waiver of Rules of Practice & Procedure.

PREMISES AFFECTED – 1828/1836 McDonald Avenue, west side of McDonald Avenue, between Avenue P and Quentin Road, Block 6632, Lots 17 & 20, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure; a reopening; amendments: (1) to legalize the change in use of a portion of the site from an auto repair shop (UG 16) and custom clothing manufacturer (UG 11) to a billiard parlor (UG 12), (2) to permit the change in use of a portion of the site to an eating and drinking establishment (UG 6), (3) to add mezzanine space, and (4) to change the hours of operation; an extension of time to obtain a certificate of occupancy; and an elimination of the term for a previously granted special permit, pursuant to ZR § 73-50, which expired on April 28, 1997; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with continued hearings on August 21, 2007 and September 25, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of McDonald Avenue, between Avenue P and Quentin Road; and

WHEREAS, the site has a lot area of approximately 9,134 sq. ft., is occupied by a one-story and mezzanine building, and is located within a C8-2 zoning district; and

WHEREAS, the building is occupied by a billiard parlor and eating and drinking establishment; and

WHEREAS, on April 28, 1987, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-50, to permit the construction of a rear enlargement for an auto repair shop into the required buffer zone between the subject C8-2 zoning district and the R6 zoning district adjacent to the rear of the site; and

WHEREAS, the special permit was limited to a term of ten years; and

WHEREAS, on May 4, 1993, under the subject calendar number, the Board modified the grant to permit a change in use of a portion of the site to custom clothing manufacturing; and

WHEREAS, in 2002, the use of a portion of the site was changed to a billiard parlor; and

WHEREAS, the instant application seeks a legalization of the change in use to a billiard parlor and a proposed use of an eating and drinking establishment on the remainder of the site; and

WHEREAS, the Board notes that the billiard parlor and eating and drinking establishment uses are permitted within the C8-2 zoning district; and

WHEREAS, the applicant also seeks to add a mezzanine with a floor area of approximately 979 sq. ft. to the portion of the building used for the eating and drinking establishment; and

WHEREAS, the Board notes that no changes are proposed to the building envelope and that the addition of the floor area associated with the mezzanine does not create any non-compliance as to floor area; and

WHEREAS, at hearing, the Board asked the applicant what use would occupy the new mezzanine since it is located at the rear of the site, within the required buffer zone; and

WHEREAS, the applicant responded that the proposed mezzanine would be used for office space accessory to the restaurant and the kitchen would occupy the area at the rear of the building so that the general restaurant use is confined to the area from away the buffer zone; and

WHEREAS, additionally, the applicant represents that an acoustic wall will also be installed to help eliminate any potential sound emanation; and

WHEREAS, the Board directed the applicant to ensure that all of the rooftop mechanicals were compliant with the Noise Code and positioned so as to minimize the potential of sound reaching nearby properties; and

WHEREAS, in response, the applicant provided (1) a

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roof plan, reflecting the position of the existing and proposed mechanicals, (2) photographs of the roof, and (3) a statement from the project architect describing the compliance with the Noise Code; and

WHEREAS, the Board notes that the rooftop mechanicals will be situated to be between ten and 20 feet from the parapet at the rear of the building; and

WHEREAS, finally, the applicant proposes to extend the hours of operation until 2:00 a.m.; and

WHEREAS, at hearing, the Board directed the applicant to notify the property owners on Dahill Road (at the rear of the site) to determine whether there was any objection to the operation of the site or the extended hours of operation; and

WHEREAS, in response, the applicant submitted proof that notification had been performed; and

WHEREAS, the Board notes that no letters of objection were received in response to the notice; and

WHEREAS, the applicant also seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, lastly, the applicant requests that the term be eliminated; and

WHEREAS, based upon its review of the record, the Board finds that the requested change in hours of operation, change in use, extension of time to obtain a certificate of occupancy, and elimination of term are appropriate, with the conditions 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 April 28, 1987, so that as amended this portion of the resolution shall read: “to grant approval of a change in use from an auto repair shop (UG 16) and custom clothing manufacturer (UG 11) to a billiard parlor (UG 12) and eating and drinking establishment (UG 6), a change in the hours of operation, an extension of time to obtain a certificate of occupancy, and an elimination of the term of the special permit; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received February 12, 2007’ – (3) sheets, ‘June 11, 2007’-(3) sheets and ‘August 31, 2007’-(1) sheet; and *on condition*:

THAT there shall be no (1) change in use of the site, (2) modification to the building, or (3) change in hours of operation without prior approval from the Board;

THAT the term of the grant shall be eliminated;

THAT the hours of operation of the billiard parlor shall be limited to 2:00 p.m. to 2:00 a.m., daily;

THAT the hours of operation of the eating and drinking establishment shall be limited to 6:00 p.m. to 2:00 a.m., daily;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained within one year of the date of this grant, October 23, 2008;

THAT all rooftop mechanicals shall comply with Noise Code requirements;

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. 302172477)

Adopted by the Board of Standards and Appeals, October 23, 2007.

214-96-BZ

APPLICANT – Rampulla Associates Architects, for Colonial Funeral Home, owner.

SUBJECT – Application July 2, 2007 – Extension of Term of a previously granted Variance (§72-21) which expires on April 7, 2008, to permit in an R3-1 zoning district, a UG7 (Colonial Funeral Home) and the existing accessory parking on the adjacent lot (Lot 30) which houses a conforming UG1 single family home.

PREMISES AFFECTED – 2819 Hylan Boulevard, North side Hylan Boulevard east corner of Hylan Boulevard and Tysens Lane. Block 4256, Lot 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a waiver of the Rules of Practice and Procedure, to eliminate the term for an accessory parking lot to a funeral home, which would expire on April 7, 2008 and to allow its hours of operation to coincide with the hours of operation of the funeral home; and

WHEREAS, a public hearing was held on this application on August 21, 2007 after due notice by publication in the *City Record*, with a continued hearing on October 2, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Hylan Boulevard and Tysens Lane; and

WHEREAS, the site is located within an R3-1 zoning district and is improved upon with a one-story commercial office building with accessory parking for seven vehicles and a

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single-family home; and

WHEREAS, on November 9, 1960, the Board granted an application under BSA Cal. No. 430-60-BZ to permit the construction of a one-story and cellar building for use as a funeral establishment with use of the unbuilt portion of the lot for accessory parking for a term of 20 years to expire November 9, 1980, subject to certain conditions; and

WHEREAS, the grant was subsequently amended to extend its term and permit certain site modifications; and

WHEREAS, on April 7, 1992, under BSA Cal. No. 128-90-BZ, the Board granted under ZR §§ 11-411 and 11-412 an extension of the term of ten years to April 7, 2002 and legalized an extension of the funeral home use into an existing off-street loading garage; and

WHEREAS, on September 20, 1994, under Cal. No. 99-93-BZ, the Board granted an enlargement of the cellar and first story, subject to certain conditions and extended the term to September 20, 2004; and

WHEREAS, on October 10, 1995, the Board denied a request for the expansion of the commercial use of the present lot (Lot 28) onto the adjoining lot (Lot 30) which would have required the demolition of the structure at 2809 Hylan Boulevard and converting the entire lot into accessory off-street parking, and

WHEREAS, on April 7, 1998, under the subject calendar, the Board granted a variance to permit the legalization of the funeral home's chapel in the cellar area, a smoker's lounge, and ancillary office and storage area on the mezzanine level and the enlargement of the existing accessory parking lot by incorporating an adjacent parking lot (block 4256, Lot 34) which houses a conforming single-family home, and to extend the term to April 7, 2008 subject to conditions which included a limitation that access to the rear parking lot by customers of the funeral establishment be limited to the hours between 5:00 p.m. and 9:30 p.m.; and

WHEREAS, on February 8, 2007, the Board approved by letter an enlargement to the second floor of the existing one family home located at 2809 Hylan Boulevard which did not create any new non-compliance; and

WHEREAS, the applicant represents that there have not been any changes since the prior approval; and

WHEREAS, the applicant has operated as a funeral establishment for more than 46 years and any change to the size or bulk of the funeral home would require approval of this Board; and

WHEREAS, the applicant has sought and received multiple extensions to its term; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested amendment to the prior resolution with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated April 7, 1998, so that the resolution shall no longer contain a term associated with the grant and the access to the rear parking lot by customers of the funeral establishment shall no longer be limited to the hours between 5:00 p.m. and 9:30 p.m.; on

condition that the use and operation of the site shall conform to the previously approved drawings; and on further condition:

THAT there shall be no change in the use or in the building's bulk without prior approval of the Board;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

(DOB Application No. 510006468)

Adopted by the Board of Standards and Appeals, October 23, 2007.

197-05-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: B & E 813 Broadway, LLC and Broadway Realty Associates, LLC.

SUBJECT – Application August 17, 2006 – To consider dismissal for lack of prosecution – Proposed 11-story residential building with ground floor retail to violate regulations for FAR (§ 23-145), height and setback (§ 35-24), and maximum number of dwelling units (§ 23-22). C6-1 district.

PREMISES AFFECTED – 813-815 Broadway, East 12th Street and East 11th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD # 2M

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Application withdrawn from Dismissal Calendar.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

Adopted by the Board of Standards and Appeals, October 23, 2007.

347-05-A

APPLICANT – NYC Board of Standards and Appeals

OWNER: Douglaston Realty Associates, owners.

SUBJECT –To consider dismissal for lack of prosecution.

PREMISES AFFECTED – Vacant Lot, 242-22 61st Avenue, south side of 61st Avenue, Block 8266, Lot 186, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

Adopted by the Board of Standards and Appeals,
October 23, 2007.

109-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Vincent Mazzone

SUBJECT – Application June 2, 2006 – To consider dismissal for lack of prosecution – Proposed three-story enlargement to an existing one-story building; contrary to bulk regulations. R5 district.

PREMISES AFFECTED – 1201 Avenue Z, north east corner of East 12th Street, Block 7433, Lot 148, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 26, 2006, acting on Department of Buildings Application No. 302036160, reads in pertinent part:

“The proposed three and one-half story building does not comply with:

Floor area (23-141b), FAR (23-141b ZR), Open Space (23-141b ZR), Lot Coverage (23-141b ZR), Yards (23-462 & 23-541), Setback (23-661 ZR); Wall Height (23-631 ZR), Building Height (23-631 ZR), Sky Exposure Plane (23-631d ZR) and parking (25-23 ZR) requirements and is therefore referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, a three-story vertical enlargement to an existing one-story building, contrary to regulations for floor area, FAR, open space, lot coverage, rear and side yards, setback, wall height, building height, sky exposure plane, and parking under ZR §§ 23-141, 23-462 & 23-541, 23-661, 23-631, and 25-23; and

WHEREAS, the applicant sought to construct residential uses above an existing one-story non-conforming commercial building occupied by a UG 6 restaurant on the first floor and UG 17 manufacturing on the cellar floor, with accessory parking for residents of the premises; and

WHEREAS, the variance application was filed on June 2, 2006; and

WHEREAS, on September 6, 2006, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, the Notice of Objections requested that the applicant submit the following: (1) a revised objection from

DOB stating that the proposed development was contrary to ZR § 23-45, and eliminating an objection under ZR § 23-541; (2) revisions to the affidavit of ownership concerning the owner of record; (3) evidence of the legal non-conforming status of the existing business on the subject property; (4) a revised Statement of Facts and Findings; (5) a revised BSA zoning analysis; (6) a revised proposed plot plan and floor plan for fourth floor; and (7) requisite color photographs; and

WHEREAS, on November 2, 2006, the applicant requested an additional 60 days to reply to the Notice of Objections; an extension of time to respond was granted; and

WHEREAS, the Board received no subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and.

WHEREAS, on September 26, 2007, the Board sent the applicant a notice stating that the case had been put on the October 23, 2007 dismissal calendar; and

WHEREAS, the applicant did not respond to the notice and did not appear at the hearing on October 23, 2007; and

WHEREAS, accordingly, because of the applicant’s lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 109-06-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals,
October 23, 2007.

304-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Khan Shahnawaz.

SUBJECT – Application November 21, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the construction of a detached single family home on a vacant corner lot which does not provide the required front yard (23-45(a)) located in an R3-2 zoning district.

PREMISES AFFECTED – 106-02 Astoria Boulevard, southeast corner of Astoria Boulevard and 106th Street, Block 1639, Lot 1, Borough of Queens.

COMMUNITY BOARD # 3Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

Adopted by the Board of Standards and Appeals,
October 23, 2007.

324-06-A

APPLICANT – NYC Board of Standards and Appeals

OWNER: Al Muhammad & Deborah Muhammad, owners.

SUBJECT – To consider dismissal for lack of prosecution.

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PREMISES AFFECTED – 1449 Rosedale Avenue, a/k/a 1447 Cross Bronx and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to an Order of Closure from the Commissioner of DOB, dated January 16, 2004; and

WHEREAS, the Order of Closure states that the existence of a gift store at the subject premises was determined to be an illegal commercial use (Use Group 6) in a residential zoning district (R6); and

WHEREAS, the appeal is brought by the tenants of the premises, (the “Appellants”); and

WHEREAS, the Appellants were the proprietors of a gift store at the site which was padlocked by DOB pursuant to the Order of Closure; and

WHEREAS, the Appellants initially filed a petition in New York State Supreme Court to contest the closure; and

WHEREAS, by decision dated July 20, 2006, the court stated that since the Appellants had not exhausted administrative remedies, specifically an appeal of DOB’s determination at the BSA, the case was not ripe for review; and

WHEREAS, accordingly, the Appellants filed the subject appeal on December 15, 2006, without payment of the appropriate fee; and

WHEREAS, in February 2007, Board staff met with the Appellants and addressed the question of whether they had standing to bring the appeal without authorization from the owner; and

WHEREAS, in April 2007, the Board determined that the Appellants did have standing to proceed with the appeal; and

WHEREAS, in April 2007, Board staff made several attempts to contact the Appellants at the telephone numbers noted in the application; and

WHEREAS, Board staff was unable to reach the Appellants; and

WHEREAS, ultimately, the Appellants contacted Board staff and Board staff informed them that they had legal standing to prosecute the appeal without the owner’s authorization but that they were required to pay the fee; and

WHEREAS, the Appellants contested the requirement to pay the fee; and

WHEREAS, on May 9, 2007, the Board sent a letter to the Appellants, at all known addresses, informing them that, as per the Board’s rules and the Administrative Code, a fee was required in order to proceed with the appeal; and

WHEREAS, the Board did not receive any payment or any other response from the Appellants; and

WHEREAS, the unopened letters regarding the payment

were received back at the Board as returned to sender; and

WHEREAS, on September 5, 2007, Board staff sent a letter to the Appellants at all known addresses stating that a public hearing to consider dismissal of the application would be scheduled for October 23, 2007; and

WHEREAS, the Board did not receive any response; and
WHEREAS, the Appellants did not appear at the October 23, 2007 hearing; and

WHEREAS, accordingly, because of the Appellants’ failure to prosecute this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 324-06-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, October 23, 2007.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application September 7, 2007 – ZR 11-411 for the Extension of Term of a previously granted variance for a UG8 parking garage (Rapid Park Industries) in an R8B zoning district which will expire on March 3, 2008.

PREMISES AFFECTED – 148-150 East 33rd Street, southside of East 33rd Street, east of East 33rd Street and Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

1199-88-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP., for Joseph and Rosemarie Tranchina, owner.

SUBJECT – Application May 11, 2007 – Amendment filed pursuant to §§72-01 & 72-22 of the zoning resolution to permit within a C1-1(R3-1)(SRD) the enlargement of previously approved banquet hall (use group 9) and a change in use from offices (use group 6) to retail stores (use group 6).

PREMISES AFFECTED – 29 Nelson Avenue, east side of Nelson Avenue, northeast corner of Nelson Avenue and Locust Place, Block 5143, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Joseph Tranchina.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

233-06-BZ

APPLICANT – New York City Board of Standards and

MINUTES

Appeals.

OWNER: Syful Islam.

SUBJECT – Application September 11, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the legalization of an enlargement to a single family home, which required front yard 23-47 and less than the required side yard 23-461 in an R-5 zoning district; and also to change the occupancy from a one family to a two family home.

PREMISES AFFECTED – 2342 Haviland Avenue, Haviland Avenue bounded by Zerega Avenue and Havemeyer Avenue, Block 3827, Lot 51, Borough of Bronx.

COMMUNITY BOARD # 9BX

APPEARANCES –

For Applicant: Kathleen Bradshaw.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for continued hearing on the dismissal calendar.

293-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Veronica Nicastro.

SUBJECT – Application November 6, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the enlargement of an existing one-family dwelling which exceeds the permitted floor area and does not provide the required open space (23-141) in an R1-2 zoning district.

PREMISES AFFECTED – 54-07 254th Street, east side of 254th Street, 189' north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam Rothkrug

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing on the dismissal calendar.

299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§ 22-10). R7-1 district.

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100' north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx

COMMUNITY BOARD # 6BX

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing on the dismissal calendar.

APPEALS CALENDAR

326-06-A

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10' west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: David L. Businelli.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Negative:.....0

Abstain: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a one-story with cellar building with medical office use (UG 4) under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in *The City Record*, with continued hearings on August 7, 2007 and September 18, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the Dongan Hills United Civic Association submitted testimony in opposition to the application citing concerns about the long history of development and abandonment at the site and the potential incompatibility of the building with neighborhood character; and

WHEREAS, the site is located on the north side of Richmond Road, between Garretson Avenue and Forest Avenue and has a lot area of 5,353 sq. ft.; and

WHEREAS, the applicant notes that, on September 27, 1995, the Staten Island Borough President's Office changed the address of the site from 1525 Richmond Road to 1523 Richmond Road; and

WHEREAS, the applicant proposes to complete construction and obtain a certificate of occupancy for a one-story with cellar medical office building (the "Building"), with 1,500 sq. ft. of floor area on the first floor and 1,500 sq. ft. of floor space in the cellar; and

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WHEREAS, the site is located within an R1-2 zoning district within the Special Natural Area District 1; and

WHEREAS, the Building complies with the former R1-2 zoning district parameters for UG 4 community facilities, specifically with respect to the proposed medical office use and the amount of floor area dedicated to it; and

WHEREAS, however, on September 9, 2004 (the "Enactment Date"), the City Council voted to adopt the amendments to the Community Facility regulations in the ZR, which included ZR § 22-14 – Use Group 4 provisions; and

WHEREAS, prior to the Enactment Date, medical offices were permitted in the subject zoning district pursuant to ZR § 22-14, but were limited to a maximum of 1,500 sq. ft. of total floor area or cellar space; and

WHEREAS, the text amendments prohibited medical office use regardless of size in the subject zoning district; and

WHEREAS, accordingly, a medical office use of any size is not permitted as of right under the current zoning; and
History of Development at the Site

WHEREAS, the plans for the Building date back to November 25, 1986 when a prior owner filed a new building application at DOB; and

WHEREAS, on November 25, 1987, the Department of City Planning approved an application to construct a one-story community facility building in the Special Natural Area District 1; and

WHEREAS, on July 6, 1990, DOB issued the New Building permit under DOB Application No. 3068/86 (the "1990 Permit"); and

WHEREAS, the applicant represents that the prior owner commenced construction and, in 1991, the building was approximately 85 percent complete; and

WHEREAS, the applicant represents that no work was performed at the site from 1991 until the applicant purchased it in 2005; and

WHEREAS, on March 12, 2006, DOB issued a permit (the "2006 Permit") for the construction of the Building; subsequent to a special audit, the permit was ultimately revoked prior to the completion of all work; and

WHEREAS, the applicant represents that the Building is now nearly complete and seeks to resume construction; and
Validity of the 2006 Permit

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, initially, the applicant sought to vest the right to complete construction under the 2006 Permit (New Building Permit No. 500821596) since work had not been completed within two years of the Enactment Date; and

WHEREAS, thus, DOB and the Board first analyzed whether the 2006 Permit was valid; and

WHEREAS, DOB objected to vesting pursuant to the 2006 Permit because it stated that the 2006 Permit was issued in error; and

WHEREAS, specifically, DOB states that on May 16, 2006, it issued a letter of intent to revoke the permit for failure to demonstrate that the building was lawfully constructed pursuant to a valid permit; and

WHEREAS, on July 16, 2006, after the applicant failed to demonstrate that the building was lawfully constructed pursuant to a valid permit and after the applicant failed to produce a copy of the 1990 Permit, DOB revoked the 2006 Permit; and

WHEREAS, in its objections associated with the revocation, DOB stated its concerns that (1) all construction was not performed pursuant to a valid permit as required by ZR § 11-31; (2) the plans which were filed and approved under the application were contrary to the original approval; and (3) the proposed building exceeded the maximum allowable floor area for a medical office, which includes cellar space, pursuant to ZR § 22-14; and

WHEREAS, specifically, DOB states that its review revealed that the 2006 Permit improperly authorized a medical office building with 1,500 sq. ft. of floor area and an additional 1,500 sq. ft. of accessory space in the cellar, and the Building thereby exceeded the 1,500 sq. ft. total floor area limitation imposed by the pre-Enactment Date text of ZR § 22-14; and

WHEREAS, the Board notes that, prior to the Enactment Date, medical offices were a permitted UG 4 use, but were limited in R1 districts to not more than 1,500 sq. ft. of floor area including cellar space; and

WHEREAS, on August 7, 2006, DOB denied the applicant's request to change the cellar use to a non-profit institution use as a means of reducing the medical office's floor area under the 2006 Permit to meet the 1,500 sq. ft. limitation permitted by the ZR prior to the Enactment Date; and

WHEREAS, DOB asserts that the change in the use of the cellar level could not cure the defect with the 2006 Permit since no medical office use, regardless of its size, was permitted in the zoning district at the time of the 2006 Permit application; and

WHEREAS, on August 14, 2006, after the permit was revoked, DOB issued a new objection citing the failure to comply with ZR § 22-14 at the time of the issuance of the 2006 Permit; and

WHEREAS, DOB states, that after the ZR text was amended to prohibit the medical office use and the permit was revoked, DOB had no authority to reinstate the permit notwithstanding the applicant's efforts to cure the defects; and

WHEREAS, specifically, DOB states that pursuant to Administrative Code § 27-196, a permit may be reinstated only when the work complies with the law in effect at the time of the application for reinstatement; and

WHEREAS, accordingly, since the relevant ZR provisions were amended in September 2004 to prohibit any medical office use, and the permit was revoked in July 2006, the applicant's subsequent attempts to cure the objections were made too late to reinstate the permit; and

WHEREAS, DOB asserts that after the Enactment Date and the permit revocation, the permit for medical office use could not be reinstated and the premises must now comply with the amended law; and
Validity of the 1990 Permit

WHEREAS, however, after the July 2006 revocation of the permit, the applicant provided DOB with information about the 1990 Permit; and

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WHEREAS, as noted, on July 6, 1990, DOB issued the 1990 Permit and the prior owner commenced construction; and

WHEREAS, the 1990 Permit was issued for the construction of a one-story medical office building with 1,500 sq. ft. of floor area for medical office use on the first floor and 1,500 sq. ft. of accessory space in the cellar; and

WHEREAS, as noted, prior to the Enactment Date, the medical office use was permitted, but it was limited to 1,500 sq. ft. including all floor area and cellar space; and

WHEREAS, during the hearing process, the applicant submitted a copy of an amendment, approved by DOB on November 14, 1990, which reflects a change to the plans associated with the 1990 Permit from accessory medical office use in the cellar (UG 4) to a non-commercial art gallery (UG 3), although a copy of the approved plans reflecting the change of use has not been located; and

WHEREAS, during the hearing process, DOB reviewed the 1990 Permit and the 1990 amendment, which reduced the floor area occupied by medical office use to just the 1,500 sq. ft. on the first floor, and determined that it was an approved amendment which cured the defect of the 1990 Permit; and

WHEREAS, accordingly, DOB determined that the 1990 Permit, as amended, is a valid permit upon which to base the vested rights claim; and

WHEREAS, at hearing, the Board asked whether the 1990 Permit was in effect in 2005, the year the applicant stated that he purchased the Building; and

WHEREAS, DOB responded that, according to its records, no permit was in effect in 2005 that authorized construction of a medical office at the premises and no certificate of occupancy was in effect in 2005 that authorized use and occupancy of the premises as a medical office; and

WHEREAS, further, DOB noted that the 1990 Permit expired on April 15, 1991; and

WHEREAS, the Board agrees with DOB that the 1990 Permit was valid for the period of July 6, 1990 to April 15, 1991; and

Vesting Criteria

WHEREAS, when a valid permit has been issued and work has proceeded under it, the Board notes that a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which

measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, the Board notes that there is a long history of development at the site and that there have been several owners since the expiration of the permit on April 15, 1991; and

WHEREAS, however, since the common law standard requires that the Board only consider work completed pursuant to a valid permit, and DOB has determined that the only valid permit is the 1990 Permit, the Board will only consider construction performed pursuant to that permit; and

WHEREAS, at hearing, the Board directed the applicant to seek out records as to the amount of construction completed, the amount of expenditures associated with that construction performed up until April 15, 1991, and the amount of loss which would result if the right to proceed under the prior zoning were not permitted; and

WHEREAS, as to substantial construction, the applicant states that prior to April 15, 1991, 85 percent of construction was completed on the Building; and

WHEREAS, the applicant contacted the contractor who aided the prior owner and the contractor supported the applicant's assertion as to the amount of work completed as of the expiration of the 1990 Permit; and

WHEREAS, the prior project architect was contacted but he no longer had records of the job; and

WHEREAS, the applicant represents that the following work was completed under the valid permit: excavation, demolition, foundation work, a masonry one-story shell, with rough plumbing, electrical, and some interior finishes; and

WHEREAS, the Board notes that the applicant was unable to document the precise history of the construction, but it accepts (1) the statements as to the completed work, (2) records reflecting that work had commenced, and (3) records of the sale of the property which suggest that there was development at the site at the time of various property transactions; and

WHEREAS, the Board also notes that no stop work orders were issued either prior to the issuance of the 1990 Permit or in the intervening years before construction resumed in 2006; and

WHEREAS, thus, in the absence of evidence to the contrary, the Board concludes that a significant amount of construction was completed pursuant to the 1990 Permit within the prescribed timeframe; and

WHEREAS, further, the Board accepts the testimony from those familiar with the Building that 85 percent of the Building was completed in 1991; and

WHEREAS, the Board recognizes that work was performed since the expiration of the 1991 Permit, but has not considered it due to the failure to meet the threshold permit requirement; and

WHEREAS, the Board has reviewed the representations

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as to the amount and type of work completed before the expiration of the 1990 Permit and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the Building, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, the Board has determined that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, in light of these cases, the Board has determined that the work performed at the site between July 6, 1990 and April 15, 1991, which includes demolition, excavation, foundation work, and the construction of the shell for a one-story masonry building, can be characterized as substantial; and

WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was sufficient to meet the minimum requirements established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, in the absence of financial records from the prior owner, the applicant has submitted an analysis of construction costs contemporary to the time of construction; and

WHEREAS, the applicant states that the prior owner made qualifying expenditure of approximately \$95,000 out of \$105,000 budgeted for the entire project (these numbers represent a conversion to 1990 costs based on a current multiplier of 1.12; the equivalent 2007 costs for the same work are considerably higher); and

WHEREAS, the Board accepts the expenditure analysis and accepts on its face that a considerable proportion of the total expenditure required for the project, including certain soft costs would have been expended or committed for a building which had been 85 percent completed; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, the Board has considered the costs for the following: architectural services, demolition, excavation, infrastructure, construction, and contractor's services; and

WHEREAS, the Board has not considered the expenditures for work performed pursuant to the 2006 Permit; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of \$95,000 associated with the qualifying construction would result if vesting were not

permitted is significant; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the decreased level of return for the project if the amended zoning provisions were imposed; and

WHEREAS, specifically, the applicant notes that the building could not be used for the use it was designed for and represents that it is not appropriate for a conforming use; and

WHEREAS, the Board agrees that the need to demolish and redesign the Building, coupled with \$95,000 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting analysis submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the 1990 Permit, as amended, and all other related permits necessary to complete construction; and

WHEREAS, the Board notes that its decision is limited to the questions raised as to the common law right to vest and the plans for the Building are subject to DOB review to ensure compliance with all other relevant provisions of the Zoning Resolution, the Administrative Code, or any other laws.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 3068/86, as amended, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 23, 2007.

157-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Blue Diamond Development, LLC, owner.

SUBJECT – Application June 11, 2007 – Extension of time (11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2/R6A, M1-2/R6B and MX-8.

PREMISES AFFECTED – 55 Eckford Street, western side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

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COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Negative:.....0

Abstain: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in *The City Record*, and then to decision on October 23, 2007; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject premises is located on the west side of Eckford Street, between Driggs Avenue and Engert Avenue; and

WHEREAS, the premises is currently located partially within an M1-2/R6A (MX-8) zoning district and partially within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the development complies with the prior R6 (M1-1) zoning district regulations; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint Williamsburg Rezoning; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed

and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 301756319-01 NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

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WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, the steel frame for six of the 12 proposed floors, and concrete slab floors for floors one through six; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing the steel frame and slab floors for floors one through six; a statement from the project developer describing the completed work; copies of concrete pour tickets; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant represents that delays in construction resulted from financial hardship, which has now been resolved; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,379,767, or 17 percent, of the \$7,871,450 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, at hearing the Board asked the applicant to address all violations associated with site safety; and

WHEREAS, in response, the applicant submitted a statement, with related photographs, describing how each violation has been corrected; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 301756319-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate

of occupancy for one term of two years from the date of this resolution, to expire on October 23, 2009.

Adopted by the Board of Standards and Appeals, October 23, 2007.

212-07-BZY

APPLICANT – Greenberg Traurig by Deirdre A. Carson, Esq., for 163 Charles St. Realty, LLC, owner.

SUBJECT – Application September 12, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on October 11, 2005. R6A, C1-5 zoning district.

PREMISES AFFECTED – 163 Charles Street, fronting on Charles Street and Charles Lane, between Washington and West Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Margo Flug – Greenberg Traurig.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction, and obtainment of a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Hinkson; and

WHEREAS, the subject premises is located on a through lot with frontage on Charles Street and Charles Lane, between Washington and West Streets in the West Village neighborhood of Manhattan; and

WHEREAS, the premises is currently located within an R6A (C1-5) zoning district; and

WHEREAS, the development complies with the prior C6-2 zoning district parameters as to floor area, stories of commercial height, lot coverage and street wall; and

WHEREAS, however, on October 11, 2005, the City Council voted to adopt the Far West Village Rezoning, which rezoned the site to R6A (C1-5), as noted above, and

WHEREAS, as of that date, the applicant had obtained permits for the development, completed excavation of the property but had not completed the foundations for the property;

WHEREAS, on January 31, 2006 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 326-05-BZY, pursuant to ZR § 11-331, and

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WHEREAS, on January 31, 2006 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 328-05-A, pursuant to the common law; and

WHEREAS, the foundation was completed within six months and construction has continued since; and

WHEREAS, pursuant to ZR §11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the

Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 103972550-01-AL, (hereinafter, the "Alteration Permit"); and

WHEREAS, the Board has reviewed the record and agrees that the Alteration Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Alteration Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes installation of structural steel, interior partitions, mechanical equipment, rough plumbing and electrical wiring and that only minor work remains to be completed; and

WHEREAS, in support of this statement, the applicant has submitted the following: photographs of the site showing the completed building form for the 8-story building with completed façade work and windows in place on both building frontages; mechanicals and building infrastructure; floors; ceilings; and partial interior wall construction; and a statement by the architect enumerating the completed work; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$5,067,379, or 97 percent, out of the \$5,249,633 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted

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evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit No. 103972550-01-AL, as well as all related permits for various work types either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on October 23, 2009.

Adopted by the Board of Standards and Appeals, October 23, 2007.

105-06-A

APPLICANT – Rothkrug Rothkrug and Spector, for Yafa Development, LLC, owner.

SUBJECT – Application May 23, 2006 – Proposed development of a single family home which will lie partially in the bed of a mapped street (Hook Creek Boulevard contrary to General City Law Section 35. Premises is located within an R2 zoning district.

PREMISES AFFECTED – 240-23 128th Avenue, corner of 128th Avenue and Hook Creek Boulevard, Block 12866, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402271108, reads in pertinent part:

“Building partially in the bed of a mapped street, BSA Approval Required. This denial is needed as part of the BSA process”; and

WHEREAS, this application requests permission to build a single-family home partially within the bed of a mapped street, Hook Creek Boulevard; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in the *City Record*, and then to a continued hearing and decision on October 23, 2007; and

WHEREAS, by letter dated October 2, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter dated February 22, 2007, the Fire Department states that it has reviewed the above application and has no objection; and

WHEREAS, by letter dated July 12, 2006, the Department of Environmental Protection (DEP) states that it reviewed the above application and advises the Board that there is an adopted Drainage Plan 42(5), which calls for a future 12-in. diameter combined sewer in Hook Creek Boulevard between 128th Avenue and Brookville Boulevard; and

WHEREAS, DEP also notes that there is an existing 12-in. diameter combined sewer and an existing 8-in. diameter water main at the site; and

WHEREAS, accordingly, DEP requested a survey reflecting the distance between the proposed building and the existing sewers and water mains as well as the width of the mapped street of Hook Creek Boulevard between 128th Avenue

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and Brookville Boulevard; and

WHEREAS, in response to DEP's request, the applicant has provided a revised plan, which reflects the total width of the mapped Hook Creek Boulevard is 89'-8" with a remaining portion with a width of approximately 46'-0", which will be available for the installation, maintenance, and/or reconstruction of the existing 8-in. diameter water main and for the existing and future 12-in. diameter combined sewer; and

WHEREAS, by letter dated October 12, 2007, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402271108, 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 October 16, 2007," "A1"– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2007.

162-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Egdewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Egdewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2848 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

105-07-A thru 108-07-A

APPLICANT – Paul Bonfilio Architect, P.C., for Tom and Angelika Davis, owners.

SUBJECT – Application May 2, 2007 – Proposed construction of four two family semi detached dwellings located within the bed of mapped street (199th) contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED –

198-24 47th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49.

198-28 47th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5619, Lot 20.

47-17 199th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49.

47-18 199th Street, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49, Borough of Queens

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio, A. Davis and T Davis.

For Opposition: T. Pouymari, Auburndale Improv. Assn., P DeBona and Warren DeBona

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 23, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

80-07-BZ

CEQR #07-BSA-075M

APPLICANT – Sheldon Lobel, P.C., for 319 West LLC, owner. The Lantern Group, Incorporated, lessee.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to community facility floor area (§24-111), wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 26, 2007 acting on Department of Buildings Application No. 104694868 reads, in pertinent part:

“Proposed wall height, setback & sky exposure are not permitted and are contrary to ZR 24-522.

Proposed rear yard does not meet minimum requirement, is not permitted, and is contrary to ZR 24-36.

Proposed demolition of existing building is not permitted and is contrary to ZR 54-41;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the three story enlargement of an existing six-story building with cellar for a community facility with sleeping accommodations and accessory social service space that exceeds the street wall height, does not provide the required setbacks, encroaches into the setback and sky exposure plane, does not provide the required rear yard, and demolishes more than 75 percent of the interior floor area of an existing non-complying building, contrary to ZR §§ 24-522, 24-36, and 54-41; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on August 21, 2007, with a continued hearing on September 25, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application conditioned upon the following:

- (1) that HPD and the applicant meet with a community advisory board regarding the safety of tenants during construction;
- (2) that a memorandum of understanding be executed between the existing tenants and the applicant; and

WHEREAS, City Council Member Brewer testified in favor of this application; and

WHEREAS, representatives of Neighborhood in the Nineties Block Association (“Neighborhood in the Nineties”) and other local residents testified in opposition to this application; and

WHEREAS, this application is brought on behalf of The Lantern Group (an affiliate of Audubon Housing Development Fund Corporation, MiCasa HDFC and Friends in the City), a not-for-profit entity; and

WHEREAS, the site’s lot area is 7,565 sq. ft., with 75 feet of frontage on the northern side of West 94th Street, approximately 214 ft. east of Riverside Drive; and

WHEREAS, the site is currently improved upon with a dumbbell-shaped six-story non-complying New Law Tenement Class A Building, occupied as a Single Room Occupancy (“SRO”); and

WHEREAS, the building currently measures approximately 31,578 sq. ft. in floor area (FAR 4.17) and contains 149 rooming units, pursuant to a Certificate of Occupancy dated September 9, 1949, of which 52 units are occupied, and

WHEREAS, the applicant proposes to rehabilitate and enlarge the existing structure for use as a 140-unit community facility, with one unit for an on-site superintendent; and

WHEREAS, the proposed building will have a total community facility floor area of 45,418 sq. ft. and a total FAR of 6.00, which are permitted as of right, and

WHEREAS, the proposed building will have a street wall height along West 94th Street of 88 feet (85 feet is the maximum permitted) without a setback (a 20’-0” foot setback is the minimum required); a total height of 99 feet, and a rear yard of 13’-1” (30’-0” is the minimum required), and will require the substantial demolition of the existing building; and

WHEREAS, the applicant originally filed an application for a 10-story building which sought waivers to the floor area ratio (for a 6.70 FAR), floor area of 50,666 sq. ft., a street wall height of 109’-6”, a total height of 109’-6”, and 150 units, which was modified after discussions with community residents to the current proposal; and

WHEREAS, the applicant represents that the variance

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request is necessitated in part by the programmatic needs and in part by the conditions on the subject site – namely -- the existing obsolete building, which will be retained; and

WHEREAS, as to the programmatic needs, the applicant represents that the community facility's proposed housing program, to be located on floors two through nine, will provide 52 studio apartments and 88 SRO units to meet the housing needs of (i) homeless single adults (40% of the units, approximately 56 units) and (ii) low-income adults currently living in the surrounding community (60% of the units, approximately 84 units); and

WHEREAS, the applicant states that the community facility's social service component, to be located on a portion of the cellar and ground floors, will include therapeutic, educational and employment services administered by a staff to include case managers, psychiatric social workers, an independent living skills specialist, a housing intake and outreach coordinator, vocational/educational counselor, nutritionist, program director and residence coordinators; and

WHEREAS, the applicant notes that the housing and social services program was designed in collaboration with New York City's Housing Development Corporation (HDC) and Department of Housing Preservation and Development (HPD), which are financing the development of the proposed community facility; and

WHEREAS, the applicant submitted a letter to the Board from HPD stating that the project funding was conditioned on providing a minimum of 140 dwelling/rooming units at the approved level of public subsidy, beyond which the project would be infeasible; and

WHEREAS, the applicant further notes that HPD and HDC program requirements also dictate the minimum unit sizes, the number of bathrooms and kitchenettes, and the volume of community space to be provided within the proposed building; and

WHEREAS, the applicant states that, in addition to creating 140 affordable units, its mission also includes preventing the displacement and relocation of the 52 current tenants, who are predominately elderly and low-income, and

WHEREAS, the applicant further states that it could not bear the cost to relocate and rehouse the tenants during the construction of the facility; and

WHEREAS, the applicant represents that, as their relocation is neither financially feasible nor consistent with its mission, the existing tenants must be housed within the building while the community facility would be constructed; and

WHEREAS, the applicant asserts therefore, that (i) the existing building cannot be demolished and (ii) that the number of dwelling units and the associated waivers requested are required to comply with funders' requirements; and

WHEREAS, the applicant states that the following unique physical conditions of the existing building create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) its dumbbell shaped floorplate, (2) the existing

non-complying rear yard, and (3) the non-complying non-fireproof nature of the building; and

WHEREAS, as to the dumbbell-shaped footprint, the floorplate results in an irregular and inefficient floorplate with court yards of approximately 20 feet by 30 feet at the east and west;

WHEREAS, the applicant states that this irregular floorplate generates an excessive amount of hallway circulation space in comparison to the floorplate of a more typical square-shaped existing structure; and

WHEREAS, the applicant notes that the inefficient floorplate results in an inability to use space that would otherwise have been available; and

WHEREAS, the applicant further notes that the inefficient floorplate constrains the programmatic space needs, which require the development of at least 140 studio apartments and SRO units and accessory social services space, from being accommodated within the existing structure; and

WHEREAS, notwithstanding the noted inefficiencies of the floorplate, the applicant states that it is compelled to retain the existing building in order to retain the existing tenants; and

WHEREAS, accordingly, the applicant proposes to enlarge the existing building; and

WHEREAS, the applicant further states that the cost to modify the building to conform to all relevant zoning regulations as well as to accommodate the programmatic space needs would far exceed its development budget, and require the relocation of the existing tenants;

WHEREAS, the applicant has determined that accommodating its program needs within the building's footprint would require the construction of a vertical enlargement; and

WHEREAS, as to enlargement of the existing building, the applicant states that the existing court yards constrain the development of an as of right building that can accommodate its program needs; and

WHEREAS, the applicant further states that a complying development would require a front setback at the seventh floor and a thirty-foot rear yard for the enlarged portion of the building; and

WHEREAS, as to the existing rear yard, the applicant notes that the rear yard with a depth of 13'-1" is an existing non-complying condition; and

WHEREAS, the ground through sixth floors of the existing building encroach by 16'-10" into the rear yard; and

WHEREAS, the applicant provided drawings showing an as of right 12-story structure with the required front setback and rear yard; and

WHEREAS, the applicant represents that the resulting building would have consequently smaller floorplates and would result in approximately twenty fewer units than are required to meet its programmatic needs; and

WHEREAS, as to the fire safety of the existing building, the applicant states that the building is a non-complying, non-fireproof Class 3 structure; and

WHEREAS, the applicant represents that the existing Building Code requires that a newly-constructed nine-story building be fireproof; and

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WHEREAS, the applicant states that in order to create a fireproof structure that integrates the enlargement with the existing building, the replacement of the entire wood joist structural system, as well as antiquated plumbing, electrical, fire alarm and sprinkler systems and the installation of internal fire stairs and a code compliant elevator are required; and

WHEREAS, the applicant further states that the scope of this reconstruction necessitates the replacement of approximately 80 percent of the floor area of the existing building; and

WHEREAS, under ZR § 54- 41 no more than 75 percent of the floor area can be replaced in the reconstruction of an existing building; and

WHEREAS, at the hearing, the Board questioned whether the anticipated structural work required the replacement of more than 75 percent of the floor area of the existing wood joist structural system of the building with a new non-fireproof steel and concrete floor structure; and

WHEREAS, to respond to the Board's concern, the applicant sought a reconsideration from the Department of Buildings for the proposed replacement of 80 percent; and

WHEREAS, in response, on September 10, 2007, the Deputy Borough Commissioner of the Buildings Department, denied a request for reconsideration, stating, "Proposed reconstruction exceeds permitted in ZR 54-41; 80% > 75%;" and

WHEREAS, the applicant states that a waiver of street wall height, setback and sky exposure plane and rear yard requirements are necessary to develop the 140 units and social services space required to fulfill its programmatic mission; and

WHEREAS, the Board finds that replacement of more than 75 percent of the floor area is appropriate and necessary to improve the safety of the building; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the Lantern Group's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the proposed use, floor area and total height are permitted as of right under the zoning regulations and that the number of proposed units is fewer than the number permitted under the existing certificate occupancy, and

WHEREAS, the applicant states that the proposed street wall waiver would allow the building to rise to the eighth floor, to a height of 88 feet high along the West 94th Street street line; and

WHEREAS, the applicant notes that the zoning regulations permit a street wall height of 85 feet, and that a wall

height increase of three feet over what is permitted is minor and compatible with neighborhood character; and

WHEREAS, the applicant represents that a complying development would be forced to set back from the street line at the eighth floor; and

WHEREAS, the applicant states that the building's eighth story will be recessed with a mansard and series of dormer elements and suggests that these design elements mitigate the building height by providing a visual break and making the building appear to be only eight stories; and

WHEREAS, the applicant represents that the setback and rear yard waivers are required because the enlargement would rise upward and extend from the existing front and rear walls; and

WHEREAS, the Board agrees that the encroachment into the required rear yard is compensated by the gain in light and air as a result of the reduced height of the building; and

WHEREAS, local residents raised issues at hearing concerning the scale of the proposed building and its compatibility to the neighborhood context; and

WHEREAS, the applicant states that the proposed bulk and height of the building will not be out of context with surrounding buildings, pointing out that the subject site is flanked by six and seven-story multiple dwelling buildings and that a 21-story residential building is located on the northeast corner of 94th Street and Riverside Drive, and a 16-story residential building is located directly to its south; and

WHEREAS, the applicant provided information in the record depicting an as of right enlargement which rises to 128 feet or 12 stories, containing the same square footage as the proposed development, but which included only 122 dwelling/rooming units instead of the 140 units which would be created by the proposed project; and

WHEREAS, the applicant represents that a complying development would be forced to set back from the street line at the eighth floor, as well as set back from the rear by 30 feet from the seventh floor; and that these setbacks in bulk would necessarily result in a twelve-story building, three stories higher than that proposed; and

WHEREAS, the Board notes that the a building constructed as of right under the zoning regulations would be considerably taller than that proposed; and

WHEREAS, the applicant additionally notes that the existing building has not been well-maintained and that the proposed development will provide for its renovation and continued maintenance; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicants states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site and in the uniqueness posed by its programmatic needs; and

WHEREAS, the Board finds that the hardship herein was

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not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the applicant originally filed an application for a 10-story building which sought waivers to the floor area ratio (for a 6.70 FAR), floor area of 50,666 sq. ft., a street wall height of 109'-6", a total height of 109'-6", and 150 units, and

WHEREAS, in response to concerns raised by the Community Board and others, the applicant withdrew the floor area variance request and amended its proposal to instead seek to construct the building currently proposed with an FAR of 6.00, floor area of 45,418 sq. ft., a street wall height of 88'-0", a total height of 99'-0" and 140 units; and

WHEREAS, the Board finds that the requested wall height, sky exposure plane, setback, rear yard, and floor area demolition waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, a concern was raised at the hearing as to whether property owners had received the required notice of hearing; and

WHEREAS, the applicant provided proof that it had secured the list of property owners within a 400-foot radius of the proposed project and sent letters of notification to them in a timely manner, in conformance with BSA notification procedures; and

WHEREAS, however, at the hearing of September 25, 2007 it was learned that the Department of Finance had the wrong address for one owner -- the New York City Department of Education (DOE) -- due to a change in its official address; and

WHEREAS, the Board closed the hearing on September 25, 2007 to other witnesses, but stated in the record that the hearing would be reopened for testimony by the DOE, after its proper notification; and

WHEREAS, the applicant subsequently notified the DOE on October 3, 2007 at its proper address; and

WHEREAS, after the hearing was closed, a letter was submitted by the president of the parent/ teachers association ("PTA") of nearby Public School 75 requesting that the hearing be continued to hear concerns about the homeless persons to be served by the project, particularly given its proximity to the local school; and

WHEREAS, a letter was also submitted by legal counsel for Neighborhood in the Nineties requesting that the hearing be continued because the applicant had allegedly: (a) failed to disclose that the target population could include persons with histories of mental illness or substance abuse, information relevant to a review of the project's potential environmental impacts under CEQR and to the neighborhood character "C" finding required by ZR § 72-21; and (b) failed to provide proper notice to the DOE; and

WHEREAS, on October 23, 2007, the Board reopened the hearing to accept the written submissions by the PTA and Neighborhood in the Nineties and to permit representatives of the DOE to testify; and

WHEREAS, the Board notes that the defective notice to the DOE was corrected on October 3, 2007 and the DOE had a meaningful opportunity to be heard on October 23, 2007, nearly three weeks later, when the Board reopened the hearing to permit its representatives to testify; and

WHEREAS, no representative of the DOE testified on October 23, 2007; and

WHEREAS, as to the PTA's request to continue the hearing to hear concerns about the proposed target population, the Board notes that the proposed use is as of right; and

WHEREAS, the Board further notes that the proposed variance seeks only a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, as pertains to the request to reopen the hearing by Neighborhood in the Nineties to hear concerns regarding the proposed target population, the Board notes that neighborhood residents had the opportunity to speak at hearings on August 21, 2007 and October 5, 2007 concerning the proposal; and

WHEREAS, as pertains to the alleged failure to disclose facts material to the environmental review; and

WHEREAS, based on the technical guidelines for CEQR, the proposed project, which entails a reduction to 141 units from the 149 units permitted by the certificate of occupancy, does not trigger the additional analysis of the impacts of the community facility on socioeconomic conditions or neighborhood character; and

WHEREAS, as noted above, the use is allowed as of right and the proposed variance seeks only a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, the Board therefore concludes that that disclosure of the target population to be housed by the community facility would therefore not be "material" to the environmental review, and

WHEREAS, as pertains to the "C" finding to be made under ZR § 72-21, the Board is required to find that the grant of the variance will not alter the essential neighborhood character, impair the use or development of adjacent property or be detrimental to the public welfare; and

WHEREAS, the variance seeks a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, the target population to be served by a community facility would be immaterial to the consideration of the impacts on neighborhood character implicated by the grant of a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations under §72-21; and

WHEREAS, the Board therefore declined to reopen the hearing for testimony by the public concerning the proposed target population; and

WHEREAS, the project is classified as unlisted action pursuant to Section 617.13 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental

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review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA075M, dated April 10, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an R8 zoning district, the three story enlargement of an existing six-story building with cellar for a community facility with sleeping accommodations and accessory social service space that exceeds the street wall height, does not provide the required setbacks, encroaches into the sky exposure plane, does not provide the required rear yard, and demolishes more than 75 percent of the interior floor area of an existing building, contrary to ZR §§ 24-522, 24-36, and 54-41; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2007"– (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a community facility floor area of 45,418 sq. ft.; a total of 141 dwelling units; a total FAR of 6.00, a street wall height of 88 feet without a setback, a total height of 99 feet, and a rear yard of 13'-1";

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2007.

188-07-BZ

CEQR #08-BSA-009M

APPLICANT – Friedman & Gotbaum, LLP, for Hilton Hotels Corporation, owner; Spa Chakra, LLC, lessees.

SUBJECT – Application August 2, 2007 – Special Permit (§§73-03 & 73-36) – To allow a Physical Culture Establishment in portion of an existing building (19th floor & p/o lobby level) in a C5-2.5/C5-3/C6-6 ZD.

PREMISES AFFECTED – Waldorf-Astoria, 301 Park Avenue, entire block bounded by Park & Lexington Avenues and East 49th & 50th Streets, Block 1304, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Lori Cuisinier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 104697856, reads in pertinent part:

“The proposed Physical Culture Establishment use on the 19th floor and portion of the first floor lobby of the building in a C5-2.5/C5-3/C6-6 district is not permitted pursuant to Section 32-10 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2.5/C5-3/C6-6 zoning district, the establishment of a physical culture establishment (PCE) in the lobby floor and 19th floor of an existing 43-story hotel building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 25, 2007 after due notice by publication in *The City Record*, and then to decision on October 23, 2007; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the entire block bounded by Park Avenue on the west, Lexington Avenue on the east, East 50th Street on the north and East 49th Street on the south; and

WHEREAS, the site is occupied by a 43- story hotel building, the Waldorf-Astoria; and

WHEREAS, the PCE will occupy approximately 13,810 sq. ft. of floor area on the 19th floor and approximately 960 sq. ft. of floor area on the lobby floor; and

WHEREAS, the applicant represents that the PCE will offer facilities for the practice of massage within a full

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service day spa, as well as facilities for classes, instruction and programs for physical improvement, and related facilities; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 9:00 a.m. to 9:00 p.m. and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA009M, dated August 30, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2.5/C5-3/C6-6 zoning

district, the establishment of a physical culture establishment in the lobby floor and 19th floor of an existing 43-story hotel building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 30, 2007"- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 23, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2007.

378-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for deferred decision.

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16-07-BZ

APPLICANT – Juan D. Reyes, III, for Daytop Village, Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit (§73-44) to permit a reduction in required parking for a Use Group 4A ambulatory and diagnostic treatment center located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue, Halperin Avenue between Blandell Avenue and Williamsburg Road, Block 4074, Lot 11, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Juan D. Reyes, III, and John Strauss.

For Opposition: Marianne LaCroce, Marie Lacroce and Anthony LaCroce.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for decision, hearing closed.

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (23-141); perimeter wall height (23-361) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lewis Garfinkel.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

78-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application April 12, 2007 – Special Permit (§73-36) to allow the operation of a PCE on the first floor of a two-story commercial building. The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for continued hearing.

48-07-BZ

APPLICANT – Alfonso Duarte, for Jerry Trianfafillou, owner.

SUBJECT – Application February 20, 2007 – Variance (§72-21) for the enlargement of an existing single family residence on an undersized lot which seeks to vary (23-47) less than the required rear yard and (23-141(b)) for lot coverage in an R2A zoning district.

PREMISES AFFECTED – 7-12 126th Street, west side 90' south of 7th Avenue, Block 3970, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

110-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby Landmark Corporation, owner.

SUBJECT – Application May 3, 2007 – Special Permit under § 73-63 to allow the enlargement of a non-residential building. M1-5B district.

PREMISES AFFECTED – 53 Crosby Street, east side of Crosby Street between Spring Street and Broome Street, Block 482, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for decision, hearing closed.

144-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuta Shlesinger, owner.

SUBJECT – Application May 30, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage, (§23-141) and side yards (§23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 3810 Bedford Avenue, southwest corner of Bedford Avenue and Quentin Road, Block 6807, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for decision, hearing closed.

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for 8701 Fourth Avenue, LLC, owner.

SUBJECT – Application June 8, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to section 32-00 of the Zoning Resolution. C4-2A zoning district.

PREMISES AFFECTED – 8701 Fourth Avenue, southeast corner of Fourth Avenue and 87th Street, Block 6050, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for decision, hearing closed.

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center, Inc., owner.

SUBJECT – Application June 12, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to 32-00. C8-2 district.

PREMISES AFFECTED – 2402 86th Street, south corner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for decision, hearing closed.

211-07-BZ

APPLICANT – Eric Palatnik, P.C., for Dave Weiss, owner.

SUBJECT – Application September 7, 2007 – Special

Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1149 East 22nd Street, north of Avenue K, south of Avenue J, Block 7604, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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AND APPEALS

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November 8, 2007

DIRECTORY

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SUSAN M. HINKSON

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238-07-BZ

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240-07-A

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241-07-BZ

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242-07-BZ

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243-07-BZ

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244-07-A

120 John Street, At northwest corner of the intersection of John Street and Douglas Street., Block 1123, Lot(s) 120, Borough of Staten Island, Community Board: 1. Proposed construction of a three story, one family home located within the bed of mapped street (John Street) contrary to General City Law Section 35 . R3-2 Zoning district .

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 11, 2007, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 11, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

16-36-BZII

APPLICANT - Vassalotti Associates, Architects, for Cumberland Farms Incorporated, owners.

SUBJECT - Application July 17, 2007 - Extension of Term of a previously granted variance for the operation of a gasoline service station (Exxon) which expired November 1, 2007 in a C2-2/R-5 zoning district.

PREMISES AFFECTED - 1885 Westchester Avenue, northwest corner of Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

673-81-BZ

APPLICANT - David L. Businelli, for Joseph Montalbano, owner.

SUBJECT - Application August 20, 2007 - Extension of Term of variance granted pursuant to §72-21 permitting, in an R3-2 zoning district, the erection of a one story and cellar retail store and office building with accessory parking in the open area. The application was previously approved for a 15 year term which expired on January 5, 1997.

PREMISES AFFECTED - 2075 Richmond Avenue, East side of Richmond Avenue 461.94' N. feet from corner of Rockland Avenue, Block 2015, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2 SI

67-95-BZ

APPLICANT - Francis R. Angelino, Esq., for Times Square JV LLC, owner; Town Sports International, lessee.

SUBJECT - Application May 17, 2007 - Extension of Term of a previously approved Special Permit granted pursuant to §73-36 allowing the operation of a physical culture establishment on the 14 & 15 floors of the Crowne Plaza Hotel located in a C6-7T (MID) zoning district.

PREMISES AFFECTED - 1591/1611 Broadway, west side, the blockfront between West 48th & West 49th Streets, Block 1020, Lot 46, Borough of Manhattan.

COMMUNITY BOARD #5M

155-07-A

APPLICANT - Jorge F. Canepa, for Sonja Keyser, owner.

SUBJECT - Application June 11, 2007 - Proposed construction of a swimming pool, tennis court and changing room located within the bed of a mapped street (Tiber Place) contrary to General City Law Section 35. R1-2 Zoning District.

PREMISES AFFECTED - 55 Chipperfield Court, 413.88' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 21, Borough of Staten Island.

COMMUNITY BOARD #2SI

240-07-A

APPLICANT - Sheldon Lobel, P.C., for 1270 Bay Ridge Parkway Development, LLC, owner.

SUBJECT - Application October 24, 2007 - Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R4/C1-2 zoning district. R4-1 zoning district.

PREMISES AFFECTED - 1270 Bay Ridge Parkway, 12th Avenue and 13th Avenue, Block 6221, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #10BK

CALENDAR

DECEMBER 11, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 11, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

197-05-BZ

APPLICANT – Blank Rome LLP, by Marvin Mitzner, for B & E 813 Broadway, LLC & Broadway Realty, owner.

SUBJECT – Application August 17, 2005 – Variance (§ 72-21) to allow a 11-story residential building with ground floor retail; contrary to regulations for FAR and open space ratio (§ 23-142), front wall height, setback and sky-exposure plane (§ 33-432), and maximum number of dwelling units (§ 23-22). C6-1 district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 30, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

919-57-BZ

APPLICANT – Cullen and Dykman LLP by Gary Goldman, owner; Stanley Halpern, lessee.

SUBJECT – Application August 20, 2007 – Extension of Term, ZR §11-411 of a previously granted variance for the continued operation of a UG6 take out restaurant in an R3-2 zoning district which expired on March 25, 2003.

PREMISES AFFECTED – 4912 Avenue K, south side of Avenue K between East 49th Street and Utica Avenue, Block 7829, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

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 the term for a previously granted variance for a Use Group 6 restaurant in an R3-2 zoning district, which expired on March 25, 2003; and

WHEREAS, a public hearing was held on this application on October 2, 2007 after due notice by publication in *The City Record*, and then to decision on October 30, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application, with the following conditions: (1) that parking be limited to one car; (2) that garbage disposal be placed out of sight; and (3) that the premises, rear yard and driveway area be kept free of debris and graffiti; and

WHEREAS, the subject premises is located on the south side of Avenue K between 49th Street and Utica Avenue; and

WHEREAS, the site is located within an R3-2 zoning district and is occupied by a one-story commercial building; and

WHEREAS, on March 25, 1958, the Board granted a variance under the subject calendar number to permit the construction of a two-story mixed use building in a residential zoning district having a store on the first floor and two apartments on the second floor for a term of 15 years, subject to certain conditions; and

WHEREAS, the grant was subsequently amended to extend the time to obtain permits and complete the approved work; and

WHEREAS, on May 26, 1964, the grant was reopened and amended to permit a redesign of the building to eliminate the second floor and to provide for a 23’-0” rear yard; and

WHEREAS, the applicant has sought and received multiple extensions to its term; and

WHEREAS, the term of the variance expired March 25, 2003; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the Board asked the applicant to confirm that all signage complies with C1 zoning district regulations; and

WHEREAS, the applicant represents that all signage complies with C1 zoning district regulations; and

WHEREAS, the Board also directed the applicant to ensure that the building façade was free of graffiti; and

WHEREAS, the applicant submitted photographs indicating that the façade had been cleaned; and

WHEREAS, the Board notes that all of the Community Board’s requested conditions are addressed by conditions in previous approvals which remain in effect; and

WHEREAS, the applicant represents that the use and operation of the site complies with all of the conditions of the prior approvals and the Community Board’s request; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 25, 1958, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on March 25, 2013; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received August 20, 2007”-(4) sheets; and *on further condition*:

THAT this grant shall expire on March 25, 2013;

THAT the site shall be maintained free of debris and graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a new certificate of occupancy be obtained within six months of the date of this grant, on April 30, 2008;

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.”

Adopted by the Board of Standards and Appeals,

MINUTES

October 30, 2007.

382-80-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Full Gospel New York Church, owners.

SUBJECT – Application June 29, 2007 – Extension of Term of a previously granted variance, which expired on July 1, 2005, to allow the operation of a theater (Playhouse 91) on the mezzanine and second floors located in an R8b zoning district.

PREMISES AFFECTED – 316 East 91st Street, south side of East 91st Street, 250’ east side of Second Avenue, Block 1553, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

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 the term for a previously granted variance to allow the operation of a theater, which expired on July 1, 2005; and

WHEREAS, a public hearing was held on this application on October 2, 2007 after due notice by publication in *The City Record*, and then to decision on October 30, 2007; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject premises is located on the south side of East 91st Street, 250’-0” east of Second Avenue; and

WHEREAS, the theater is located on the mezzanine and second floors of a two-story commercial building within an R8B zoning district; and

WHEREAS, on July 1, 1980, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement and conversion of the second floor of an existing two-story commercial building into a theater for a term of fifteen years; and

WHEREAS, the first floor of the premises is occupied by a legal non-conforming use that was not included in that application; and

WHEREAS, on January 17, 1996, the grant was amended to legalize changes to previously approved plans which included relocating the box office, restrooms, and control booth and to extend the term for ten years, to expire July 1, 2005; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant states that the theater has been in operation at the subject premises for more than 25 years; and

WHEREAS, the applicant proposes to maintain the use of the subject premises as a theater; and does not seek any changes to the building; and

WHEREAS, the applicant states that the delay in filing an amendment to extend the term of the variance was due to a change in ownership; and

WHEREAS, the applicant notes that it has diligently pursued the filing of this application since its purchase of the property this year, and

WHEREAS, the applicant further represents that it is in compliance with all the conditions of the 1995 grant; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 1, 1980, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on July 1, 2015; *on condition* that the use and operation shall substantially conform to previously approved plans; and *on further condition*:

THAT this grant shall expire on July 1, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a new certificate of occupancy shall be obtained within six months of the date of this grant, on April 30, 2008;

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. 104801500)

Adopted by the Board of Standards and Appeals, October 30, 2007.

233-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Syful Islam.

SUBJECT – Application September 11, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the legalization of an enlargement to a single family home, which required front yard 23-47 and less than the required side yard 23-461 in an R-5 zoning district; and also to change the occupancy from a one family to a two family home.

PREMISES AFFECTED – 2342 Haviland Avenue, Haviland Avenue bounded by Zerega Avenue and Havemeyer Avenue, Block 3827, Lot 51, Borough of Bronx.

COMMUNITY BOARD # 9BX

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APPEARANCES –

For Applicant: Jennifer Riker.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

Adopted by the Board of Standards and Appeals, October 30, 2007.

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for decision, hearing closed.

426-83-BZ

APPLICANT – Glen V. Cutrona, AIA, for Giuseppe Emmanuele, owner; S & E Landholding, Incorporated, lessee.

SUBJECT – Application November 3, 2006 – Extension of Term/Amendment/Waiver-Request extension of term of an existing retail stores on the first floor and offices on the second floor (UG6 in a R3-1 zoning district), approved pursuant to §72-21. The amendment seeks to legalize a reduction in parking from the 27 to 20 vehicles and approve the change in parking layout. The application also seeks to amend the signage and extend the term for an additional twenty (20) years from its expiration on November 27, 2004.

PREMISES AFFECTED – 1880 Hylan Boulevard, Hylan Boulevard and Slater Boulevard, Block 3657, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for continued hearing.

16-92-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §§72-01 & 72-22 to permit a waiver of the rules of practice and procedure, a re-opening, an amendment, and an extension of the term of the variance. The requested application would permit the legalization from the change in use from auto repair and warehouse to a charity auto donation facility (Use Group 16 automotive storage), container storage (Use Group 16), a woodworking and metal working company (Use Group 16) and a legalization of a 2,420 square foot mezzanine addition. The premises is located in a R5/C1-1 zoning district.

PREMISES AFFECTED – 115 King Street, 78 Sullivan Street, lot front King Street and Sullivan Street, between Richardson and Van Brunt Street, Block 556, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Molly Rouzie, Amy Helfard, Jorset Keindl, Louis Sones, Kimberly Huntington.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

73-07-A

APPLICANT – Fire Department of The City of New York
OWNER – L. W. Equity Associates Incorporated

LESSEE – Fabco Shoe Store

SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.

PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application from the Fire

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Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for automatic wet sprinklers in the cellar; and

WHEREAS, the order issued from the Fire Commissioner to the property owner, dated September 8, 2003, reads in pertinent part:

“You are hereby directed and required to comply with the following ORDER within thirty (30) days:

- 1) Install approved automatic wet sprinkler system throughout the ENTIRE CELLAR, arranged and equipped per Title 27, Chapter 1, Sub-Chapter 17 of the Administrative Code of the City of New York.
- 2) Plans are to be filed and approved by the Department of Buildings and a certified copy, accompanied by numbered Plan Work application, submitted to the Bureau of Fire Prevention – Sprinkler Install Unit – FDNY before any work is commenced.
- 3) After installation of sprinkler system submit a copy of the FP-85 Test Report to the Bureau of Fire Prevention – Sprinkler Install Unit – FDNY.

AUTHORITY: Section 27-4265 of the Administrative Code of the City of New York;” and

WHEREAS, a public hearing was held on this application on September 11, 2007, after due notice by publication in *The City Record*, with a continued hearing on October 2, 2007, and then to decision on October 30, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject premises is located on the north side of 86th Street, 100 feet west of Bay Parkway, within a C4-2 zoning district; and

WHEREAS, the site is occupied by a two-story with cellar commercial building; and

WHEREAS, the first floor and cellar are occupied by a Use Group 6 retail establishment and the second floor is occupied by Use Group 6 offices, which are both permitted uses in the zoning district; and

WHEREAS, the retail establishment operates as Fabco Shoes; and

WHEREAS, the current Certificate of Occupancy No. 300217414, dated May 19, 1995, does not reflect that sprinklers are required; and

WHEREAS, the Fire Department represents that upon a routine inspection in the late 1990s, its local administrative company performed an inspection of the subject building and referred its recommendations to the Bureau of Fire Prevention’s Sprinkler Install Unit; and

WHEREAS, the Sprinkler Install Unit then inspected the site and determined that, notwithstanding the absence of a requirement for an automatic wet sprinkler system at the site on the current certificate of occupancy, the cellar must be fully sprinklered in order to bring the building into compliance with the Building Code; and

WHEREAS, specifically, the Building Code § 27-954 – Required Sprinklers – reads in pertinent part: “A system of automatic sprinklers shall be provided in the areas listed . . . regardless of occupancy group classification . . . the first story below grade when it cannot be ventilated by at least thirty-five square feet of openable area per ten thousand cubic feet of volume. Such ventilation shall be provided by operable windows or other natural ventilation sources . . . All other stories below grade shall be sprinklered;” and

WHEREAS, ultimately, as noted above, the Fire Commissioner issued an order dated September 8, 2003, which reflected the determination that the owner must install automatic sprinklers in the cellar within thirty days; and

WHEREAS, the Fire Department represents that it made approximately five subsequent inspections of the site and noted that the conditions had not changed, sprinklers were still required, and had not yet been installed; and

WHEREAS, the Board notes that there have been actions in other forums involving the Fire Department and the owner regarding the noted fire safety issues at the building, but that these are not relevant to the subject appeal; and

WHEREAS, the Fire Department asserts that its request is reasonable and necessary in the interest of public safety since fire protection within the subject building is inadequate due to the following existing conditions: (1) the two-story and cellar building is non-fireproof; (2) the first floor and cellar are occupied by a retail establishment; (3) the cellar is used for storage and open retail space accessible to the public; (4) the cellar lacks a means of ventilation; and (5) the interior staircase between the first floor and cellar is open and unenclosed; and

WHEREAS, pursuant to the Administrative Code § 27-4265, the Fire Department requests to modify the certificate of occupancy to reflect that (1) an automatic wet sprinkler system be installed in the entire cellar, (2) that the plans approved by DOB and (3) that the plans be filed with the Sprinkler Install Unit; and

WHEREAS, the Board notes that the owner initially contested the requirement to install sprinklers, stating that it was financially infeasible to do so; and

WHEREAS, further, at hearing, the owner stated that the use of the cellar for storage, display, and customer access was necessary for its business and could not be eliminated; and

WHEREAS, the owner submitted photographs of the cellar and noted that certain signage and lights had been added or would be added in an effort to improve egress and fire safety; and

WHEREAS, at hearing, the Fire Department stated that egress, as addressed by the noted improvements, is only one concern; the proposed sprinklers are required to control the spread of fires within the building and among adjacent buildings; and

WHEREAS, the Fire Department notes that because other options to address fire control concerns, such as mechanical ventilation, are not an option in the cellar space, sprinklers are required; and

WHEREAS, the Board agrees with the Fire Department that, given the use of the cellar and the inability to provide ventilation through any other means, automatic sprinklers are

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required in the cellar per the Building Code; and

WHEREAS, ultimately, the owner agreed to research and install a sprinkler configuration, in consultation with DOB, which would satisfy the Fire Department's requirements; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, is necessary to protect life and property at the premises in the event of fire; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the Fire Department initially requested, but it will be approved by DOB and the Fire Department prior to installation.

Therefore it is Resolved that the application of the Fire Commissioner, dated March 30, 2007, seeking the modification of the Certificate of Occupancy No. 300217414 is granted.

Adopted by the Board of Standards and Appeals, October 30, 2007.

2-07-A thru 5-07-A

APPLICANT – Sheldon Lobel, P.C., for Ron Karo, owner.
SUBJECT – Application January 8, 2007 – To allow construction of four-3story 2 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED– 3212, 3214, 3216, 3218, Tiemann Avenue, northeast corner of Tiemann Avenue and unnamed Street, Block 4752, Lots 128, 129, 132, 133, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for continued hearing.

39-07-BZ thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of a 3 story, 3 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 3248, 3250, Givan Avenue, unnamed street between Wickham and Givan Avenue, Block 4755, Lots 65 & 66, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for continued hearing.

138-07-A

APPLICANT – New York City Department of Buildings.

OWNER: 614 NYC Partners, Incorporated

SUBJECT – Application May 24, 2007 – Appeal seeking to

revoke Certificate of Occupancy No. 104114487 that allowed the conversion of single room occupancy units (SRO) to Class A apartments without obtaining a Certificate of No Harassment from NYC Housing Preservation and Development (HPD). R8 Zoning District.

PREMISES AFFECTED – 614 West 138th Street, West 138th Street, east of Riverside Drive and west of Broadway, Block 2086, Lot 141, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: John Egnatios-Beene, Department of Buildings.

For Opposition: Mark E. Klein.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for decision, hearing closed.

154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57th Apartments, Inc., owner.

SUBJECT – Application June 11, 2007 – Appeal seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under Section 23-692(a) and is not listed as a permitted obstruction in Section 23-62. R10 Zoning district.

PREMISES AFFECTED – 441 East 57th Street, north side of east 57th Street, between 1st Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCE –

For Applicant: Caroline G. Harris.

For Opposition: Stuart Beckerman and Stephen P. Krammer of Department of Buildings.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for continued hearing.

204-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Washington-Hall Holdings, LLC, owner.

SUBJECT – Application August 17, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development of a 15 story mixed use building under the prior R6/C1-3 Zoning District.

PREMISES AFFECTED – 163-167 Washington Avenue, approximately 80' from the northeast corner of Myrtle Avenue and Washington Avenue, Block 1890, Lots 1, 4, 82, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Ron Mandel, Jordan Most, Rich Esposito, Steve Majartan.

For Opposition: Letishe James, Vaidila Kungys, Jacqueline Stallings, Ragnas Nacea, Sophia Chang, Sharon Barnes, Ann Ballentine, Gary Hattem Scott Witter, Hampton Tolbert, Shirley Godson, Peter Eide, Tresa Elguera, Patricia Hagan and Schellie Hagan.

ACTION OF THE BOARD – Laid over to December

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11, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 30, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

10-05-BZ

CEQR #05-BSA-085K

APPLICANT – Sheldon Lobel, P.C., for Samuel Benitez,
owner.

SUBJECT – Application January 20, 2005 – Zoning
variance under §72-21 to allow a five (5) story residential
building containing twenty-seven (27) dwelling units and
fifteen (15) parking spaces contrary to use regulations (§42-
00); M1-2 district.

PREMISES AFFECTED – 443 39th Street, a/k/a 459 39th
Street, 39th Street between 4th Avenue and 5th Avenue,
Block 705, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

Adopted by the Board of Standards and Appeals,
October 30, 2007.

315-05-BZ

APPLICANT – David L. Businelli, AIA, for Diggy's LLC,
owner.

SUBJECT – Application October 28, 2005 – Zoning
variance under §72-21 to allow a two-story horizontal
extension of an existing three-story mixed commercial retail
(UG 6) and residential building containing one (1) dwelling
unit. Twenty (20) open accessory parking spaces are
proposed. Proposed commercial use is contrary to use
regulations (ZR §22-10). R3X district (Special South
Richmond District).

PREMISES AFFECTED – 862 Huguenot Avenue, South
side of Huguenot Avenue, 0' east from Hawley Avenue.
Block 6815, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

Adopted by the Board of Standards and Appeals,
October 30, 2007.

83-06-BZ

CEQR #06-BSA-082Q

APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application May 2, 2006 – Variance (§72-21)
to allow the conversion and two (2) story enlargement of an
existing four story industrial building. The proposed multi-
family building will contain six (6) floors, ground floor retail
use, and fourteen (14) dwelling units. No parking spaces are
proposed. The proposal would exceed the maximum floor
area ratio (§123-64 (a)) and applicable height and setback
requirements (§123-662). The project site is located within
the Hunters Point Subdistrict of the Special Long Island City
Mixed Use District and is zoned M1-4/R6A (LIC).

PREMISES AFFECTED – 47-33 Fifth Street, north side of
5th Street, between 48th Avenue and 47th Road, Block 30, Lot
26, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

Adopted by the Board of Standards and Appeals,
October 30, 2007.

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103-06-BZ

APPLICANT – Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)) and rear yard (§23-47) in R-2 zoning district. PREMISES AFFECTED – 1324 East 23rd Street, East 23rd Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Adopted by the Board of Standards and Appeals, October 30, 2007.

69-07-BZ

CEQR #07-BSA-070M

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLP, for 240 West Broadway, LLC, owner.

SUBJECT – Application March 23, 2007 – Variance (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units; contrary to use regulations (§42-10). M1-5 district (Area B-1 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 240 West Broadway, northwest corner of the intersection of North Moore Street and West Broadway, Block 190, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 15, 2007, acting on Department of Buildings Application No. 104631837, reads in pertinent part:

“The proposed residential use is not permitted as-of-right in an M1-5 District within Area B-1 of the Special Mixed District and is contrary to ZR 42-10; There are no bulk regulations governing residential buildings in M1-5 District. (BSA to determine);” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5 zoning district within area B1 of the Special Tribeca Mixed Use District, a nine-story residential building with six dwelling units and a ground floor accessory parking space, which is contrary to ZR § 42-10 and; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in the *City Record*, with a continued hearing on September 25, 2007, and then to decision on October 30, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the application on condition that the applicant adopt a construction management plan designed to minimize the impact of construction on surrounding historic buildings and avoid the use of a hydraulic pile-driving method, and further recommended that the applicant consider retail uses for the ground floor; and

WHEREAS, certain neighbors, some of whom were represented by counsel (the “Opposition”) provided testimony and made submissions in opposition to this application; the Opposition contends that (1) the building is not compatible with neighborhood character; (2) the proposed construction could endanger nearby buildings; and (3) the applicant should have analyzed the feasibility of retaining the pre-existing parking lot; and

WHEREAS, the subject premises is located at the northwest corner of West Broadway and North Moore Street, with frontage on both streets, and has 4,207 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5 zoning district within Area B1 of the Special Tribeca Mixed Use District; and

WHEREAS, the site is currently occupied by a 30-space parking lot, with an advertising billboard; and

WHEREAS, the applicant originally proposed a seven-unit residential building with a floor area of 23,139 sq. ft. (5.50 FAR), a street wall height of 72’-0”, a total building height of 108’-0”, and one accessory parking space; and

WHEREAS, the current proposal is for a six-unit residential building with a floor area of 22,911 sq. ft. (5.45 FAR), a street wall height of 72’-0”, a total building height of 108’-0”, and one accessory parking space; and

WHEREAS, as to the proposed building, (1) the cellar level will be occupied by storage and accessory use, (2) the first floor will be occupied by a residential entrance on North Moore Street, the lower portion of a duplex residential unit, a 350 sq. ft. accessory parking space, and a 1,204 sq. ft. courtyard, (3) the second floor will contain the upper portion of the duplex residential unit, (4) the third through sixth floors will each be occupied by individual floor-through residential units, and (5) the seventh through ninth floors will be occupied by a three-story penthouse unit surrounded by a terrace on both streetfronts, for a total of six residential units; and

WHEREAS, further, the proposed building will provide a setback above the sixth floor on both the West Broadway and North Moore frontages at a height of 72’-0”, with a 10’-0” setback on the West Broadway frontage and 15’-0” setback on the North Moore frontage and will reach a height of 108’-0” above the ninth floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary

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hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site is irregularly-shaped; and

WHEREAS, as to size, the applicant represents that the small size of the lot results in an inefficient floor plate, in which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms) which is comparable in size to a core that could serve a larger floor plate; and

WHEREAS, the applicant represents that this condition results in a higher percentage of non-revenue generating floor area than for a building with a larger floor plate; and

WHEREAS, as to the site's shape, the applicant states that it is a six-sided irregular shape characterized by an unusual obtuse angle due to its location at the intersection of West Broadway and North Moore Street; and

WHEREAS, specifically, the applicant states that the site is bounded on the east side by West Broadway, with 52'-10.5" of frontage; and on the south by North Moore Street, with 51'-0.75" of frontage; and

WHEREAS, because of the site's unusual obtuse angle, and the large amount of street frontage in relation to the depth of the lot, there is a high ratio of exterior walls to usable interior which increases the cost of construction; and

WHEREAS, the applicant has identified premium construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, the applicant represents that the small size of the site and its irregular configuration would not accommodate efficient floor plates for a conforming development at the site; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram and a land use map of the area, which illustrates that the site is the only vacant parcel reflected on the radius diagram with a comparable lot size or shape; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) a conforming office building with ground floor retail use; (2) a conforming hotel; (3) the original proposed nine-story residential building with 5.5 FAR; and (4) a nine-story residential building with a 5.0 FAR; and

WHEREAS, at hearing, the Board asked the applicant to revise the financial analysis to eliminate 408 Greenwich Street from the comparables that establish the site value, since its high value may be attributed to the Board grant associated with the site; and

WHEREAS, in response, the applicant removed the reference to 408 Greenwich Street's value, reduced the site value and revised the financial analysis accordingly, and

WHEREAS, the feasibility study indicated that a conforming office building, a conforming hotel, and a residential building with 5.0 FAR, would not result a reasonable return, while the original proposal of 5.5 FAR would result in a reasonable return; and

WHEREAS, the Board questioned the analysis of the original proposal that contained a first floor unit with a below-grade cellar laundry room that counted as floor area; and

WHEREAS, the proposal was revised to eliminate the below-grade cellar/laundry floor area from the first floor unit, thereby reducing the FAR from 5.50 to 5.45; and

WHEREAS, further, the applicant adjusted the value for the ground floor unit and the financial analysis which indicated that the revised proposal would result in a reasonable return; and

WHEREAS, the Board also raised concerns regarding the feasibility analysis for the residential building with an FAR of 5.0 (lesser variance alternative) which contained a double-height unit on the ground floor of a nine-story building; and

WHEREAS, specifically, the Board questioned whether an eight-story building with the same FAR would be a more feasible alternative; and

WHEREAS, a response from the applicant demonstrated that an eight-story residential building with an FAR of 5.0 would yield a lower return than the nine-story residential building with the same FAR; and

WHEREAS, the applicant explained that units on the top floors afforded by the height of the nine-story building command a significant premium;

WHEREAS, the Board questioned whether the height premium of a nine-story building would offset the lower construction costs of an eight-story building, and whether the projected value of the ground floor double-height unit in the 5.0 FAR residential building reflected the premium associated with double-height space; and

WHEREAS, the applicant made a submission to the Board outlining the cost for the eight-story and nine-story 5.0 FAR alternatives and explaining the differences in cost for each line item; the applicant also supplied an analysis demonstrating that the double-height unit had been valued at a higher per square foot rate than the single-height ground floor unit and that the premium had been incorporated into the analysis; and

WHEREAS, as to the feasibility study, the Opposition testified that the applicant should have analyzed the feasibility of retaining the pre-existing parking lot; and

WHEREAS, in response, the applicant made a submission to the Board showing that the current use as an attended parking lot would provide an unreasonably low return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the

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immediate area has a high concentration of residential uses; and

WHEREAS, the applicant states that the residential use is consistent with the character of the area, and with the C6-2 zoning district directly adjacent to the site which allows residential use; and

WHEREAS, the applicant further states that in the subject M1-5 zoning district, buildings constructed prior to December 15, 1961 with a lot coverage of less than 5,000 sq. ft. are permitted to convert all but the first and second floors to residential use as of right; and

WHEREAS, the Opposition raised concerns at the hearing concerning the appropriateness of the proposed building's height and FAR to the surrounding area; and

WHEREAS, as to height and massing, the applicant states that the proposed building would be similar in height to existing buildings in the neighborhood; and

WHEREAS, the applicant notes that the building's height is within the parameters permitted for a conforming building in the subject M1-5 zoning district; and

WHEREAS, the applicant further states that there are buildings in the surrounding area that exceed the height and FAR of the proposed building; and

WHEREAS, nevertheless, at hearing, the Board asked the applicant to address the compatibility of the proposed bulk and building height to nearby buildings; and

WHEREAS, the applicant submitted information about nearby building heights which reflects that there are two buildings on the same block which are taller than the proposed building; and

WHEREAS, the applicant submitted an illustration noting the heights and FAR of buildings in proximity to the subject site; and

WHEREAS, specifically, this illustration shows two of the five existing buildings on the block have heights of 115'-0" and FARs of 8.4 and 8.84, respectively, and 11 buildings within the immediate vicinity exceed the height and FAR of the proposed building; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height and FAR are compatible with other buildings in the neighborhood; and

WHEREAS, the Board finds that the introduction of six dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Opposition raised a concern that the site is adjacent to several buildings which are historic in nature and which require extra measures for protection during construction, including underpinning; and

WHEREAS, the Board notes that the applicant has agreed to provide protection during construction to adjacent buildings and has submitted a construction management plan to the Board that will be approved by DOB prior to the issuance of any building permits; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed building of six dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, further, the Board notes that the applicant modified the application to reduce the number of units from seven to six and to eliminate the cellar/laundry room from the first floor unit, thereby reducing the FAR from 5.50 to 5.45; and

WHEREAS, the applicant analyzed the feasibility of a residential building with a 5.0 FAR and concluded that it would not provide a reasonable return; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, certain speakers at the hearing stated that they had not received the required notice of the hearing; and

WHEREAS, the applicant established that it had notified all property owners in accordance with Board procedures; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA070M, dated July 24, 2007; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, The New York City Landmarks Preservation Commission ("LPC") has determined on February 5, 2007 that the project site may be archaeologically sensitive and that artifacts from the 19th century may lie beneath the surface of the site. An archaeological documentary study dated May 2007 was submitted to LPC to determine which portions of the site may contain recoverable materials. The documentary study, which confirmed the site's potential sensitivity, has been reviewed and accepted by LPC on June 1, 2007. The June 1, 2007 LPC findings requested archaeological field testing. On

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June 25, 2007 LPC approved the field testing protocol with a stipulation that the applicant alert LPC when the field testing is scheduled to commence; and

WHEREAS, the Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 23, 2007 Environmental Assessment Statement, (2) an August 2006 Phase I Environmental Site Assessment (3) an August 2007 Phase II Environmental Site Investigation Report; and (iv) the August 2007 Remedial Action Plan (RAP) and Health and Safety Plan (HASP); and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, DEP approved the RAP and HASP on September 19, 2007 and concluded that the applicant may proceed with construction provided that a Remedial Closure Report, certified by a Professional Engineer, is submitted by the applicant to DEP showing that all remedial requirements have been properly implemented; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-5 zoning district within Area B1 of the Special Tribeca Mixed Use District, the construction of a nine-story, six-unit residential building, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received October 2, 2007” – twenty (20) sheets and “Received October 26, 2007” – one (1) sheet; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a six-unit residential building with a floor area of 22,911 sq. ft. (5.45 FAR), a street wall height of 72’-0”, a total building height of 108’-0”, and one accessory parking space;

THAT the construction protection plan for 7 North Moore Street, 8 Beach Street, 246 West Broadway, and 248-50 West Broadway that was submitted to the BSA, dated September 28, 2007, shall be followed;

THAT prior to the issuance of building permits, DOB shall inspect the site conditions and review and approve the construction protection plans for 7 North Moore Street, 8 Beach Street, 246 West Broadway, and 248-50 West Broadway, and shall modify such plans, if necessary;

THAT prior to the issuance of building permits, including any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or its

successor(s) shall complete the archaeological investigation to LPC’s satisfaction;

THAT prior to the issuance of any building permits, including any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or its successor(s) shall perform all the hazardous materials remedial measures and the construction health and safety measures delineated in the Remedial Action Plan and the Health and Safety Plan;

THAT the issuance of building permits shall be contingent upon the issuance of a Final Notice of Satisfaction or a Notice of No Objection by DEP indicating that the Remedial Action Plan and Health and Safety Plan have been completed to its satisfaction;

THAT DEP and LPC shall be contacted to coordinate the timing and completion of field testing and soil remediation activities;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 30, 2007.

71-07-BZ

APPLICANT– Walter T. Gorman, P.E., for Exxon Mobile Corporation, owner; Ted Zorbas, lessee.

SUBJECT – Application March 26, 2007 – Re-instatement for the continued use of a Variance (ZR §11-411 and §73-01(d)) which expired June 27, 2001 for the operation of a UG16 Gasoline Service Station (Exxon Mobil) in anC1-4/R-6 & R-5 zoning district.

PREMISES AFFECTED – 32-05 21st Street, south side 21st Street blockfront between Broadway and 33rd Avenue, Block 555, Lot 16, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 19, 2007, acting on Department of Buildings Application No. 402553508, reads in pertinent part:

“Proposal to extend the term of the zoning variance which expired on June 27, 2001 is contrary to the

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latest resolution adopted by the Board of Standards and Appeals under Cal. No. 274-61-BZ and contrary to C.O. #196421 which expired on June 27, 1991 and must, therefore, be referred back to the BSA for reinstatement of the variance since the variance granted under Cal. No. 274-61-BZ has lapsed"; and

WHEREAS, this is an application for a reinstatement of a prior Board approval to permit an automotive service station, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in the *City Record*, with continued hearings on July 24, 2007, August 21, 2007 and October 2, 2007, and then to decision on October 30, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommended approval of the application with the condition that the two curb cuts on Broadway be eliminated because they interfere with an existing MTA bus stop; and

WHEREAS, the site occupies a through lot on the southeast side of 21st Street, between Broadway and 33rd Avenue, partially within a C1-4 (R6B) zoning district and partially within an R5 zoning district; and

WHEREAS, the subject zoning lot has a total lot area of approximately 11,056 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,225 sq. ft. automotive service station building with a small convenience store, and five gasoline pump islands; and

WHEREAS, on June 27, 1961, under BSA Cal. No. 274-61-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses for a term of 20 years; and

WHEREAS, subsequently, the grant was amended several times to permit site modifications and to extend the term; and

WHEREAS, most recently, on March 3, 1992, the grant was extended for a period of ten years, to expire on June 27, 2001; and

WHEREAS, the applicant states that a new certificate of occupancy has not been obtained since the June 27, 1991 expiration of the latest one; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 274-61-BZ; and

WHEREAS, pursuant to ZR §11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has been no enlargement to the zoning lot; and

WHEREAS, the applicant states that the following site modifications have been made since the last grant: (1) the addition of two gasoline pump islands on the 21st Street frontage, (2) the addition of one gasoline pump island on the Broadway frontage, (3) the installation of a larger canopy above the gasoline pump islands, (4) the installation of an air machine and vacuum at the southeast corner of the site, (5) the installation of a planter at the corner of 33rd Avenue and 21st Street, and (6) the conversion of the office area to a small

convenience store; and

WHEREAS, initially, the applicant proposed to legalize all of the noted site modifications; and

WHEREAS, at hearing, the Board expressed concern about (1) the number of gasoline dispensers (five rather than the two approved) and (2) the size and location of the curb cuts and their potential interference with the existing MTA bus stop on Broadway adjacent to the site; and

WHEREAS, accordingly, the Board directed the applicant to eliminate the gasoline pump island on the Broadway frontage; and

WHEREAS, additionally, the Board directed the applicant to eliminate both curb cuts on the Broadway frontage and to reduce the size of the 76'-0" curb cut on 21st Street in order to improve traffic circulation at the site and along Broadway and 21st Street; and

WHEREAS, in response, the applicant revised the plans to reflect the elimination of the noted pump island and the two curb cuts on Broadway, and the replacement of the 76'-0" curb cut on 21st Street with two curb cuts with widths of 30'-0" each; and

WHEREAS, based on the above, the Board finds that the noted changes to the approved plans are appropriate; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411; and

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 under ZR § 11-411, for a reinstatement of a prior Board approval of gasoline service station; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received October 10, 2007"-(6) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on October 30, 2017;

THAT the above condition shall be listed on the certificate of occupancy;

THAT the site shall be brought into compliance with the BSA-approved plans and all conditions of this grant, and a new certificate of occupancy shall be obtained within one year of the date of this grant, on October 30, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the property, and location and size of the fence shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of

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plan(s)/configuration(s) not related to the relief granted.
Adopted by the Board of Standards and Appeals, October 30, 2007.

148-07-BZ

CEQR #07-BSA-096M

APPLICANT – Ivan Khoury, for Kerry Riorden, owner; Tribeca Spa of Tranquility, lessee.

SUBJECT – Application June 6, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment. The proposal is contrary to section 42-10. M1-5 zoning district within the Tribeca Mixed-Use Special District.

PREMISES AFFECTED – 462 Greenwich Street, 49’-8.5” south from the corner of Greenwich and Watts Streets, Block 224, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 8, 2007, acting on Department of Buildings Application No. 103109510, reads in pertinent part:

“Proposed work of spa/sports club is not permitted as-of-right in M1-5 zoning district and is contrary to ZR 42-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district within the Tribeca Mixed-Use Special District and the West Tribeca Historic District, the legalization of a physical culture establishment (PCE) on the first floor of a five-story mixed-use building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 2, 2007, after due notice by publication in *The City Record*, and then to decision on October 30, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Greenwich Street, between Watts Street and Desbrosses Street; and

WHEREAS, the PCE occupies the first floor of a five-story mixed-use building with residential use on the second through fifth floors; the PCE has a floor area of 1,667.42 sq. ft.; and

WHEREAS, the PCE is operated as Tribeca Spa of

Tranquility; and

WHEREAS, the Board notes that the site has been in operation since October 1, 2006; and

WHEREAS, the applicant represents that the services at the PCE include massages, body scrubs, and other body treatments; and

WHEREAS, the hours of operation are: Monday through Friday, 9:00 a.m. to 12:00 a.m.; Saturday, 9:00 a.m. to 1:00 a.m.; and Sunday, 10:00 a.m. to 12:00 a.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA096M, dated May 30, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district within the Tribeca Mixed-Use Special District and the West Tribeca Historic District,

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the legalization of a physical culture establishment on the first floor of a five-story mixed-use building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 6, 2007"-two(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 1, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 30, 2007.

39-06-BZ

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 zoning district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P.M., for deferred decision.

48-06-BZ

APPLICANT – Jack A. Addesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under § 72-21 to allow an eight (8) story residential building containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is

contrary to use regulations (§ 42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Jack Addesso, Bill Seevers and Mario Cangeras.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

134-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under § 72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking spaces. Proposal is contrary to regulations for use (§ 22-12), floor area and FAR (§ 23-141), open space (§ 23-141), front yard (§ 23-45), height and setback (§ 23-631) and maximum number of dwelling units (§ 23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

212-06-BZ

APPLICANT – Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application August 22, 2006 – Variance (§72-21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to §22-10.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

227-06-BZ

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot

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90, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik, Adam Rothkrug and Mark Lipton.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

65-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Ship Management Corp., owner.

SUBJECT – Application March 15, 2007 – Variance (§72-21) to allow a one-story (UG 6) retail building to violate use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 146-93 Guy R. Brewer Boulevard, northeastern intersection of 147th Avenue and Guy R. Brewer Boulevard, Block 13354, Lot 12, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

78-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application April 12, 2007 – Special Permit (§73-36) to allow the operation of a PCE on the first floor of a two-story commercial building. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Sam Chera.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

730-72-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application October 10, 2007 – Amendment to permit the operation of a Physical Culture Establishment on the first floor of the enlarged portion of an existing building.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Sam Chera.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

79-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Power Test Realty Company, LP, owner.

SUBJECT – Application April 12, 2007 – under §11-411 to re-establish the previously granted variance permitting the operation of an automotive service station with accessory uses which is not permitted as-of-right in a C2/2R3-2 zoning district as per §32-10 of the zoning resolution. The prior BSA grant was under calendar number 711-53-BZ and expired on July 24, 2001.

PREMISES AFFECTED – 114-05 Farmers Boulevard, east side of Farmers Boulevard between Murdock Avenue and 114th Road, Block 11007, Lot 5, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P. M., for continued hearing.

124-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gino Masci, owner.

SUBJECT – Application May 16, 2007 – Under (§ 72-21) to allow UG 6 (eating and drinking) on the first floor and cellar of an existing seven-story building, contrary to use regulations (§ 42-14(d)(2)(b)). M1-5B district.

PREMISES AFFECTED – 521 Broome Street, between Broome and Watts Streets, midblock between Thompson Street and Sixth Avenue, Block 476, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Doris Diether of Community Board #2.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

158-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 184-20 Union Turnpike Realty, LLC, owner.

SUBJECT – Application June 11, 2007 – Variance (§ 72-21) to allow a one-story commercial retail building (UG 6), contrary to use regulations (§ 22-10). R1-2 district.

PREMISES AFFECTED – 184-20 Union Turnpike, 110' west of southwest corner of the intersection of Union

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Turnpike and Chevy Chase Street, Block 7248, Lot 39, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Howard A. Fried.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

167-07-BZ

APPLICANT – Harold Weinberg, P.E., for Alex Sirota, owner.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage, floor area (§23-141) and less the required rear yard (§23-47) in an R3-1 zoning district. This application also seeks to convert from a two family residence to a one family residence.

PREMISES AFFECTED – 220 Amherst Street, west side 140' south of Oriental Boulevard between Oriental Boulevard and Esplande, Block 8738, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for decision, hearing closed.

202-07-BZ

APPLICANT – Cozen O'Connor Attorneys, for Frank J. Martino Revocable Living Trust, owner; Mattan Basseter, lessee.

SUBJECT – Application August 14, 2007 – Special Permit under §73-19 to allow a religious pre-school (UG3). The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2160-2170 McDonald Avenue, west side of McDonald Avenue, 40' north of Avenue T, Block 7087, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: John Gorman, Mary Placanica, John Antonides, Anthony Piana, Leonard Beninson and Theresa Marchitello.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for continued hearing.

213-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Eisenreich, owner.

SUBJECT – Application September 18, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1217 East 26th Street, East 26th Street between Avenue L and Avenue M, Block 7644, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for decision, hearing closed.

215-07-BZ

APPLICANT – Sheldon Lobel, P.C., for YMCA of Greater New York, owner.

SUBJECT – Application September 20, 2007 – Variance (§72-21) to permit an enlargement of the existing community facility building. The proposal requests waivers of lot coverage (§24-11) and sky exposure plane (§24-521). R5B district.

PREMISES AFFECTED – 69-02 64th Street, southwest corner of the intersection of Catalpa Avenue and 64th Street, Block 3631, Lot 6, Borough of Queens.

COMMUNITY BOARD #5Q

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APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to December
4, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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223-90-A	114 Kreischer Street, Staten Island
175-95-BZ	205-35 Linden Boulevard, Queens
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181-07-BZ	72-18 Amstel Boulevard, Queens

DOCKETS

New Case Filed Up to November 20, 2007

245-07-BZ

220 Water Street, Between Water and Bridge Streets, Block 41, Lot(s) 17, Borough of Brooklyn, Community Board: 2. Variance to allow the residential conversion of an existing 5 story building located in a M1-2 district.

246-07-A

97 Victory Boulevard, West side of Victory Boulevard, 180 ft south of Caron Avenue., Block 23, Lot(s) 55, Borough of Staten Island, Community Board: 1. Proposed construction of a mixed use building located within the bed of a mapped street contrary to general City Law Section 35 . C2-1 Zoning district.

247-07-A

246 Spring Street, Between Varick Street and Hudson, Block 491, Lot(s) 36, Borough of Manhattan, Community Board: 2. Appeal seeking to revoke permits and approvals to construct a condominium hotel in an M1-6 zoning district. Applicant argues that its residential use violates the underlying M1-6 zoning district prohibitions. M1-6 zoning district.

248-07-BZ

32-15 60 Street, Between Northern Boulevard and 32nd Avenue., Block 1161, Lot(s) 29, Borough of Queens, Community Board: 1. Variance to allow legalization of existing 3-story, two family residence on an existing narrow lot (25' X100').

249-07-BZ

1865 East 28th Street, East side, 215'-0" north of Avenue S between Avenue R and Avenue S., Block 6834, Lot(s) 58, Borough of Brooklyn, Community Board: 15. Special Permit (73-622) for the enlargement of an existing single family residence. This application seeks to vary side yard requirement (23-461) in an R3-2 zoning district.

250-07-BZ

837 Belmont Avenue, Northeast corner of the intersection of Atkins Avenue and Belmont Avenue., Block 4023, Lot(s) 45, Borough of Brooklyn, Community Board: 5. Variance to permit the construction of a detached two-story, two-family dwelling on a vacant corner lot that does not provide a required front-yard or a required side

yard, contrary to use regulations.

251-07-A

63 Houston Street, Between Houston Street and Willowbrook Road., Block 1478, Lot(s) 1, Borough of Staten Island, Community Board: 1. Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3A zoning district. R3X zoning district.

252-07-A

65 Houston Street, Between Houston Street and Willowbrook Road., Block 1478, Lot(s) 543, Borough of Staten Island, Community Board: 1. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R3A zoning district. R3X zoning.

253-07-A

104 Willowbrook Road, Between Houston Street and Willowbrook Road., Block 1478, Lot(s) 150, Borough of Staten Island, Community Board: 1. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R3A zoning district. R3X zoning.

254-07-A

106 Willowbrook Road, Between Houston Street and Willowbrook Road., Block 1478, Lot(s) 151, Borough of Staten Island, Community Board: 1. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R3A zoning district. R3X zoning.

255-07-A

40-54 Francis Lewis Boulevard, Corner of Francis Lewis Boulevard and 42nd Avenue., Block 5361, Lot(s) 10,12, Borough of Queens, Community Board: 11. Construction within mapped street, contrary to Section 35 of the General City Law.

DOCKETS

256-07-BZ

1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph., Block 1339, Lot(s) 39, Borough of Brooklyn, Community Board: 8. Variance to allow a cellar and three-story, three family attached dwelling.

257-07-BZ

3 East 101st Street, Located on the west side of Madison Avenue between 101st and 102nd Streets., Block 1607, Lot(s) 3,5,59, Borough of Manhattan, Community Board: 11. Variance to allow a community facility, contrary to bulk regulations.

258-07-BZ

105-55 Horace Harding Expressway, North west corner of 108th Street, Block 1964, Lot(s) 23, Borough of Queens, Community Board: 4. Special Permit (72-211) to allow reconstruction of an automotive service station.

259-07-A

41-97 Parsons Boulevard, Ash Avenue and Parsons Boulevard., Block 5374, Lot(s) 11, Borough of Queens, Community Board: 7. Proposed construction of an eight story residential with a community facility and parking on the ground floor within the bed of mapped street (Ash Drive) contrary to General City Law Section 35. R6 Zoning District.

260-07-A

14 Devon Walk, West side of Devon Walk., Block 16350, Lot(s) 400, Borough of Queens, Community Board: 14. Reconstruction and enlargement of an existing one family home not fronting on mapped street, contrary to General City Law and the proposed upgrade of the private disposal system in the bed of the service road contrary to Building Department Policy. R4 zoning district.

261-07-A

135 North 9th Street, North side of North 9th Street, 125'-0" from north east corner of Berry Street and North 9 Street - in east direction., Block 2304, Lot(s) 36, Borough of Brooklyn, Community Board: 1. An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 (M1-2) zoning district. R6B Zoning District.

262-07-BZ

23 East 38th Street, South east corner of East 38th Street and Madison Avenue., Block 869, Lot(s) 25 (old, Borough of Manhattan, Community Board: 6. Variance for the reinstatement of previously approved variance 461-37-BZ as per 11-411 ZR. Continued use of lot for right of way and parking and storage for 18 motor vehicles open Monday to Saturday-7AM to Midnight.

263-07-BZ

1169 East 21st Street, East 21st Street between Avenue J and Avenue K., Block 7603, Lot(s) 29, Borough of Brooklyn, Community Board: 14. Special Permit (73-622) for the enlargement of a single family home.

264-07-A

76 Romer Road, East side of Romer Road; 449.51' north of Four Corners Road., Block 870, Lot(s) 111, Borough of Staten Island, Community Board: 2. Proposed legalization of an existing single family home not fronting a mapped street is contrary to General City Law Section 36. R1-1(SNAD) (SGMD)

265-07-A

57 West 70th Street, North side of 70th Street, 160 feet east of corner formed by 70th Street and Columbus Avenue., Block 1123, Lot(s) 7, Borough of Manhattan, Community Board: 7. An appeal challenging the Department of Building's interpretation that the rear yard structure (porch) is a permitted obstruction that complies with Section 23-44. R8B zoning district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 11, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 11, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

16-36-BZII

APPLICANT – Vassalotti Associates, Architects, for Cumberland Farms Incorporated, owners.
SUBJECT – Application July 17, 2007 – Extension of Term of a previously granted variance for the operation of a gasoline service station (Exxon) which expired November 1, 2007 in a C2-2/R-5 zoning district.
PREMISES AFFECTED – 1885 Westchester Avenue, northwest corner of Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.
COMMUNITY BOARD #9BX

673-81-BZ

APPLICANT – David L. Businelli, for Joseph Montalbano, owner.
SUBJECT – Application August 20, 2007 – Extension of Term of variance granted pursuant to §72-21 permitting, in an R3-2 zoning district, the erection of a one story and cellar retail store and office building with accessory parking in the open area. The application was previously approved for a 15 year term which expired on January 5, 1997.
PREMISES AFFECTED – 2075 Richmond Avenue, East side of Richmond Avenue 461.94' N. feet from corner of Rockland Avenue, Block 2015, Lot 28, Borough of Staten Island.
COMMUNITY BOARD #2 SI

67-95-BZ

APPLICANT – Francis R. Angelino, Esq., for Times Square JV LLC, owner; Town Sports International, lessee.
SUBJECT – Application May 17, 2007 – Extension of Term of a previously approved Special Permit granted pursuant to §73-36 allowing the operation of a physical culture establishment on the 14 & 15 floors of the Crowne Plaza Hotel located in a C6-7T (MID) zoning district.
PREMISES AFFECTED – 1591/1611 Broadway, west side, the blockfront between West 48th & West 49th Streets, Block 1020, Lot 46, Borough of Manhattan.
COMMUNITY BOARD #5M

APPEALS CALENDAR

155-07-A

APPLICANT – Jorge F. Canepa, for Sonja Keyser, owner.
SUBJECT – Application June 11, 2007 – Proposed construction of a swimming pool, tennis court and changing room located within the bed of a mapped street (Tiber Place) contrary to General City Law Section 35. R1-2 Zoning District.
PREMISES AFFECTED – 55 Chipperfield Court, 413.88' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 21, Borough of Staten Island.
COMMUNITY BOARD #2SI

240-07-A

APPLICANT – Sheldon Lobel, P.C., for 1270 Bay Ridge Parkway Development, LLC, owner.
SUBJECT – Application October 24, 2007 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R4/C1-2 zoning district. R4-1 zoning district.
PREMISES AFFECTED – 1270 Bay Ridge Parkway, 12th Avenue and 13th Avenue, Block 6221, Lot 34, Borough of Brooklyn.
COMMUNITY BOARD #10BK

DECEMBER 11, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 11, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

197-05-BZ

APPLICANT – Blank Rome LLP, by Marvin Mitzner, for B & E 813 Broadway, LLC & Broadway Realty, owner.
SUBJECT – Application August 17, 2005 – Variance (§ 72-21) to allow a 11-story residential building with ground floor retail; contrary to regulations for FAR and open space ratio (§ 23-142), front wall height, setback and sky-exposure plane (§ 33-432), and maximum number of dwelling units (§ 23-22). C6-1 district.
PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.
COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

CALENDAR

JANUARY 8, 2008, 1:30 P.M.

JANUARY 8, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 8, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1038-80-BZ, VII

APPLICANT – Davidoff Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application November 5, 2007 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expires on January 6, 2008.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

222-03-BZ, Vol. II

APPLICANT – Alfonse Duarte, for Emanuel T. Lorras, owner.

SUBJECT – Application November 15, 2007 – Extension of Time to Complete Construction of a Variance (72-21) previously granted on November 18, 2003 for the enlargement of a single family home, in an R-4 zoning district, which expired on November 18, 2007

PREMISES AFFECTED – 30-04 73rd Street, south west corner of 30th Avenue, Block 1121, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 8, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

160-06-BZ

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under section 72-21 to permit the proposed one-story & cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to section 22-00. R3-1 district.

PREMISES AFFECTED – 2199 (aka 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

293-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Veronica Nicaastro, owner.

SUBJECT – Application November 6, 2006 – Variance (§72-21) for the proposed enlargement of an existing one-family dwelling which exceeds the permitted floor area and does not provide the required open space (23-141) in an R1-2 zoning district.

PREMISES AFFECTED – 54-07 254th Street, east side of 254th Street, 189' north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

209-07-BZ

APPLICANT – Raymond J. Irrera, for The Summit School, owner.

SUBJECT – Application August 29, 2007 – Variance (§72-21) to enlarge and maintain the use of the existing school. The proposal is contrary to floor area (24-11), enlargement not permitted obstruction in the required front yard (24-33), and front yard (24-34). R1-2 district.

PREMISES AFFECTED – 187-30 Grand Parkway, southwest corner of 188th Street and Grand Central Parkway, Block 9969, Lot 12, Borough of Queens.

COMMUNITY BOARD #8Q

CALENDAR

235-07-BZ

APPLICANT – Law Office of Fredrick A. Becker for Shoshana Hager and David Hager.

SUBJECT – Application October 16, 2007 – Special Permit (73-622) for the enlargement of an existing single family residence. This application seeks to vary open space ratio and floor area (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1148 East 27th Street, East 27th Street between Avenue K and Avenue L, Block 7626, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 20, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, a legalization of an accessory convenience store, and an extension of term for a previously granted variance for an automotive service station, which will expire on July 22, 2008; and

WHEREAS, a public hearing was held on this application on July 10, 2007 after due notice by publication in *The City Record*, with a continued hearing on October 30, 2007, and then to decision on November 20, 2007; and

WHEREAS, the site is located on the northeast corner of the intersection of Bailey and Heath Avenues; and

WHEREAS, the site is located in an R6 zoning district and is occupied by an automotive service station with an accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 1958 when, under the subject calendar number, the Board granted a variance permitting the construction and maintenance of the existing automotive service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on July 25, 2000, the grant was amended to extend the term for ten years from the expiration of the prior grant on July 22, 1998; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained after the most recent amendment and extension of term; and

WHEREAS, the applicant also seeks to legalize a convenience store which occupies the former accessory office space; and

WHEREAS, the Board notes that because the convenience store is located within the service station building and on the same zoning lot as the service station, and the area of its selling floor is only 250 sq. ft., it qualifies as an accessory use to the automotive service station; and

WHEREAS, based on observations from site visits, the Board asked the applicant to explain the nature of taxicab and limousine vehicles parked at the premises; and

WHEREAS, the applicant responded that the taxis and limousines seen parked on the premises were there pursuant to an informal agreement, which could be terminated; and

WHEREAS, at hearing, the Board directed the applicant to eliminate all taxi and limousine parking on the site and to install signage indicating that parking is limited to employees and patrons of the automotive service station; and

WHEREAS, the applicant subsequently submitted photographs reflecting that taxi and limousine parking had been eliminated and agreed to install the signage requested by the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and legalization of an accessory convenience store are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on July 22, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 22, 2008 to expire on July 22, 2018, to permit the operation of an accessory convenience store, and to permit an extension of time to obtain a certificate of occupancy, to expire on May 20, 2008, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received April 11, 2007’–(3) sheets; and *on further condition*:

MINUTES

THAT the term of this grant shall expire on July 22, 2018;

THAT signage be installed indicating the parking will be limited to employees and patrons of the automotive service station;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within six months of the date of this grant, by May 20, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 201102458)

Adopted by the Board of Standards and Appeals, November 20, 2007.

139-92-BZ

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53’ east of 52nd Street, Block 1315, Lot 76, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Samuel H. Valencia.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an extension of term that expired on March 7, 2007; and

WHEREAS, a public hearing was held on this application on June 5, 2007, after due notice by publication in *The City Record*, with continued hearings on July 17, 2007, August 21, 2007, September 18, 2007 and October 16, 2007, and then to decision on November 20, 2007; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and

Commissioner Hinkson; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, citing concerns about the management and operation of the site and its incompatibility with the neighborhood; and

WHEREAS, the subject premises is located on the north side of Roosevelt Avenue, east of 52nd Street; and

WHEREAS, on March 7, 1995, the Board granted a special permit application pursuant to ZR § 73-244, to permit, in a C2-2 (R6) zoning district, the use of the first floor and cellar of an existing three-story building as an eating and drinking establishment with dancing; and

WHEREAS, subsequently, the Board has amended and extended the grant three times; and

WHEREAS, most recently, on March 28, 2006, the Board granted an extension of term to expire on March 7, 2007; and

WHEREAS, at hearing, the Board asked the applicant to explain the current status of the business and whether there were any outstanding allegations against its employees or operators; and

WHEREAS, in response, the applicant stated that the business is currently not in operation but will re-open under new management; and

WHEREAS, further, the attorney who represented the employees stated that all summonses associated with the operation of the business had been dismissed; and

WHEREAS, additionally, the Board raised concerns about a tent and overhead beams at the rear of the property and asked the applicant to document that all construction was approved by DOB; and

WHEREAS, in response, the applicant (1) removed the tent in the rear yard and provided photographs reflecting its removal and (2) explained that the beams are required to support the air-conditioning units; and

WHEREAS, the applicant submitted DOB permits associated with the construction; and

WHEREAS, based on the above, the Board finds that a three-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated March 7, 1995, so that as amended this portion of the resolution shall read: “to grant an extension of the term of the special permit for a term of three years; *on condition* that the use and operation of the eating and drinking establishment with dancing shall substantially conform to the previously-approved drawings; and *on further condition*:

THAT this grant shall be limited to a term of three years from March 7, 2007, expiring March 7, 2010;

THAT the above condition, and all conditions on the current Certificate of Occupancy, shall appear on the new Certificate of Occupancy;

THAT all conditions from prior resolutions not

MINUTES

specifically waived by the Board remain in effect;

THAT the Department of Buildings shall review the approved plans for compliance with all safety regulations, including egress and waiting area requirements;

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. 400322469)

Adopted by the Board of Standards and Appeals, November 20, 2007.

189-99-BZ

APPLICANT – Kenneth H. Koons, for 460 Quincy Avenue Realty Corporation, owner.

SUBJECT – Application September 12, 2007 – Extension of Term for a variance previously granted for the operation of a UG6 grocery store (Nana Food Center), with a one family dwelling above, in an R3-A zoning district which expired on November 14, 2005; for the Extension of Time to obtain a C of O which expired on February 3, 2004; for an amendment to legalize the increase in signage and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 460 Quincy Avenue, southeast corner of Dewey Avenue and Quincy Avenue, Block 5578, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, an extension of the term of a previously granted variance permitting a food store (Use Group 6) in an R3-A zoning district, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, and then to decision on November 20, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Ottley-Brown and Commissioner Hinkson; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application, requesting that the term be limited

to three years and that the applicant obtain a new certificate of occupancy; and

WHEREAS, the subject premises are located on the southeast corner of Quincy Avenue and Dewey Avenue, within an R3-A zoning district; and

WHEREAS, the site is occupied by a two-story mixed-use residential/commercial building with a food store (Use Group 6) on the first floor and residential use above; and

WHEREAS, in 1960, under BSA Cal. No. 316-59-BZ, the Board granted a variance to permit the food store with a one-family dwelling above for a term of twenty years; and

WHEREAS, on February 2, 1980, a request for an extension of the term was denied; the applicant represented that the denial was based on non-compliance with business sign regulations; and

WHEREAS, on November 14, 2000, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit the legalization of the existing food store for a term of five years subject to certain conditions; and

WHEREAS, on February 3, 2004, the Board reopened and amended the resolution to permit an extension of the time to obtain a certificate of occupancy for an additional two years, to expire February 3, 2006; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, additionally, the applicant also seeks an additional ten-year term; and

WHEREAS, the applicant also seeks to modify the previously approved signage; and

WHEREAS, the applicant represents that the signage complies with relevant zoning district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 14, 2000, so that as amended this portion of the resolution shall read: “to grant a six-month extension of time to obtain a certificate of occupancy and to grant a ten-year extension of term from the expiration of the prior grant, to expire on November 14, 2015; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received September 12, 2007”-(7) sheets and “October 5, 2007”-(1) sheet; and *on further condition*:

THAT this grant shall expire on November 14, 2015;

THAT the above condition and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by May 20, 2008;

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;

MINUTES

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 App. No. 210012797)

Adopted by the Board of Standards and Appeals, November 20, 2007.

8-05-BZ

APPLICANT – Sheldon Lobel, P.C., for James Pi, owner.
SUBJECT – Application January 18, 2005 – To consider dismissal for lack of prosecution – propose use, bulk and parking variance to allow a 17 story mixed-use building in R6/C1-2 and R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, a/k/a 51-35 Reeder Street, entire frontage on Queens Boulevard between Reeder Street and Broadway, Block 1549, 41 (a/k/a 41 & 28), Borough of Queens.

COMMUNITY BOARD # 4Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

Adopted by the Board of Standards and Appeals, November 20, 2007.

997-84-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for 222 Union Associates, owner.

SUBJECT – Application March 2, 2007 – Extension of Term/Amendment/Waiver for a special permit which expired on September 10, 2005, to revise the BSA plans to reflect existing conditions utilizing the Board’s formula for attended parking of one space per 200 square feet, and the legalization of the existing automobile lifts within the parking garage.

PREMISES AFFECTED – 800 Union Street, southside of Union Street, between 6th and 7th Avenues, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for decision, hearing closed.

223-90-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Frank A. Burton, Jr., owner.

SUBJECT – Application April 3, 2007 – Amendment of a previous grant under the General City Law Section 36 to remove a Board condition requiring that no permanent Certificate of Occupancy shall be issued until a Corporation Counsel Opinion of Dedication has been obtained for Kresicher Street and to approve the enlargement of the site and building. M1-1 Zoning district.

PREMISES AFFECTED – 114 Kreischer Street, west side of Kreischer Street, 140.8’ north of Androvette Street, Block 7408, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for decision, hearing closed.

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0’ east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

APPEARANCES –

For Applicant: Alan Sigman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for decision, hearing closed.

MINUTES

293-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Veronica Nicastro.

SUBJECT – Application November 6, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the enlargement of an existing one-family dwelling which exceeds the permitted floor area and does not provide the required open space (23-141) in an R1-2 zoning district. PREMISES AFFECTED – 54-07 254th Street, east side of 254th Street, 189’ north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Withdrawn from the dismissal calendar.

299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§ 22-10). R7-1 district.

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100’ north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx

COMMUNITY BOARD # 6BX

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for decision, hearing closed.

146-59-BZ

APPLICANT – Larry Dean Merritt, for Larry Dean Merritt, owner.

SUBJECT – Application June 20, 2007 – Z.R. §11-411 for the Extension of Term of a previously granted variance for the operation of a (UG8) parking lot which expired on May 6, 2007 in an R8 zoning district.

PREMISES AFFECTED – 686-88 Gerard Avenue, east side 180’ north of 153rd Street, Block 2473, Lot 8, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Larry Dean Merritt.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

147-07-BZY

APPLICANT – Cozen O’Connor Attorneys, for North Seven Associates, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Geis and Howard Hornstein.

For Opposition: Peter Gillespie and Stephanie Raye.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown.....3

Negative:.....0

Recused: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to December 11, 2007, at 10 A.M., for decision, hearing closed.

64-07-A

APPLICANT – Stuart A. Klein, Esq., for Sidney Frankel, owner.

SUBJECT – Application March 12, 2007 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.

PREMISES AFFECTED – 1704 Avenue N, a/k/a 1702-04 – 1411-1421 East 17th Street, southeast corner lot at intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Edward McCabe, Ellen Messing and Elizabeth Wads.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

140-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP

Owner: Breezy Point Cooperative, Incorporated

Lessee: Thomas Carroll

SUBJECT – Application May 25, 2007 – Appeals seeking to reverse the Department of Building’s decision to revoke permits and approvals for a one family home. R4 Zoning district.

PREMISES AFFECTED – 607 Bayside Drive, North west intersection of Bayside Drive and zoning street know as Service Lane, Block 16350, Lot 300, Borough of Queens.

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COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for an adjourned hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 12:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, NOVEMBER 20, 2007 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

59-06-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Paul Schillace, owner, Carvel Ice Cream, lessee.

SUBJECT – Application April 3, 2006 – Zoning variance under §72-21 to allow a one-store retail building (UG 6) with thirteen (13) unenclosed accessory parking spaces contrary to use regulations (§ 22-00); R4 district.

PREMISES AFFECTED – 1006 East 233rd Street, Southeast corner of Paulding Avenue, Block 4879, Lot 40, Borough of The Bronx.

COMMUNITY BOARD # 12BX

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Adopted by the Board of Standards and Appeals,
November 20, 2007.

144-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuta Shlesinger, owner.

SUBJECT – Application May 30, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage, (§23-141) and side yards (§23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 3810 Bedford Avenue, southwest corner of Bedford Avenue and Quentin Road, Block 6807, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 10, 2007, acting on Department of Buildings Application No. 30228274019, reads in pertinent part:

“Exceeding allowable floor area as per ZR 23-141

Required side yards as per ZR 23-461”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on September 11, 2007, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2007, and then to decision on November 20, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, 50 feet south of Quentin Road; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 2,514 sq. ft. (0.83 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,514 sq. ft. (0.83 FAR) to 3,143 sq. ft. (1.04 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will maintain the existing non-complying front yard of 11’-0” (a front yard with a minimum depth of 15’-0” is required), and a non-complying side yard of 3’-0” (side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the enlargement consists of constructing two enlargements at portions of the home only built to the basement level, above the garage and at the entryway; and

WHEREAS, specifically, the applicant proposes to create additional living space on the first floor by enclosing an entryway porch and to build a new room above the basement level garage; and

WHEREAS, the applicant initially proposed to also

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provide 651.9 sq. ft. of floor area at the attic level, resulting in an FAR of 1.30; and

WHEREAS, at the Board's direction, the applicant revised the application to reduce the FAR; and

WHEREAS, the applicant represented that the attic was not habitable since the floor to ceiling height would not exceed 5'-0" due to the addition of trusses; and

WHEREAS, the applicant represents that the trusses in the attic are required for structural support; and

WHEREAS, the applicant subsequently eliminated all habitable floor area in the attic level and revised the proposal to restrict the use of the attic to access for mechanical space, permitted under zoning district regulations; and

WHEREAS, the Board also asked the applicant to verify that the application is for the enlargement of a single-family home to be used as a single-family home; and

WHEREAS, the applicant represents that the single-family status of the home will be maintained; 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, 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 proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and side yards, contrary to ZR §§ 23-141 and 23-461; *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 November 8, 2007"-(8) sheets; and *on further condition*:

THAT there shall be no habitable room in the attic;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,143 sq. ft. (1.04 FAR), 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; 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, November 20, 2007.

146-07-BZ

CEQR #07-BSA-095M

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77th Street, North side of East 77th Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stuart Beckerman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2007, acting on Department of Buildings Application No. 104747204, reads in pertinent part:

“The proposed enlargement and conversion is not permitted as-of-right in zoning district R8B and is contrary to ZR 22-10 and requires BSA special permit pursuant to ZR 11-412;” and

WHEREAS, this is an application under ZR § 11-412 to permit, within an R8B zoning district, the structural alteration and enlargement of an existing nonconforming two-story public parking garage (Use Group 8) to add a first floor

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mezzanine, third floor, and to expand the cellar to increase the capacity of the garage from 96 cars to 162 cars; and

WHEREAS, a public hearing was held on this application on July 21, 2007, after due notice by publication in *The City Record*, with continued hearings on September 18, 2007 and October 16, 2007, and then to decision on November 20, 2007; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application provided that the applicant use a non-illuminated accessory sign at the subject building; and

WHEREAS, the site is located on the north side of East 77th Street, 144 ft. west of York Avenue within an R8B zoning district; and

WHEREAS, the site is occupied by a two-story public parking garage with 14,572 sq. ft. of floor area, with full lot coverage at the first and second floors of the of 7,236 sq. ft. lot; and

WHEREAS, on April 8, 1924, under BSA Cal. No. 221-24-BZ, the Board approved an application to permit the construction of a two-story garage for the storage of more than five motor vehicles – the existing 96-car garage - in a business district; and

WHEREAS, in an earlier iteration of the current proposal, the applicant proposed a 147-car three-story garage with a total floor area of 20,543 sq. ft. (2.8 FAR), a wall height of 49'-10", and a 20'-0" rear yard setback at the third floor; and

WHEREAS, the current proposal is for a 162-car three-story garage with a total floor area of 19,869 square feet (2.75 FAR), a wall height of 59'-0", and a 30'-0" rear yard setback above the second floor; and

WHEREAS, as to the proposed building: (1) the cellar level will be expanded to approximately 7,236 sq. ft. of floor space; (2) a mezzanine containing 263 sq. ft. in floor area will be constructed at the first floor; (3) a third floor will be constructed with approximately 5,100 sq. ft. of floor area; and (4) connecting ramps and a vehicle elevator will be constructed to allow transit between floors; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for alteration and enlargement of the site, provided that such enlargement does not exceed fifty percent of the floor area existing on December 15, 1961; and

WHEREAS, the applicant proposes to add 5,297 sq. ft. of floor area to the existing 14,572 sq. ft. building; and

WHEREAS, the Board notes that the proposed floor area increase of 36.4 percent is permitted under ZR § 11-412; and

WHEREAS, at hearing, the Board raised concerns about the increased non-compliance of the rear yard, originally proposed at 20'-0" above the second floor; and

WHEREAS, the applicant responded by increasing the rear yard above the second floor from 20'-0" to 30'-0"; and

WHEREAS, the applicant notes that increasing the rear yard above the second floor reduced the proposed floor area and the capacity of the garage; and

WHEREAS, accordingly, the applicant proposes to raise the floor-to-ceiling height of the third floor to 25'-0" from the 15'-0" originally proposed, to accommodate triple-level auto stackers; and

WHEREAS, at hearing, the Board questioned whether the proposed floor to ceiling height was necessary to accommodate the triple-level stackers; and

WHEREAS, the applicant submitted specifications of triple stackers approved by the Department of Buildings that required the requested floor to ceiling height; and

WHEREAS, the applicant further noted that the height of the enlarged building is within the maximum base height of 60'-0" and is less than the 75'-0" maximum total height permitted in the zoning district and the height of both abutting buildings; and

WHEREAS, at hearing, the Board questioned whether the third floor enlargement could be set back by five feet in the front to align the building's street wall with those of the adjacent buildings on East 77th Street; and

WHEREAS, the applicant responded that a 5'-0" setback would create a practical difficulty in accommodating the car elevator which is 22'-0" deep, and would require the structural support of the building to be reconfigured and reconstructed; and

WHEREAS, the applicant originally proposed no reservoir spaces; the Board questioned whether cars waiting to enter the garage would block pedestrians and vehicular traffic on the street; and

WHEREAS, the applicant subsequently agreed to provide nine reservoir spaces, representing five percent of the total of 162 spaces, and assured the Board that this number was sufficient for a garage of this size located in a predominately residential neighborhood, where most cars would be parked long term on a monthly basis; and

WHEREAS, at hearing, the Board also asked the applicant if the signage complies with relevant zoning district regulations; and

WHEREAS, the applicant responded that the existing sign is a legal non-conforming non-illuminated sign installed in the 1920s that is within the zoning district regulations; and

WHEREAS, the Board noted that the signage in the aggregate is within the parameters of that permitted and agreed that the proposed signage is appropriate; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (EAS) CEQR No. 07BSA095M, dated June 6,

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2007; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, according to the Phase I Environmental Site Assessment, there are two abandoned 550-gallon gasoline tanks, an inactive boiler, and an active boiler served by a 550-gallon above ground storage tank located in a former mechanic shop on the premises; and

WHEREAS, in a submission to the Board, the applicant represents that this equipment will be removed in accordance with the NYC Building Code and the requirements of the NYS Department of Environmental Conservation; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and grants a permit under ZR § 11-412 to allow, within an R8B zoning district, the structural alteration and enlargement of an existing nonconforming two-story public parking garage (Use Group 8), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 5, 2007"-(7) sheets, "October 2, 2007"-(3) sheets and "November 7, 2007" – (3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories, a total floor area of 19,869 sq. ft. (2.75 FAR), a total height of 59'-0"; and a rear yard of 30'-0" above the second floor;

THAT the number of parking spaces shall be limited to 162;

THAT a minimum of nine reservoir spaces shall be provided at the ground level;

THAT the above conditions shall appear on the certificate of occupancy;

THAT DOB shall review and approve the layout of the parking spaces;

THAT DOB will confirm compliance with equipment

specifications for all auto stackers;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 20, 2007.

175-07-BZ

CEQR #07-BSA-104K

APPLICANT – Stadtmauer Bailkin, LLP, for Kingsbridge Associates LLC, owner; Planet Fitness, lessee.

SUBJECT – Application June 28, 2007 – Special Permit (§73-36) to allow a Physical Culture Establishment in a two-story and cellar retail building in a strip mall. The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 90 West 225th Street, south side of 225th Street between Exterior Street and Broadway, block 2215, Lot 665, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 18, 2007, acting on Department of Buildings Application No. 103171951, reads in pertinent part:

“Proposed Physical Culture Establishment requires a BSA Special Permit as per ZR § 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-3 zoning district and partially within an M1-1 zoning district, the legalization of a physical culture establishment (PCE) on portions of the first and second floors of a two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, and then to decision on November 20, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Bronx,

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recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 225th Street, between Exterior Street and Broadway; and

WHEREAS, the site is located in the northernmost section of Manhattan and is legally part of Manhattan, but is physically within the Bronx; and

WHEREAS, the site occupies one of four tax lots (Lot 665) on a 176,704 sq. ft. zoning lot; and

WHEREAS, the site is located partially within a C1-3 zoning district and partially within an M1-1 zoning district; and

WHEREAS, there are three commercial buildings on the zoning lot; and

WHEREAS, only Lot 665 and the two-story commercial building occupied by the PCE is the subject of this application; and

WHEREAS, the PCE occupies a total floor area of 15,480 sq. ft. on portions of the first and second floors of the building; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the Board notes that the PCE has been in operation since July 1, 2007; and

WHEREAS, the applicant represents that the services at the PCE include cardiovascular fitness and strength training; and

WHEREAS, the hours of operation are: 24 hours a day from 12:00 a.m. Monday through 9:00 p.m. Friday, and 7:00 a.m. to 7:00 p.m., Saturday and Sunday; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the PCE was located entirely within the portion of the site within the M1-1 zoning district; and

WHEREAS, in response, the applicant provided a site plan and a photographic illustration reflecting that the portion of the site located at the corner of Broadway and West 225th Street is within a C1-3 zoning district and the remainder of the subject site, including the PCE, is within an M1-1 zoning district; and

WHEREAS, additionally, the Board asked the applicant to confirm that all signage complies with zoning district regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that all signage complies with zoning district regulations; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA104M, dated June 29, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-3 zoning district and partially within an M1-1 zoning district, the legalization of a physical culture establishment on portions of the first and second floors of a two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 7, 2007"- Three (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 1, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the PCE use shall be limited to the portion of the site within the M1-1 zoning district;

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THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2007.

180-07-BZ

CEQR #07-BSA-003M

APPLICANT – Sheldon Lobel, P.C., for 47 Development LLC, owner; Rituals Spa LLC d/b/a Silk Day Spa, lessee.

SUBJECT – Application July 17, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on a portion of the first floor and cellar of a nine-story mixed-use building. The proposal is contrary to section 32-10. C6-2/C6-2M districts.

PREMISES AFFECTED – 47 West 13th Street, a/k/a 48 West 14th Street, north side of West 13th Street between Fifth and Sixth Avenues, Block 577, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 10, 2007, acting on Department of Buildings Application No. 104825487, reads in pertinent part:

“Ground floor and cellar as a physical culture establishment is contrary to ZR Section 32-10 and must be referred to the BSA for approval”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-2M zoning district and partially within a C6-2 zoning district, the legalization of a physical culture establishment (PCE) on a portion of the first floor and in the cellar of a nine-story

mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, and then to decision on November 20, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application on condition that the louvered air vent on West 13th Street be redesigned so as to eliminate the emission of hot air onto the sidewalk; and

WHEREAS, the subject site is located on the north side of West 13th Street, between Fifth Avenue and Sixth Avenue, partially within a C6-2M zoning district and partially within a C6-2 zoning district; and

WHEREAS, the PCE occupies a portion of the first floor and the cellar level of a nine-story mixed-use building; the PCE occupies 5,846 sq. ft. of floor space in the cellar and 491 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE is operated as Silk Day Spa; and

WHEREAS, the Board notes that the site has been in operation since November 2003; and

WHEREAS, the applicant represents that the services at the PCE include massages, facials and other skin treatments, and hot stone therapy; and

WHEREAS, the hours of operation are: Monday through Friday, 10:45 a.m. to 10:00 p.m.; Saturday, 9:30 a.m. to 10:00 p.m.; and Sunday, 10:45 a.m. to 10:00 p.m.; and

WHEREAS, at hearing, the Board directed the applicant to redesign the air vent at the West 13th Street entrance to eliminate the problem of emitting hot air onto the sidewalk; and

WHEREAS, in response, the applicant submitted a statement from a consulting engineer noting that the air vent does not currently comply with the Building Code and will be re-routed to be brought into compliance; and

WHEREAS, the Board is satisfied with the noted submission, but requests that DOB confirm that the vent complies with the Building Code; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions

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and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA003M, dated September 20, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-2M zoning district and partially within a C6-2 zoning district, the legalization of a physical culture establishment on a portion of the first floor and in the cellar of a nine-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 21, 2007"- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2013;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the louvered air vent above the front windows on West 13th Street be redirected so as to eliminate the

emission of hot air onto the sidewalk;

THAT DOB shall confirm that the noted louvered air vent, as modified, complies with all Building Code requirements;

THAT a new Certificate of Occupancy shall be obtained within six months of this grant, by May 20, 2008;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2007.

16-07-BZ

APPLICANT – Juan D. Reyes, III, for Daytop Village, Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit (§73-44) to permit a reduction in required parking for a Use Group 4A ambulatory and diagnostic treatment center located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue, Halperin Avenue between Blandell Avenue and Williamsburg Road, Block 4074, Lot 11, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Juan D. Reyes, III.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

53-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an

MINUTES

existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19th Street, Block 888, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for deferred decision.

110-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby Landmark Corporation, owner.

SUBJECT – Application May 3, 2007– Special Permit under § 73-63 to allow the enlargement of a non-residential building. M1-5B district.

PREMISES AFFECTED – 53 Crosby Street, east side of Crosby Street between Spring Street and Broome Street, Block 482, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for decision, hearing closed.

342-05-BZ& 343-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Kingsbridge Terrace, LLC, owner.

SUBJECT – Application November 29, 2005 – Zoning variance (§72-21) to allow six (6) three-family buildings (18 dwellings) and six (6) accessory parking spaces; contrary to regulations for use (§ 22-12), FAR (§ 23-141), lot coverage (§23-141), number of dwelling units (§23-22), building height (§23-631), side yards (§ 23-461), minimum number of accessory parking spaces (§25-23), and special requirements for developments with private roads (§26-21).

PREMISES AFFECTED – 1, 3 & 5 Maya Drive, southeast corner of Kingsbridge Terrace and Perot Street, Block 3253, Lot 204, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Adam Rothkrug and Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 29, 2008, at 1:30 P.M., for decision, hearing closed.

426-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Expert Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a two-level enlargement of an existing one-story commercial building contrary to FAR regulations (§43-12). M1-1 district.

PREMISES AFFECTED – 57-02/08 39th Avenue and 39-02 58th Street, Block 1228, Lots 48, 52, 57, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

306-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (§72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (§42-00), floor area and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), and front wall (§24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P.M., for continued hearing.

315-06-BZ

APPLICANT– Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35,

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24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

33-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (§72-21) to permit the conversion of the upper four floors of an existing five-story manufacturing building for residential use. The Premises is located in a M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of Carroll Street, 200' east of intersection with Van Brunt Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

58-07-BZ

APPLICANT – Rex Carner c/o Carner Associates, for Mr. Vito Savino, owner.

SUBJECT – Application March 5, 2007 – Variance (§72-21) to permit a new two-family dwelling on a vacant lot. The Premises is located in an R3A zoning district. The proposal is contrary to lot area (§23-32), residential FAR (§23-141), and parking (§25-21).

PREMISES AFFECTED – 18-02 Clintonville Street, North west corner of 18 Avenue and Clintonville Street. Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Rex Carner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 4, 2007, at 1:30 P.M., for decision, hearing closed.

135-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Ester Loewy, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141(a)); less than the required side yards (23-461) and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 920 East 24th Street. West side of East 24th Street, 140' north of Avenue L, Block 7587, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

136-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Leora Fenster, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1275 East 23rd Street, East side of East 23rd Street, 160' north of Avenue M, Block 7641, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

151-07-BZ

APPLICANT – Harold Weinberg, P.E., for John Perrone, owner.

SUBJECT – Application June 8, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage, open space (23-141) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 1133 83rd Street, north side, 256' east of 11th Avenue between 11th Avenue and 12th Avenue, Block 6301, Lot 65, Borough of Brooklyn.

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COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, R.A and Gus Margary.

For Opposition: Vito Mancini.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

176-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Fei Guo, owner.

SUBJECT – Application June 29, 2007 – Variance (§72-21) to permit the alteration and enlargement of an existing one-story single family home for commercial use. The proposal is contrary to sections 22-12 (use), 23-45(a) (front yard), and 23-461(a) (required 5' side yard). R4 district.

PREMISES AFFECTED – 50-34 69th Street, a/k/a 68-18 Garfield Avenue, southwest corner of the intersection of Garfield Avenue and 69th Street, Block 2425, Lot 33, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P. M., for an adjourned hearing.

68-07-BZ

APPLICANT – Jeffrey A. Chester, Avram Babadzhanov, owner; Congregation Rubin Ben Issac Haim, lessee.

SUBJECT – Application March 22, 2007 – Under §72-21 – Proposed community facility synagogue, which does not comply with front and side yard requirements.

PREMISES AFFECTED – 102-48 65th Road, southwest corner Yellowstone Boulevard and 65th Road, Block 2130, Lot 37, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester, David Freire, Avram Babadzhanov, Ella Aminov, Svetlana Levitin, Yuri Iskhakov, Arsen Uvaydov and others.

For Opposition: Jacob Schraefer, Max Lamm, Laszlo Vienne and Eleanor Ney.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P.M., for continued hearing.

111-07-BZ

APPLICANT – Harold Weinberg, P.E., for Javier Galvez, owner .

SUBJECT – Application May 4, 2007 – Special Permit (§73-622) for the In-Part Legalization of an enlargement to a single family home. This application seeks to vary lot coverage, open space and floor area (§23-141) and side yard (§23-461) in an R3-1 zoning district. It is also proposed to

remove the non-complying roof and replace with a complying one.

PREMISES AFFECTED – 155 Norfolk Street, east side, 325' north of Oriental Boulevard, between Oriental Boulevard and Shore Parkway, Block 8757, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E., Frank Sellitto, R.A. and Gus Margary.

For Opposition: Robert M. Kemprev and Williams.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for continued hearing.

173-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gitty Gubitz-Rosenberg, owner.

SUBJECT – Application June 21, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space ratio (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1061 East 21st Street, located on the east side of East 21st Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Suzi Bollag and Ann Kahn.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P.M., for continued hearing.

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181-07-BZ

APPLICANT – Omnipoint Communications Inc., for Pat Quadrozzi, owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application July 20, 2007 – Special Permit (§73-30) For a proposed 20-foot extension to an existing 50-foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 72-18 Amstel Boulevard, north side of Amstel Boulevard between 72nd Street, and Beach 73rd Street, Block 16070, Lot 13, Borough of Queens.

COMMUNITY BOARD # 14Q

APPEARANCES –

For Applicant: Cara M. Bonomolo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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December 6, 2007

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

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SUSAN M. HINKSON

Commissioners

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Roy Starrin, *Deputy Director*

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266-07-A

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267-07-A

49 West Market Street, South side West Market Street at intersection of mapped Bayside Drive., Block 16350, Lot(s) p/o 300, Borough of Queens, Community Board: 14. Construction within mapped street, contrary to Section of the General City Law.

268-07-BZ

1644 48th Street, South side of 48th Street, Between 16th and 17th Avenues., Block 5448, Lot(s) 27, Borough of Brooklyn, Community Board: 12. Variance to allow the proposed Synagouge with Rabbi's apartment

269-07-BZ

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270-07-A

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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

JANUARY 8, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 8, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1038-80-BZ, VII

APPLICANT – Davidoff Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application November 5, 2007 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expires on January 6, 2008.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

222-03-BZ, Vol. II

APPLICANT – Alfonse Duarte, for Emanuel T. Lorras, owner.

SUBJECT – Application November 15, 2007 – Extension of Time to Complete Construction of a Variance (72-21) previously granted on November 18, 2003 for the enlargement of a single family home, in an R-4 zoning district, which expired on November 18, 2007

PREMISES AFFECTED – 30-04 73rd Street, south west corner of 30th Avenue, Block 1121, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

JANUARY 8, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 8, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

160-06-BZ

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under section 72-21 to permit the proposed one-story & cellar Walgreens drug store with accessory parking for 24 cars.

The proposal is contrary to section 22-00. R3-1 district. PREMISES AFFECTED – 2199 (aka 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

293-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Veronica Nicastrro, owner.

SUBJECT – Application November 6, 2006 – Variance (§72-21) for the proposed enlargement of an existing one-family dwelling which exceeds the permitted floor area and does not provide the required open space (23-141) in an R1-2 zoning district.

PREMISES AFFECTED – 54-07 254th Street, east side of 254th Street, 189' north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

209-07-BZ

APPLICANT – Raymond J. Irrera, for The Summit School, owner.

SUBJECT – Application August 29, 2007 – Variance (§72-21) to enlarge and maintain the use of the existing school. The proposal is contrary to floor area (24-11), enlargement not permitted obstruction in the required front yard (24-33), and front yard (24-34). R1-2 district.

PREMISES AFFECTED – 187-30 Grand Parkway, southwest corner of 188th Street and Grand Central Parkway, Block 9969, Lot 12, Borough of Queens.

COMMUNITY BOARD #8Q

235-07-BZ

APPLICANT – Law Office of Fredrick A. Becker for Shoshana Hager and David Hager.

SUBJECT – Application October 16, 2007 – Special Permit (73-622) for the enlargement of an existing single family residence. This application seeks to vary open space ratio and floor area (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1148 East 27th Street, East 27th Street between Avenue K and Avenue L, Block 7626, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 27, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

742-70-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 830 Bay Street LLC, owner.

SUBJECT – Application July 13, 2007 – Application filed pursuant to §§72-01 and 72-22 for an Extension of Term/Amendment/Waiver for a previously approved variance which allowed in a C1-1(R3-2) zoning district the erection and maintenance of an automotive service station with accessory uses. The application seeks to legalize the installation of two storage containers contrary to the previously approved grant. The current term of the variance expired on May 18, 2001.

PREMISES AFFECTED – 830 Bay Street, Southwest corner of the intersection of Bay Street and Vanderbilt Avenue, Block 2836, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for continued hearing.

297-99-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Co., LLC, owner; Exxon Mobil Corp., lessee.

SUBJECT – Application May 29, 2007 – Extension of Time to obtain a Certificate of Occupancy/Waiver of the rules for an existing gasoline service station (Mobil Station) which expired on September 19, 2004 in a C2-2/R6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

APPEALS CALENDAR

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for continued hearing.

123-07-A

APPLICANT – Eric Palatnik, P.C., for James Colarusso, owner.

SUBJECT – Application May 15, 2007 – Proposed construction of a single family home not fronting on a legally mapped street contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 723R Driggs Avenue, south corner of Driggs Avenue and South First Street, Block 2407, Lot 141, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 27, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

159-07-BZ

CEQR #07-BSA-099K

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center, Inc., owner.

SUBJECT – Application June 12, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to 32-00. C8-2 district. PREMISES AFFECTED – 2402 86th Street, south corner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 18, 2007, acting on Department of Buildings Application No. 302152881, reads in pertinent part:

“The application cannot be reviewed because proposed physical culture (fitness) center is not a permitted use in C8 districts per ZR 32-31”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-2 zoning district, the legalization of a physical culture establishment (PCE) on the second floor of a two-story mixed-use commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on October 23, 2007, after due notice by publication in *The City Record*, and then to decision on November 27, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 86th Street, between 24th Avenue and Bay 37th Street, within a C8-2 zoning district; and

WHEREAS, the PCE occupies the second floor of a two-story commercial building; the PCE occupies 16,983 sq.

ft. of floor area; and

WHEREAS, the PCE is operated as Dolphin Fitness; and

WHEREAS, the Board notes that the PCE has been in operation since 2002; and

WHEREAS, the applicant represents that the services at the PCE include exercise machines, cardiovascular equipment, and personal training; and

WHEREAS, the hours of operation are: Monday through Thursday, 5:00 a.m. to 12:00 a.m.; Friday, 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to address any outstanding violations; and

WHEREAS, the applicant responded that violations will be completely resolved upon the issuance of the special permit; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA099, dated September 28, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and

MINUTES

Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-2 zoning district, the legalization of a physical culture establishment on the second floor of a two-story mixed-use commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 12, 2007"-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 1, 2012;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained within six months of this grant, by May 27, 2008;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 27, 2007.

167-07-BZ

APPLICANT – Harold Weinberg, P.E., for Alex Sirota, owner.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage, floor area (§23-141) and less the required rear yard (§23-47) in an R3-1 zoning district. This application also seeks to convert from a two family residence to a one family residence.

PREMISES AFFECTED – 220 Amherst Street, west side 140' south of Oriental Boulevard between Oriental Boulevard and Esplanade, Block 8738, Lot 62, Borough of

Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 13, 2007, acting on Department of Buildings Application No. 302346450, reads in pertinent part:

“The proposed enlargement of the one-family residence in an R3-1 zoning district:

1. Increased the degree of non-compliance with respect to open space and lot coverage and is contrary to Sections 23-141 and 54-31 of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area ratio and is contrary to section 23-141.
3. Creates a new non-compliance with respect to rear yard and is contrary to Section 23-47 ZR”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for open space/lot coverage, floor area, and rear yard, contrary to ZR §§ 23-141, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on October 30, 2007, after due notice by publication in *The City Record*, and then to decision on November 27, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Amherst Street, between Oriental Boulevard and Esplanade; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a legal two-family home with a floor area of 2,240.7 sq. ft. (0.54 FAR); and

WHEREAS, the applicant proposes to convert the legal two-family home into a single-family home; and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,240.7 sq. ft. (0.54 FAR) to 4,206.7 sq. ft. (1.01 FAR); the maximum floor area permitted is 2,496 sq. ft. (0.60 FAR); and

WHEREAS, the proposed enlargement will provide a lot coverage of 38.1 percent (35 percent is the maximum

MINUTES

permitted); and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; 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 R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for open space/lot coverage, floor area, and rear yard, contrary to ZR §§ 23-141, 23-47, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 9, 2007"-(12) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 824 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,206.17 sq. ft. (1.01 FAR), 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; 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,
November 27, 2007.

227-06-BZ

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot 90, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik,

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P.M., for decision hearing closed.

331-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Putnam Holding Corp., owner.

SUBJECT – Application December 27, 2006 – Variance under §72-21 to allow a three-family dwelling to violate front yard (§23-45) and side yard (§23-462(a)) requirements. R4 district.

PREMISES AFFECTED – 3647 Palmer Avenue, south side of Palmer Avenue, between Needham Avenue and Crawford Avenue, Block 4917, Lot 17, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for decision, hearing closed.

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (§23-141); perimeter wall height (§23-361) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to December
4, 2007, at 1:30 P.M., for decision, hearing closed.

74-07-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S.
Friedman, Esq., for Congregation Shearith Israel a/k/a
Trustees of the Congregation Shearith Israel in the City of
N.Y. a/k/a the Spanish and Portuguese Synagogue.

SUBJECT – Application April 2, 2007 – Variance (§ 72-21)
to allow a nine (9) story residential/community facility
building; the proposal is contrary to regulations for lot
coverage (§ 24-11), rear yard (§ 24-36), base height,
building height and setback (§ 23-633) and rear setback (§
23-663). R8B and R10A districts.

PREMISES AFFECTED – 6-10 West 70th Street, south side
of West 70th Street, west of the corner formed by the
intersection of Central Park West and West 70th Street,
Block 1122, Lots 36 & 37, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Shelly Friedman, Ray Dovell, Hayyim
Angel, Lynne Kay, Edgar Nathan.

For Opposition: Mark Lebow, NYS Senator Thomas K.
Duane, Michael Kaplan of Assembly Member Richard N.
Gottfried, Norman Marcus, Alan Sugerma, Jaores Greek,
Thomas Hansen, Simon Bankoff, Elizabeth Ashby, Susan
Nial, Kate Wood, Eve Sindiko, Dee Rieber, LaVerne
Mooney, Howard Lapan, Linda Blumkin, Lo Van der Valk,
Hal Shane.

ACTION OF THE BOARD – Laid over to February
12, 2008, at 1:30 P.M., for continued hearing.

88-07-BZ

APPLICANT – Eric Palatnik, P.C., for Lisa Roz and Ronnie
Roz, owners.

SUBJECT – Application April 19, 2007 – Special Permit
(\$73-622) for the enlargement of a single family residence.
This application seeks to vary floor area and lot coverage
(\$23-141(b)); side yard (§23-461(a)) and rear yard (§23-47)
in an R3-2 zoning district.

PREMISES AFFECTED – 1633 East 29th Street, eastern
border of 29th Street, south of Avenue P and North of
Quentin Road, Block 6792, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 8,
2008, at 1:30 P.M., for decision, hearing closed.

114-07-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Sullivan
Mountain RE, LLC, owner.

SUBJECT – Application May 7, 2007 – Special Permit
(\$73-19) to allow a day-care center (school), (UG3). M1-1
district.

PREMISES AFFECTED – 7-05 152nd Street, 152nd Street,
east side at intersection with Powells Cove Boulevard, Block
4531, Lot 35, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino and Tim O’Sullivan.

For Opposition: Councilmember Tony Avella, James J.
Raymond, Helen Paladino and Maria H. Stern.

ACTION OF THE BOARD – Laid over to January
15, 2008, at 1:30 P. M., for continued hearing.

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for
Kingswood Partners, LLC, owner; TSI Midwood LLC,
owner.

SUBJECT – Application May 15, 2007 – Special Permit
(\$73-36) to legalize the operation of a Physical Culture
Establishment on portions of the first and second floors of a
three-story commercial building. The proposal is contrary to
section 32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, westerly
side of East 15th Street, 50’ north of Kings Highway, Block
6777, Lots 17 and 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to January
15, 2008, at 1:30 P. M., for continued hearing.

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for 8701 Fourth Avenue,
LLC., owner.

SUBJECT – Application June 8, 2007 – Special Permit
(\$73-36) to allow the legalization of a Physical Culture
Establishment on the second floor of a two-story commercial
building. The proposal is contrary to section 32-00 of the
Zoning Resolution. C4-2A zoning district.

PREMISES AFFECTED – 8701 Fourth Avenue, southeast
corner of Fourth Avenue and 87th Street, Block 6050, Lot 8,
Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 8,
2008, at 1:30 P.M., for deferred decision.

211-07-BZ

APPLICANT – Eric Palatnik, P.C., for Dave Weiss, owner.

MINUTES

SUBJECT – Application September 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1149 East 22nd Street, north of Avenue K, south of Avenue J, Block 7604, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Sam Matalon.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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December 13, 2007

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DOCKETS

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271-07-BZ

213-219 West 23rd Street, The north side of 23rd Street between Seventh and Eighth Avenues., Block 773, Lot(s) 34, Borough of **Manhattan, Community Board: 4**. Special Permit (73-03) to allow for the legalization of a Physical Culture Establishment within cellar & Variance for continued occupancy of the fitness within the portion of lot R-8A. R8 Zoning prohibits the use of PCE's.

272-07-BZ

344 Amsterdam Avenue, Westside Amsterdam Avenue between West 76th And West 77th Streets., Block 1168, Lot(s) 30, Borough of **Manhattan, Community Board: 7**. Special Permit (73-03 & 73-36) to allow a Physical Culture Establishment.

273-07-BZ

1435 East 22nd Street, 140" North from the intersection of East 22nd Street and Avenue N., Block 7658, Lot(s) 13, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.

274-07-BZ

1157 83rd Street, Located on the northern side of 83rd Street between 11th Avenue and 12th Avenue., Block 6301, Lot(s) 54, Borough of **Brooklyn, Community Board: 10**. Special Permit (73-622) for the enlargement of a single family home.

275-07-BZ

249-32 Caney Road, Vacant triangular lot with 249th Street to the west, Caney Road to the north, and Weller Avenue to the east., Block 13580, Lot(s) 22, Borough of **Queens, Community Board: 13**. Variance to allow a two-story and cellar single family residence.

276-07-A

249-32 Caney Road, Vacant triangular lot with 249th Street to the west, Caney Road to the north, and Weller Avenue to the east., Block 13580, Lot(s) 22, Borough of **Queens, Community Board: 13**. Appeal seeking to permit construction of 8% of the perimeter of the building fronting directly upon a legally mapped street or frontage space.

277-07-BZ

165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard., Block 12318, Lot(s) 10, Borough of **Queens, Community Board: 12**. Special Permit (11-40) for the erection of a one story automotive service station with accessory convenience store.

278-07-BZ

630 West 168th Street, Two "superblocks" bounded by Broadway, West 165th Streets, Riverside Drive, and Fort Washington Avenue., Block 2139, Lot(s) 30,40,1,15,80,85, Borough of **Manhattan, Community Board: 12**. Variance to allow three 30-foot identifying signs at entrance to medical center campus.

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

JANUARY 15, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 15, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46th Street Realty Corporation, owner.

SUBJECT – Application September 17, 2007 – Extension of Term/Waiver for a previously granted special permit (§73-36) for a physical culture establishment (Osaka Health Spa) on the third floor and mezzanine level of a six story mixed used building in a C6-4.5 zoning district which expired on February 6, 2006.

PREMISES AFFECTED – 37 West 46th Street, north/south West 46th Street, between 5th and 6th Avenues, Block 1262, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

140-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP

Owner: Breezy Point Cooperative, Incorporated

Lessee: Thomas Carroll

SUBJECT – Application May 25, 2007 – Appeals seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 Zoning district.

PREMISES AFFECTED – 607 Bayside Drive, North west intersection of Bayside Drive and zoning street know as Service Lane, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

270-07-A

APPLICANT – Sheldon Lobel, P.C., for Washington Hall Holdings, LLC, owner.

SUBJECT – Application November 27, 2007 – seeking a determination that the owner has acquired a common law vested right to continue development under the prior R6 zoning.

PREMISES AFFECTED – 163-167 Washington Avenue, approximately 80' from the northeast corner of Myrtle Avenue and Washington Avenue, Block 1890, Lots 1, 4, 82, Borough of Brooklyn.

COMMUNITY BOARD #2BK

JANUARY 15, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 15, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

143-07-BZ

APPLICANT – Moshe M. Friedman, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application June 4, 2007 – Variance (§72-21) to permit the construction of a three-story and cellar synagogue, religious pre-school, and Mikva. The proposal is contrary to sections §24-111 (a) and §23-141 (a) (Floor Area and FAR), §24-11 (Open Space and Lot Coverage), §24-521 (Front Wall and Sky Exposure Plane), §24-34 (Front Yard), §24-35 (Side Yard), §25-31 (Parking). R2 district.

PREMISES AFFECTED – 6404 Strickland Avenue, south east corner of Strickland Avenue and East 64th Street, Block 8633, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

193-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Gonter and Mark Gonter, owners.

SUBJECT – Application August 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3591 Bedford Avenue, eastern side of Bedford Avenue between Avenue N and O, Block 7679, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

217-07-BZ

APPLICANT – Eric Palatnik, PC, for Clara Tarantul, owner.

SUBJECT – Application September 24, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); rear yard (§23-47) and side yards (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 25 Beaumont Street, between Shore Boulevard and Hampton Avenue, Block 8728, Lot 95, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

236-07-BZ

APPLICANT – Jay A. Segal, Esq., for Hope Street Ventures, LLC, owner.

SUBJECT – Application October 17, 2007 – Special Permit (§73-46) to allow a waiver of parking requirements for a residential conversion of an existing building. 46 spaces are required; 11 spaces are proposed. M1-2/R6A (MX-8) district.

PREMISES AFFECTED – 53-65 Hope Street, north side of Hope Street between Havemeyer Street and Marcy Avenue, Block 2369, Lot 38, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

249-07-BZ

APPLICANT – Harold Weinberg, P.E., for Varda Grodko, owner.

SUBJECT – Application November 2, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary side yard requirement (§23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 1865 East 28th Street, east side, 215' north of Avenue S between Avenue R and S, Block 6834, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, DECEMBER 4, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

997-84-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for 222 Union Associates, owner.

SUBJECT – Application March 2, 2007 – Extension of Term/Amendment/Waiver for a special permit which expired on September 10, 2005, to revise the BSA plans to reflect existing conditions utilizing the Board’s formula for attended parking of one space per 200 square feet, and the legalization of the existing automobile lifts within the parking garage.

PREMISES AFFECTED – 800 Union Street, southside of Union Street, between 6th and 7th Avenues, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to increase the number of parking spaces, and an extension of the term for a previously granted variance, which expired on September 10, 2005; and

WHEREAS, a public hearing was held on this application on September 11, 2007, after due notice by publication in *The City Record*, with continued hearings on October 16, 2007 and November 20, 2007, and then to decision on December 4, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the south side of Union Street, between Sixth Avenue and Seventh Avenue; and

WHEREAS, the site is located within an R6A zoning district and is occupied by a six-story parking garage; and

WHEREAS, the parking garage has a total floor area of 52,110 sq. ft.; and

WHEREAS, in 1929, under BSA Cal. No. 271-29-BZ,

the Board granted a variance to permit the construction of a parking garage and gasoline station at the site; and

WHEREAS, in 1959, under BSA Cal. No. 490-59-BZ, the Board granted a change in use to the manufacture and storage of incombustibles; and

WHEREAS, on September 10, 1985, under the subject calendar number, the Board granted an amendment, pursuant to ZR § 11-413, to permit a change in use to a parking garage and automobile rental office for a term of ten years; and

WHEREAS, the grant was subsequently extended for an additional ten-year term; and

WHEREAS, this application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, additionally, the applicant seeks to legalize an increase in the number of parking spaces from 149 to 237; this number includes 20 parking spaces for rental cars on the second floor; and

WHEREAS, the applicant initially requested the legalization of the existing 261 parking spaces; and

WHEREAS, during the hearing process, the Board inquired about whether the use and operation of the auto stackers was Building and Fire Code compliant; and

WHEREAS, in response, the applicant determined that the stackers could not be fully compliant and feasibly accommodated on the upper floors and would be relocated to the cellar, which is fully-sprinklered; and

WHEREAS, the applicant represents that the floor-to-ceiling height in the cellar is adequate for the proposed stackers and that the proposed layout complies with all DOB requirements; and

WHEREAS, at hearing, the Board noted that it would request DOB to review and confirm that the stackers in the cellar comply with all relevant regulations; and

WHEREAS, due to the relocation of the stackers to the cellar, the applicant represents that it is unable to accommodate the existing 44 stackers and will reduce the number to 26; and

WHEREAS, the Board directs the applicant to come into compliance with the plans associated with this grant and remove the 18 excess stackers within six months of the date of this grant; and

WHEREAS, the applicant will also relocate the 20 auto rental parking spaces from the cellar to the second floor; and

WHEREAS, additionally, the Board directed the applicant to provide sufficient reservoir parking for cars entering and exiting the site; and

WHEREAS, in response, the applicant revised the plans to provide 12 reservoir spaces on the first floor, which accommodates five percent of the total capacity of the garage; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for alteration to the site; and

WHEREAS, based upon its review of the record, the Board finds that proposed extension of term and site modifications are appropriate with certain conditions as set forth below.

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Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated September 10, 1985, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the prior expiration, to expire on September 10, 2015 and to permit the noted site modifications; on condition that any and all work shall substantially conform to drawings filed with this application marked "Received November 8, 2007"-(7) sheets and "December 3, 2007"-(3) sheets; and; and on further condition:

THAT this grant shall expire on September 10, 2015;

THAT the number of cars parked onsite shall be limited to 217 for public parking and 20 for auto rental parking;

THAT a minimum of 12 reservoir spaces shall be provided at the ground level;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT all work shall be performed and a new certificate of occupancy shall be obtained within six months of this grant, by June 4, 2008;

THAT DOB shall review and approve the layout of the parking spaces;

THAT DOB will confirm compliance with equipment specifications for all auto stackers;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (Alt. 863/84)

Adopted by the Board of Standards and Appeals, December 4, 2007.

223-90-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Frank A. Burton, Jr., owner.

SUBJECT – Application April 3, 2007 – Amendment of a previous grant under the General City Law Section 36 to remove a Board condition requiring that no permanent Certificate of Occupancy shall be issued until a Corporation Counsel Opinion of Dedication has been obtained for Kresicher Street and to approve the enlargement of the site and building. M1-1 Zoning district.

PREMISES AFFECTED – 114 Kreischer Street, west side of Kreischer Street, 140.8' north of Androvette Street, Block 7408, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to a grant pursuant to General City Law § 36, to permit the enlargement of the site and the existing building; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in the *City Record*, with a continued hearing on November 20, 2007, and then to decision on December 4, 2007; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the subject application; and

WHEREAS, the subject premises is located on the west side of Kreischer Street, between Androvette Street and Winant Place, in an M1-1 zoning district within the Special South Richmond Development District; and

WHEREAS, Kreischer Street, Androvette Street, and Winant Place are all paved and improved, but not legally mapped streets; and

WHEREAS, on March 19, 1991, under the subject calendar number, the Board granted a waiver of the General City Law § 36, to permit the enlargement of an existing warehouse structure (Use Group 16) on a site (Lot 8) that does not front on a legally mapped street; and

WHEREAS, in 1995, DOB approved another enlargement of the existing building; and

WHEREAS, the applicant now seeks to merge Lot 8 with the adjacent lot to the north, Lot 10, to form a single lot, Lot 8; and

WHEREAS, the existing Lot 8 has a lot area of approximately 7,168 sq. ft. and Lot 10 has a lot area of approximately 9,722 sq. ft.; the merged Lot 8 has a total lot area of approximately 16,890 sq. ft.; and

WHEREAS, the existing Lot 8 is occupied by a two and one-half story building with a one-story garage; and

WHEREAS, the total floor area of the existing building is 5,087.62 sq. ft.; and

WHEREAS, Lot 10 is occupied by two buildings, which will be demolished; and

WHEREAS, the applicant proposes to enlarge the existing warehouse building onto Lot 10 for a total floor area of 14,673.68 sq. ft. (0.87 FAR); and

WHEREAS, the Board directed the applicant to ensure compliance with the Special South Richmond Development District regulations with respect to buffering between the site and adjacent residential uses; and

WHEREAS, in response, the applicant submitted a reconsideration from DOB, which states that since the adjacent lot to the west (Lot 31) is occupied by a commercial use, no buffering is required there and since the adjacent lot to the north (Lot 17) provides a landscape buffer along the common lot line on Lot 17, no landscape buffer is required on Lot 8; and

WHEREAS, the applicant has recorded a restrictive declaration agreement to maintain an 8'-0" landscaped buffer

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on Lot 17 and to maintain the existing distance of between 17.57 feet and 17.97 feet between the shared lot line and the building on Lot 17; and

WHEREAS, the applicant represents that the proposed building and use of the site complies with all zoning district regulations; and

WHEREAS, the Fire Department has reviewed the proposal and has no objections, and

WHEREAS, the applicant agreed to provide sidewalk to match the existing sidewalk in front of existing Lot 8 for the entire width of the merged Lot 8, at the Department of Transportation's request; and

WHEREAS, the applicant initially sought to eliminate the condition of the prior grant, which requires the issuance of a Corporation Counsel Opinion of Dedication prior to obtaining a certificate of occupancy; and

WHEREAS, the Board did not find any compelling reason to remove the noted condition and determined that it would be maintained; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement of the zoning lot and enlargement of the building are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated March 19, 1991, so that as amended this portion of the resolution shall read: "to permit the enlargement of Lot 8 and the associated enlargement of the warehouse building; *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received December 4, 2007 -(1) sheet; and; and *on further condition*:

THAT a Corporation Counsel Opinion of Dedication shall be obtained for Kreisler Street, between Winant Place and Androvetta Street, prior to the issuance of a certificate of occupancy;

THAT continuous matching sidewalk shall be installed and maintained for the entire width of the new Lot 8, as per DOT's request;

THAT a restrictive declaration agreement shall be recorded and maintained to ensure the maintenance of an 8'-0" landscaped buffer on adjacent Lot 17 and to maintain the existing distance of between 17.57 feet and 17.97 feet between the shared lot line and the building on Lot 17;

THAT the above conditions shall appear on the new certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 50024216)

Adopted by the Board of Standards and Appeals, December 4, 2007.

1199-88-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP., for Joseph and Rosemarie Tranchina, owner.

SUBJECT – Application May 11, 2007 – Amendment filed pursuant to §§72-01 & 72-22 of the zoning resolution to permit within a C1-1(R3-1)(SRD) the enlargement of previously approved banquet hall (use group 9) and a change in use from offices (use group 6) to retail stores (use group 6).

PREMISES AFFECTED – 29 Nelson Avenue, east side of Nelson Avenue, northeast corner of Nelson Avenue and Locust Place, Block 5143, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Joseph Tranchina.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for continued hearing.

170-47-BZ

APPLICANT – Kenneth H. Koons, for Royal Automation Supplies Corporation, owner.

SUBJECT – Application October 9, 2007 – Extension of Term of a (UG 16) storage warehouse in the cellar, used in conjunction with a (UG 17) factory on the first floor, in an R7-1 zoning district which expired on November 25, 2007.

PREMISES AFFECTED – 1982 Crotona Parkway, east side of Crotona Parkway, south of East 178th Street, Block 3121, Lot 11, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Kenneth M. Koons.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for continued hearing.

651-60-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Briar Hill Realty LLC c/o Glennwood Management Corporation, owner.

SUBJECT – Application September 14, 2007 – Extension of Term of a variance allowing the conversion of cellar space in an existing multiple dwelling to a valet service, office/stationary store and packaged goods store and to waive the Board's Rules of Procedure to allow the application to be filed more than thirty days after the expiration of the variance. The subject site is located in an R4 zoning district,

PREMISES AFFECTED – 600 West 246th Street, Located on an irregularly shaped lot bounded by the south side of West 246th Street, the east side of Independence Avenue and the north side of Blackstone Avenue, Block 5909, Lot 825, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

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For Applicant: James C. Power.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 8,
2008, at 10 A.M., for decision, hearing closed.

83-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Gary S. Chubak
and Lillian R. Chubak, owners.

SUBJECT – Application October 3, 2007 – Amendment -To
remove the terms set forth in the prior resolution. The
proposed amendment would authorize the control operation
of the health care facility (UG4) at the premises located in
an R1-2 zoning district with out a term.

PREMISES AFFECTED – 214-18 24th Street, south side of
24th Avenue, approximately 142 feet east of the corner
formed by the intersection of Bell Boulevard and 24th
Avenue, Block 6001, Lot 47, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Elizabeth Safiar.

ACTION OF THE BOARD – Laid over to January 8,
2008, at 10 A.M., for continued hearing.

162-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater
Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed
construction of a single family home located partially
within the bed of a mapped street (Edgewater Road)
contrary to General City Law Section 35. R2 Zoning
district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection
of Faber Terrace and Proposed Edgewater Road, Block
15684, Lot 161, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 8,
2008, at 10 A.M., for an adjourned hearing.

165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater
Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed
construction of a single family home located partially within
the bed of a mapped street (Edgewater Road) contrary to
General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2848 Faber Terrace, intersection
of Faber Terrace and Proposed Edgewater Road, Block
15684, Lot 61, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 8,
2008, at 10 A.M., for an adjourned hearing.

105-07-A thru 108-07-A

APPLICANT – Paul Bonfilio Architect, P.C., for Tom and
Angelika Davis, owners.

SUBJECT – Application May 2, 2007 – Proposed
construction of four two family semi detached dwellings
located within the bed of mapped street (199th) contrary to
General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED –

198-24 47th Avenue, south side of 47th Avenue, 165.37' west
of Francis Lewis Boulevard, Block 5618, Lot 49.

198-28 47th Avenue, south side of 47th Avenue, 165.37' west
of Francis Lewis Boulevard, Block 5619, Lot 20.

47-17 199th Avenue, south side of 47th Avenue, 165.37' west
of Francis Lewis Boulevard, Block 5618, Lot 49.

47-18 199th Street, south side of 47th Avenue, 165.37' west
of Francis Lewis Boulevard, Block 5618, Lot 49, Borough
of Queens

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio.

For Opposition: T. Pouymari.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to December
11, 2007, at 10 A.M., for decision, hearing closed.

196-07-A thru 199-07-A

APPLICANT – Willy C. Yuin, R.A., for Carmine Lacertosa,
owner.

SUBJECT – Application August 9, 2007 – Proposed
construction of one & two family homes not fronting on a
legally mapped street contrary to Article 3 Section 36 of the
General City Law. R-5 Zoning district.

PREMISES AFFECTED – 9 Federal Place, west of Federal
Place 195.91' south of the corner of Richmond Terrace and
Federal Place, Block 1272, Lot 72, 76, 77, 79, Borough of
Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Willy C. Yuin, R.A.

ACTION OF THE BOARD – Laid over to January
15, 2008, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 10:30 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 4, 2007
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (§23-141); perimeter wall height (§23-361) and rear yard (§23-47) in an R3-2 zoning district. PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Edward Gourdine.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 20, 2007, acting on Department of Buildings Application No. 302294112, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-14(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed Open Space is less than the required 65%.
3. Proposed plans are contrary to Z.R. 23-631(b) in that the [perimeter wall] height of building exceeds 21'-0".
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0".; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within 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, open space, perimeter wall height, and rear yard, contrary to ZR §§ 23-14, 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on June 5, 2007, after due notice by publication in *The City Record*, with continued hearings on July 24, 2007, September 11, 2007, October 23, 2007, November 20,

2007 and November 27, 2007, and then to decision on December 4, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Kings Highway and Avenue P; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 1,803 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 1,803 sq. ft. (0.60 FAR) to 3,055 sq. ft. (1.02 FAR); the maximum floor area permitted is 1,800 sq. ft. (0.60 FAR); and

WHEREAS, the proposed enlargement will provide open space of 1,851.96 sq. ft. (1,950 sq. ft. is the minimum required); and

WHEREAS, the proposed enlargement will provide for a perimeter wall height of 24'-3" (a perimeter wall height of 21'-0" is the maximum permitted except, under certain conditions, when a proposed enlargement may match the perimeter wall height of an adjacent home with an existing non-complying perimeter wall height); and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing the Board directed the applicant to provide confirmation from DOB that earlier construction performed on the home was legally performed and complies with zoning district regulations; and

WHEREAS, in response, the applicant provided a Letter of Completion from DOB stating that the construction was completed and signed off pursuant to relevant regulations; and

WHEREAS, DOB also stated that a new certificate of occupancy is not required for the work performed; and

WHEREAS, at hearing, the Board directed the applicant to survey the adjacent property to confirm its front perimeter wall height; and

WHEREAS, in response, the applicant provided information that reflects the front perimeter wall height of the adjacent building is 24'-3"; and

WHEREAS, accordingly, the Board directed the applicant to revise the proposed plans to reflect a perimeter wall height not to exceed 24'-3" so as to comply with the provisions of ZR § 73-622; 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

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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 proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio open space, perimeter wall height, and rear yard, contrary to ZR §§ 23-14, 23-141, 23-47, and 23-631; on condition that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 15, 2007"-(12) sheets; and on further condition:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 865 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,055 sq. ft. (1.02 FAR), a rear yard with a minimum depth of 20'-0", a perimeter wall with a maximum height of 24'-3", and a total building height of 35'-0", as illustrated on the BSA-approved plans;

THAT all dormers, balconies, and porches shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, December 4, 2007.

58-07-BZ

APPLICANT – Rex Carner c/o Carner Associates, for Mr. Vito Savino, owner.

SUBJECT – Application March 5, 2007 – Variance (§72-21) to permit a new two-family dwelling on a vacant lot. The Premises is located in an R3A zoning district. The proposal is contrary to lot area (§23-32), residential FAR (§23-141), and parking (§25-21).

PREMISES AFFECTED – 18-02 Clintonville Street, North west corner of 18 Avenue and Clintonville Street. Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Rex Carner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 1, 2007, acting on Department of Buildings Application No. 402320332, reads in pertinent part:

1. Section 23-32 (ZR) The existing tax lot/zoning lot is less than required minimum lot area; and
2. Section 23-141 (B/ZR) The proposed floor area ratio exceeds the permitted maximum;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the construction of a two-story two-family home on a lot that does not comply with the minimum lot area and exceeds the maximum floor area ratio, contrary to ZR §§ 23-32 and 23-141; and

WHEREAS, a public hearing was held on this application on September 11, 2007, after due notice by publication in *The City Record*, with continued hearings on October 16, 2007, November 20, 2007, and then to decision on December 4, 2007; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommended disapproval of an earlier iteration of this application, citing concerns with impacts to the view corridor caused by the configuration of the home, and a proposed parking waiver, and recommended that the home be built as one-family home, rather than the two-family home as proposed; and

WHEREAS, the site is a vacant lot located at the northwest corner of 18th Avenue and Clintonville Street; and

WHEREAS, the proposed building will have the following non-complying parameters: a lot area of 2,180 sq. ft. and an FAR of 0.74; and

WHEREAS, the minimum lot size in the subject R3A zoning district is 2,375 sq. ft. and the maximum FAR is 0.50 (0.60 with attic); and

WHEREAS, the applicant originally proposed a two-story two-family home with an FAR of 0.83 and a parking waiver for one car; and

WHEREAS, the current proposal is for a two-story two-family home with an FAR of 0.74 without a parking

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waiver; and

WHEREAS, because the intersection of Clintonville Street and 18th Avenue does not form a right angle, the site is an irregularly shaped rectangle, with approximately 69 feet of frontage along 18th Avenue and an angled frontage on Clintonville Street of approximately 33 feet; the site has a range of depths from 69 feet to 86.60 feet; and

WHEREAS, the applicant states that the site cannot be developed without a variance, due to its insufficient lot size, and also contends that additional floor area is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the lot's small size; and (2) the irregular shape of the lot; and

WHEREAS, as to the lot's size, the applicant notes that the without a waiver of ZR § 23-32, which provides for a minimum lot area of 2,375 sq. ft., the site could not be developed; and

WHEREAS, the applicant has represented that the subject lot has been in existence since at least January 28, 1969, subsequent to a widening of Clintonville Street and annexation of the former tax lot that reduced its area by 30 percent; and

WHEREAS, the applicant notes that a multi-family building with ground floor commercial space was formerly located on the site and that the site has been vacant since its condemnation and demolition; and

WHEREAS, the Board agrees that because of the size of the lot, no as-of-right development is possible; and

WHEREAS, additionally, the applicant notes that the site is irregularly-shaped with a range of widths from 86'-60" to 69'-14"; and

WHEREAS, the applicant notes that, given the small lot size and shape, the maximum FAR of 0.60 would severely constrain the floor plates that could be constructed, resulting in an unmarketable home; and

WHEREAS, the Board notes that the site is one of few uniquely small sites that are vacant or under-developed within a 400' radius, and within the surrounding three-block radius it is the only vacant lot; and

WHEREAS, the Board further notes that the other under-developed lots in the area, comprising five lots with buildings of less than 0.50 FAR out of a total of 21, are on lots that range from 3,100 sq. ft. and 4,100 sq. ft. in size, and therefore can reasonably accommodate a two-family home under the permissible FAR; and

WHEREAS, the Board also notes that all the other comparably-sized residential lots are currently developed with two-family homes and exceed their permissible FAR (ranging from 0.68 to 1.82 FAR); and

WHEREAS, the Board agrees that the lot size and FAR waivers are necessary in order to construct a habitable and marketable building; and

WHEREAS, thus, the Board finds that the aforementioned unique physical conditions, when

considered in the aggregate, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that a complying and viable development could be constructed; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed house complies with all R3A zoning district regulations aside from lot size and FAR, and that the proposed bulk and height is compatible with the other residential buildings in the immediate vicinity; and

WHEREAS, as to concerns raised by the Community Board regarding the impacts on the view corridor, the Board notes that based upon its review of the submitted land use map, the submitted pictures, and its site visits, the area surrounding the site is characterized by numerous detached two-story buildings, comparable in size or larger than the proposed home; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant had originally sought a parking waiver for one car and an FAR of 0.83; and

WHEREAS, at the Board's direction, the applicant eliminated the parking waiver and will provide two parking spaces on the site; and

WHEREAS, the Board finds that this proposal for 312 sq. ft. of additional floor area is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, in an R3A zoning district, the construction of a two-story two-family home on a lot that does not comply with minimum lot area and exceeds the maximum floor area ratio, contrary to ZR §§ 23-32 and 23-141; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 12, 2007"-- (9) sheets; and *on further condition*:

THAT all bulk parameters, including a maximum floor area ratio of 0.74, shall be as reflected on the BSA-approved plans;

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THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, December 4, 2007.

110-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby Landmark Corporation, owner.

SUBJECT – Application May 3, 2007– Special Permit under § 73-63 to allow the enlargement of a non-residential building. M1-5B district.

PREMISES AFFECTED – 53 Crosby Street, east side of Crosby Street between Spring Street and Broome Street, Block 482, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 25, 2007, acting on Department of Buildings Application No. 104592282, reads in pertinent part:

“Proposed vertical enlargement is contrary to ZR Sections 43-12, 43-17 and 54-30;” and

WHEREAS, this is an application under ZR §§ 73-63 and 73-03 to permit the enlargement of an existing six-story non-residential building containing Use Group 17 Joint Living Work Quarters for Artists (“JLWQA”), within an M1-5B zoning district, which increases non-compliance with regard to floor area contrary to ZR § 43-12; and

WHEREAS, a public hearing was held on this application on October 23, 2007, after due notice by publication in *The City Record*, with continued hearing on November 20, 2007, and then to decision on December 4, 2007; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, counsel for a neighboring owner submitted written and oral testimony citing concern with the adverse effects that the proposed enlargement would have on the adjacent property’s access to light and air; and

WHEREAS, the subject site is located on the easterly side of Crosby Street, between Spring Street and Broome Street and have a lot area of 2,500 sq. ft.; and

WHEREAS, the site is occupied by a six-story building with a height of approximately 77’-9”, a floor area of 13,434 sq. ft., and an FAR of 5.34; and

WHEREAS, the building is occupied by six Use Group 17 JLWQA units; and

WHEREAS, the proposed enlargement to the sixth floor unit results in the enclosure of a portion of the existing roof, creating a building height of 90’-7” and an increase in the floor area by 410 sq. ft.; and

WHEREAS, the subject zoning district permits a maximum FAR of 5.0; the maximum floor area permitted is 12,583 sq. ft.; and

WHEREAS, the proposed enlargement will increase the floor area by approximately 2.96 percent, amounting to a total of 13,844 sq. ft. and an FAR of 5.50; and

WHEREAS, pursuant to ZR § 73-63, the Board may grant a request for alteration and enlargement of a non-residential building constructed prior to December 15, 1961, provided that such enlargement does not exceed ten percent above the maximum allowable floor area ratio for the subject zoning district, or 10,000 sq. ft. in floor area and does not create any new non-compliance; and

WHEREAS, the proposed enlargement of 410 sq. ft. is less than the maximum permitted 10,000 sq. ft.; and

WHEREAS, the final FAR of 5.50 proposed by the applicant does not exceed ten percent above the maximum allowable for the subject zoning district; and

WHEREAS, accordingly, the Board notes that the proposed final FAR of 5.50 is permitted under ZR § 73-63; and

WHEREAS, the proposed enlargement will be built within the as-of-right building envelope and will not create any new non-compliance or increase the amount of non non-compliance except as described above; and

WHEREAS, accordingly the Board has determined that the evidence in the record supports the findings to be made under ZR § 73-63; and

WHEREAS, pursuant to ZR § 73-03, the Board may not grant a request for alteration and enlargement of the site, if such enlargement would either: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; or (4) interfere with any pending public improvement project; and

WHEREAS, based on the above, the Board finds that this action will neither: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; nor (4) interfere with any pending public improvement project ;and

WHEREAS, as to the neighbor’s concerns about effects of the enlargement on his light and air, a response by the applicant states that the proposed addition would not significantly further diminish the amount of available light and air which are already impeded or restricted by a large bulkhead,

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a rooftop “pop-up,” and a fence; and

WHEREAS, the Board reviewed the submissions of the neighbor and the applicant and reiterates that the proposed building is within the as-of-right building envelope and notes, as above, that all relevant findings of the special permit have been met; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR §§ 73-63 and 73-03 and grants a special permit pursuant, limited to the objections cited, to permit the enlargement of an existing six-story non-residential building containing Use Group 17 Joint Living Work Quarters for Artists within an M1-5B zoning district, which increases non-compliance with regard to floor area contrary to ZR § 43-12; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 27, 2007” – nineteen (19) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed enlargement: a floor area increase of 410 sq. ft., a total floor area of 13,844 sq. ft., and an FAR of 5.50;

THAT the above condition shall appear on the certificate of occupancy;

THAT DOB shall review the existing and the proposed floor area calculations, prior to permitting;

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 substantial construction shall be completed within four years of the date of this resolution; 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, December 4, 2007.

213-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Eisenreich, owner.

SUBJECT – Application September 18, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1217 East 26th Street, East 26th Street between Avenue L and Avenue M, Block 7644, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteirman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 4, 2007, acting on Department of Buildings Application No. 302376131, reads in pertinent part:

- “1. Proposed floor area is contrary to ZR 23-141.
 2. Proposed open space ratio is contrary to ZR 23-141.
 3. Proposed side yard is contrary to ZR 23-48.
 4. Proposed rear yard is contrary to ZR 23-47.”;
- and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, side yard, and rear yard, contrary to ZR §§ 23-141, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on October 30, 2007, after due notice by publication in *The City Record*, and then to decision on December 4, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 26th Street, between Avenue L and Avenue M; and

WHEREAS, the subject site has a total lot area of 2,400 sq. ft., and is occupied by a single-family home with a floor area of 1,386 sq. ft. (0.72 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 1,386 sq. ft. (0.72 FAR), to 2,410.6 sq. ft. (1.0 FAR); the maximum floor area permitted is 1,200 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide open space of 1,284.6 sq. ft. (1,800 sq. ft. is the minimum required); and

WHEREAS, the proposed enlargement will maintain the two existing non-complying side yards with widths of 2’-1 ¼” and 4’-6 ¼” (side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement will provide a 23’-6” rear yard (a minimum rear yard of 30’-0” is

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required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing the Board directed the applicant that the proposed dormers and bay windows must comply with zoning district regulations; and

WHEREAS, the applicant represents that the dormers comply with zoning district regulations; and

WHEREAS, the applicant agrees to have DOB review and approve the bay windows, canopies, and dormers; 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 R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, side yard, and rear yard, contrary to ZR §§ 23-141, 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 November 20, 2007"-(7) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 231.8 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,410.6 sq. ft. (1.0 FAR), a rear yard with a minimum depth of 23'-6", and open space of 1,284.6 sq. ft., as illustrated on the BSA-approved plans;

THAT all bay windows, canopies, and dormers shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, December 4, 2007.

215-07-BZ

APPLICANT – Sheldon Lobel, P.C., for YMCA of Greater New York, owner.

SUBJECT – Application September 20, 2007 – Variance (§72-21) to permit an enlargement of the existing community facility building. The proposal requests waivers of lot coverage (§24-11) and sky exposure plane (§24-521). R5B district.

PREMISES AFFECTED – 69-02 64th Street, southwest corner of the intersection of Catalpa Avenue and 64th Street, Block 3631, Lot 6, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 30, 2007, acting on Department of Buildings Application No. 402640246, reads in pertinent part:

1. Proposed enlargement of existing building would increase non-complying lot coverage as per ZR 24-11, increasing the degree of non-compliance in violation of ZR 54-31.
2. Proposed enlargement of existing building would further obstruct non-complying side yard as per ZR 24-35, increasing the degree of non-compliance in violation of ZR 54-31."; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5B zoning district, an enlargement to an existing community facility building, which does not comply with lot coverage and side yard regulations, contrary to ZR §§ 24-11, 24-35, and 54-31; and

WHEREAS, a public hearing was held on this application on October 30, 2007, after due notice by publication in the *City Record*, and then to decision on December 4, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the YMCA of Greater New York (the "YMCA"), a nonprofit

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institution; and

WHEREAS, the site is located on the southwest corner of Catalpa Avenue and 64th Street; and

WHEREAS, the site is square and has a lot area of approximately 10,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story U-shaped building with a narrow central courtyard, with a width of approximately 16'-11"; and

WHEREAS, the building was built as a courthouse in the 1930s; and

WHEREAS, the YMCA occupies the entire two-story building for community facility (Use Group 4) purposes; and

WHEREAS, the building has a floor area of approximately 11,203 sq. ft. (1.12 FAR); and

WHEREAS, the applicant proposes to enlarge the building by filling in the open courtyard at the center of the building, which will increase the total building floor area by 984 sq. ft. to 12,187 sq. ft. (1.22 FAR) (2.0 FAR is the maximum permitted for a community facility in the subject zoning district); and

WHEREAS, the applicant represents that the proposed building will not create any new non-compliances except for lot coverage and one side yard; and

WHEREAS, the proposed enlargement will provide for a lot coverage of 78 percent (60 percent is the maximum permitted for a community facility in the subject zoning district); and

WHEREAS, the proposed enlargement will provide a side yard of 6'-0" at the south side of the building, which matches the existing side yard of 6'-0" on the remaining portions of the lot line (a side yard of 10'-0" is the minimum required); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the constraints of the existing building and (2) the programmatic needs of the YMCA; and

WHEREAS, as to the constraints of the existing building, as noted above, the building was built as a courthouse approximately 70 years ago, but became functionally obsolete for that purpose and was given to the YMCA; and

WHEREAS, the constraints of the existing building include (1) the U-shape which creates two separate wings and does not allow for efficient floor plates or circulation on each floor and between floors, (2) several existing non-complying conditions, including the lot coverage and side yards, which restrict any enlargement, and (3) the absence of an elevator and an adequate staircase; and

WHEREAS, the applicant notes that, due to several existing non-complying conditions, it is unable to feasibly accommodate additional available floor area within an as-of-right building envelope, while providing the required yards; and

WHEREAS, the applicant seeks to alleviate the current space constraints in order to better accommodate its programming which includes after school childcare, teen programs, summer camps, and classes, while improving

physical accessibility; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the YMCA which require the requested waivers: (1) a need for a large contiguous area on the second floor for the cardio center, (2) a need to enlarge the substandard gymnasium, (3) a need to accommodate an increase in attendance, (4) a need for better visitor circulation within the building, and (5) a need to make the building more handicapped-accessible; and

WHEREAS, as to the need to expand and enlarge the activity space, the applicant represents that the creation of a new central corridor will permit the re-distribution of existing space into the cardio center and gymnasium; and

WHEREAS, as to attendance, the YMCA now serves approximately 300 visitors per day and continued increases are anticipated; and

WHEREAS, the applicant represents that the increased attendance requires a more efficient use of the space and better communication between floors; and

WHEREAS, as to visitor circulation, the applicant represents that the two wings of the building are largely cutoff from each other and access is constrained; and

WHEREAS, the applicant proposes to devote the enclosed courtyard to a new stairwell and an elevator to improve circulation in the building and allow for handicapped-accessibility; and

WHEREAS, in sum, the building as enlarged will provide for the enlargement of existing activity space, a central corridor with a new staircase and elevator for improved circulation space, and improved handicapped-accessibility; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement is necessary to address the YMCA's programmatic needs, given the limitations of the existing building; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building, when considered in conjunction with the programmatic needs of the YMCA, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the YMCA is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the increase in lot coverage is limited to the enclosure of a central courtyard, the majority of which will not be visible from the street; and

WHEREAS, the applicant states that the adjacent two-family home to the south of the site is 14 feet away from the YMCA building and does not have any windows on its northern wall, so any potential effects of the enlargement

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into the side yard would be minimal; and

WHEREAS, further, the applicant notes that the proposed side yard on the south side of the site matches the existing side yard on the south lot line; and

WHEREAS, the applicant also notes that the only change to the building's envelope will be the enclosure of a courtyard; and

WHEREAS, the applicant asserts that the proposed building is compatible with the context of the immediate area, which is occupied by multiple dwellings, a house of worship, a police station, and commercial use; and

WHEREAS, the applicant represents that there will be no significant increase in patronage associated directly with the YMCA's enlargement because the enlargement seeks primarily to improve the efficiency of the floor plates and circulation; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the YMCA could occur on the existing lot; and

WHEREAS, the Board notes that in 1965, when Queens County terminated the use of the subject building as a courthouse, it gave the YMCA the building, which had several pre-existing non-complying bulk parameters dating back to the building's construction in the 1930s; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested lot coverage and side yard waivers are the minimum necessary to accommodate the current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will locate the majority of the enlargement within the existing building envelope so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the YMCA to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as Type II action pursuant to Sections 617.5(c) of 6 NYCRR; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R5B zoning district, an enlargement to an existing community facility building, which does not comply

with lot coverage and side yard regulations, contrary to ZR §§ 24-11, 24-35, and 54-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 24, 2007"- Seven (7) sheets; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 12,187 sq. ft., 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 objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 4, 2007.

311-06-BZ thru 313-06-BZ

APPLICANT – Rothkrug, Rothkrug, & Spector, LLP, for White Star Lines LLC.

SUBJECT – Application December 4, 2006 – Zoning variance under §72-21 to allow three, four (4) story residential buildings containing a total of six (6) dwelling units, contrary to use regulations (§42-10); M1-1 district.

PREMISES AFFECTED – 300/302/304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street, Block 357, Lots 38, 39, 40. Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 1:30 P.M., for deferred decision.

65-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Ship Management Corp., owner.

SUBJECT – Application March 15, 2007 – Variance (§72-21) to allow a one-story (UG 6) retail building to violate use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 146-93 Guy R. Brewer Boulevard, northeastern intersection of 147th Avenue and Guy R. Brewer Boulevard, Block 13354, Lot 12, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for continued hearing.

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78-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application April 12, 2007 – Special Permit (§73-36) to allow the operation of a PCE on the first floor of a two-story commercial building. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Sam Chera.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for continued hearing.

730-72-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application October 10, 2007 – Amendment to permit the operation of a Physical Culture Establishment on the first floor of the enlarged portion of an existing building.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Sam Chera.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for continued hearing.

121-07-BZ

APPLICANT – Juan D. Reyes, III, for 400 Victory Boulevard Trust, owner.

SUBJECT – Application May 11, 2007 – Variance (§72-21) to permit the legalization of a Physical Culture Establishment on the first and second floors of an existing nonconforming warehouse building. The proposal is contrary to section 22-00. The Premises is located in an R3-2 zoning district within the Special Hillside Preservation District.

PREMISES AFFECTED – 400 Victory Boulevard, between Austin Place and Cobra Avenue, Block 579, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Juan D. Reyes, III.

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for continued hearing.

124-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gino Masci, owner.

SUBJECT – Application May 16, 2007 – Under (§ 72-21) to allow UG 6 (eating and drinking) on the first floor and cellar of an existing seven-story building, contrary to use regulations (§ 42-14(d)(2)(b)). M1-5B district.

PREMISES AFFECTED – 521 Broome Street, between Broome and Watts Streets, midblock between Thompson Street and Sixth Avenue, Block 476, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for continued hearing.

158-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 184-20 Union Turnpike Realty, LLC, owner.

SUBJECT – Application June 11, 2007 – Variance (§ 72-21) to allow a one-story commercial retail building (UG 6), contrary to use regulations (§ 22-10). R1-2 district.

PREMISES AFFECTED – 184-20 Union Turnpike, 110' west of southwest corner of the intersection of Union Turnpike and Chevy Chase Street, Block 7248, Lot 39, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to January 8, 2007, at 1:30 P.M., for continued hearing.

202-07-BZ

APPLICANT – Cozen O'Connor Attorneys, for Frank J. Martino Revocable Living Trust, owner; Mattan Basseter, lessee.

SUBJECT – Application August 14, 2007 – Special Permit under §73-19 to allow a religious pre-school (UG3). The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2160-2170 McDonald Avenue, west side of McDonald Avenue, 40' north of Avenue T, Block 7087, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: John Gorman, Mary Placanica, John Antonides, Anthony Piana and Theresa Marchitello.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

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Negative:.....0
ACTION OF THE BOARD – Laid over to January 8, 2007, at 1:30 P.M., for decision, hearing closed.

160-07-BZ thru 162-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Cannon Tower, LLC, owner.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to allow a three (3), three-story attached residential buildings; contrary to regulations for use (§ 22-12), side yards (§ 23-461(a)), maximum number of dwelling units (§ 23-22), perimeter wall height (§ 23-631), and FAR (§ 23-141). R4A district.

PREMISES AFFECTED – 3880, 3882, 3884 Cannon Place (formerly known at 3918 Orloff Avenue) south side of Cannon Place at the intersection of Cannon Place and Orloff Avenue, Block 3263, Lots 357, 358, 258, Borough of the Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Adam Rothkrug and Ivan Bolton.

For Opposition: Assemblymember Jeffrey Dinowitz, Tony Perez Cassino, Jamin R. Sewell (Office of Councilmember Koppel, Howard Levinger, Jerald Levinger, Jerald Kreppel and Lynn Schwarz.

ACTION OF THE BOARD – Laid over to January 29, 2007, at 1:30 P.M., for continued hearing.

193-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Gonter and Mark Gonter, owners.

SUBJECT – Application August 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3591 Bedford Avenue, eastern side of Bedford Avenue between Avenue N and O, Block 7679, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for postponed hearing.

201-07-BZ

APPLICANT – Cozen O’Connor Attorneys, for Kapsin & Dallis Realty, Corp., owner.

SUBJECT – Application August 14, 2007 – Variance (§72-21) to permit a new one-story bank. The proposal is contrary to section 22-00. R3-2 district.

PREMISES AFFECTED – 2317 Ralph Avenue, southwest corner of Ralph Avenue and Avenue M, Block 8364, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD # 18BK

APPEARANCES –

For Applicant: Peter Geis and Howard Hornstein.

ACTION OF THE BOARD – Laid over to January 15, 2007, at 1:30 P.M., for continued hearing.

216-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Casa 74th Street, LLC, owner.

SUBJECT – Application September 20, 2007 – Special Permit (§73-36) to allow a physical culture establishment on all five levels of a mixed-use building under construction. The proposal is contrary to section 32-10. C1-9 district.

PREMISES AFFECTED – 255 East 74th Street, aka 1429 Second Avenue, corner of East 74th Street and Second Avenue, Block 1429, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 8, 2007, at 1:30 P.M., for decision, hearing closed.

MINUTES

223-07-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Trigon 57 LLC, owner; Blissworld LLC, lessee.

SUBJECT – Application September 28, 2007 – Special Permit (73-36) to legalize a physical culture establishment on the third floor in an existing commercial building. The proposal is contrary to section 32-10. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57th Street, a/k/a 10-14 W. 57th Street, south side of West 57th Street, between Fifth and Sixth Avenues, Block 1272, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 8, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on November 20, 2007, under Calendar No. 146-07-BZ and printed in Volume 92, Bulletin Nos. 44-45, is hereby modified to read as follows:

146-07-BZ

CEQR #07-BSA-095M

APPLICANT – Slater & Beckerman, LLP, for PDPR Realty Corporation, owner.

SUBJECT – Application June 5, 2007 – Application filed pursuant to §§ 11-411 & 11-412 for the structural alteration and enlargement of a pre-existing nonconforming two-story parking (Use Group 8) garage allowed by a 1924 BSA action. The proposal would permit the addition of a third floor and a first floor mezzanine and the expansion of the cellar in order to increase the capacity of the public parking garage from 96 cars to the proposed 147 cars. The project is located in an R8B zoning district.

PREMISES AFFECTED – 439 East 77th Street, North side of East 77th Street, Between First and York Avenues. Block 1472, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stuart Beckerman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2007, acting on Department of Buildings Application No. 104747204, reads in pertinent part:

“The proposed enlargement and conversion is not permitted as-of-right in zoning district R8B and is contrary to ZR 22-10 and requires BSA special permit pursuant to ZR 11-412;” and

WHEREAS, this is an application under ZR § 11-412 to permit, within an R8B zoning district, the structural alteration and enlargement of an existing nonconforming two-story public parking garage (Use Group 8) to add a first floor mezzanine, third floor, and to expand the cellar to increase the capacity of the garage from 96 cars to 162 cars; and

WHEREAS, a public hearing was held on this application on July 21, 2007, after due notice by publication in *The City Record*, with continued hearings on September 18, 2007 and October 16, 2007, and then to decision on November 20, 2007; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application provided that the

applicant use a non-illuminated accessory sign at the subject building; and

WHEREAS, the site is located on the north side of East 77th Street, 144 ft. west of York Avenue within an R8B zoning district; and

WHEREAS, the site is occupied by a two-story public parking garage with 14,572 sq. ft. of floor area, with full lot coverage at the first and second floors of the of 7,236 sq. ft. lot; and

WHEREAS, on April 8, 1924, under BSA Cal. No. 221-24-BZ, the Board approved an application to permit the construction of a two-story garage for the storage of more than five motor vehicles – the existing 96-car garage - in a business district; and

WHEREAS, in an earlier iteration of the current proposal, the applicant proposed a 147-car three-story garage with a total floor area of 20,543 sq. ft. (2.8 FAR), a wall height of 49’-10”, and a 20’-0” rear yard setback at the third floor; and

WHEREAS, the current proposal is for a 162-car three-story garage with a total floor area of 19,869 square feet (2.75 FAR), a wall height of 59’-0”, and a 30’-0” rear yard setback above the second floor; and

WHEREAS, as to the proposed building: (1) the cellar level will be expanded to approximately 7,236 sq. ft. of floor space; (2) a mezzanine containing 263 sq. ft. in floor area will be constructed at the first floor; (3) a third floor will be constructed with approximately 5,100 sq. ft. of floor area; and (4) connecting ramps and a vehicle elevator will be constructed to allow transit between floors; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for alteration and enlargement of the site, provided that such enlargement does not exceed fifty percent of the floor area existing on December 15, 1961; and

WHEREAS, the applicant proposes to add 5,297 sq. ft. of floor area to the existing 14,572 sq. ft. building; and

WHEREAS, the Board notes that the proposed floor area increase of 36.4 percent is permitted under ZR § 11-412; and

WHEREAS, at hearing, the Board raised concerns about the increased non-compliance of the rear yard, originally proposed at 20’-0” above the second floor; and

WHEREAS, the applicant responded by increasing the rear yard above the second floor from 20’-0” to 30’-0”; and

WHEREAS, the applicant notes that increasing the rear yard above the second floor reduced the proposed floor area and the capacity of the garage; and

WHEREAS, accordingly, the applicant proposes to raise the floor-to-ceiling height of the third floor to 25’-0” from the 15’-0” originally proposed, to accommodate triple-level auto stackers; and

WHEREAS, at hearing, the Board questioned whether the proposed floor to ceiling height was necessary to accommodate the triple-level stackers; and

WHEREAS, the applicant submitted specifications of triple stackers approved by the Department of Buildings that required the requested floor to ceiling height; and

WHEREAS, the applicant further noted that the height of the enlarged building is within the maximum base height

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of 60'-0" and is less than the 75'-0" maximum total height permitted in the zoning district and the height of both abutting buildings; and

WHEREAS, at hearing, the Board questioned whether the third floor enlargement could be set back by five feet in the front to align the building's street wall with those of the adjacent buildings on East 77th Street; and

WHEREAS, the applicant responded that a 5'-0" setback would create a practical difficulty in accommodating the car elevator which is 22'-0" deep, and would require the structural support of the building to be reconfigured and reconstructed; and

WHEREAS, the applicant originally proposed no reservoir spaces; the Board questioned whether cars waiting to enter the garage would block pedestrians and vehicular traffic on the street; and

WHEREAS, the applicant subsequently agreed to provide nine reservoir spaces, representing five percent of the total of 162 spaces, and assured the Board that this number was sufficient for a garage of this size located in a predominately residential neighborhood, where most cars would be parked long term on a monthly basis; and

WHEREAS, at hearing, the Board also asked the applicant if the signage complies with relevant zoning district regulations; and

WHEREAS, the applicant responded that the existing sign is a legal non-conforming non-illuminated sign installed in the 1920s that is within the zoning district regulations; and

WHEREAS, the Board noted that the signage in the aggregate is within the parameters of that permitted and agreed that the proposed signage is appropriate; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement (EAS) CEQR No. 07BSA095M, dated June 6, 2007; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, according to the Phase I Environmental Site Assessment, there are two abandoned 550-gallon gasoline tanks, an inactive boiler, and an active boiler served by a 550-gallon above ground storage tank located in a former mechanic shop on the premises; and

WHEREAS, in a submission to the Board, the applicant represents that this equipment will be removed in accordance with the NYC Building Code and the requirements of the NYS Department of Environmental Conservation; and

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and grants a permit under ZR § 11-412 to allow, within an R8B zoning district, the structural alteration and enlargement of an existing nonconforming two-story public parking garage (Use Group 8), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 5, 2007"-(4) sheets, "October 2, 2007"-(3) sheets and "November 7, 2007" – (3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories, a total floor area of 19,869 sq. ft. (2.75 FAR), a total height of 59'-0"; and a rear yard of 30'-0" above the second floor;

THAT the number of parking spaces shall be limited to 162;

THAT a minimum of nine reservoir spaces shall be provided at the ground level;

THAT the above conditions shall appear on the certificate of occupancy;

THAT DOB shall review and approve the layout of the parking spaces;

THAT DOB will confirm compliance with equipment specifications for all auto stackers;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 20, 2007.

****The resolution has been corrected in the Approved Plans clause. Corrected in Bulletin No. 47, Vol. 92, dated December 13, 2007.**

BULLETIN

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December 20, 2007

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Tuesday, December 11, 2007**

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DOCKET

New Case Filed Up to December 11, 2007

279-07-A

34 Reid Avenue, South west of Reid Avenue (unmapped street) north west of Marshall Avenue (mapped street)., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 4**. Appeal for construction of a new one family dwelling on existing lot.

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

JANUARY 15, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 15, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46th Street Realty Corporation, owner.

SUBJECT – Application September 17, 2007 – Extension of Term/Waiver for a previously granted special permit (73-36) for a physical culture establishment (Osaka Health Spa) on the third floor and mezzanine level of a six story mixed used building in a C6-4.5 zoning district which expired on February 6, 2006.

PREMISES AFFECTED – 37 West 46th Street, north/south West 46th Street, between 5th and 6th Avenues, Block 1262, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

6-04-BZII

APPLICANT – The Law Office of Fredrick A. Becker, for Glenmore Associates, owner; New York Sports Club, lessee.

SUBJECT – Application March 21, 2007 – Extension of Term of a variance granted pursuant to Section 72-21 allow the operation of a physical culture establishment located in a C1-3/R6 zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, northwest corner of Third Avenue and 72nd Street, Block 5890, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEALS CALENDAR

140-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP
Owner: Breezy Point Cooperative, Incorporated
Lessee: Thomas Carroll

SUBJECT – Application May 25, 2007 – Appeals seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 Zoning district.

PREMISES AFFECTED – 607 Bayside Drive, North west intersection of Bayside Drive and zoning street know as Service Lane, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

270-07-A

APPLICANT – Sheldon Lobel, P.C., for Washington Hall Holdings, LLC, owner.

SUBJECT – Application November 27, 2007 – seeking a determination that the owner has acquired a common law vested right to continue development under the prior R6 zoning.

PREMISES AFFECTED – 163-167 Washington Avenue, approximately 80' from the northeast corner of Myrtle Avenue and Washington Avenue, Block 1890, Lots 1, 4, 82, Borough of Brooklyn.

COMMUNITY BOARD #2BK

JANUARY 15, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 15, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

143-07-BZ

APPLICANT – Moshe M. Friedman, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application June 4, 2007 – Variance (§72-21) to permit the construction of a three-story and cellar synagogue, religious pre-school, and Mikva. The proposal is contrary to sections 24-111 (a) and 23-141 (a) (Floor Area and FAR), 24-11 (Open Space and Lot Coverage), 24-521 (Front Wall and Sky Exposure Plane), 24-34 (Front Yard), 24-35 (Side Yard), 25-31 (Parking). R2 district.

PREMISES AFFECTED – 6404 Strickland Avenue, south east corner of Strickland Avenue and East 64th Street, Block 8633, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

193-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Gonter and Mark Gonter, owners.

SUBJECT – Application August 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3591 Bedford Avenue, eastern side of Bedford Avenue between Avenue N and O, Block 7679, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

217-07-BZ

APPLICANT – Eric Palatnik, PC, for Clara Tarantul, owner.

SUBJECT – Application September 24, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage (23-141(a)); rear yard (23-47) and side yards (23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 25 Beaumont Street, between Shore Boulevard and Hampton Avenue, Block 8728, Lot 95, Borough of Brooklyn.

COMMUNITY BOARD #15BK

236-07-BZ

APPLICANT – Jay A. Segal, Esq., for Hope Street Ventures, LLC, owner.

SUBJECT – Application October 17, 2007 – Special Permit (§ 73-46) to allow a waiver of parking requirements for a residential conversion of an existing building. 46 spaces are required; 11 spaces are proposed. M1-2/R6A (MX-8) district.

PREMISES AFFECTED – 53-65 Hope Street, north side of Hope Street between Havemeyer Street and Marcy Avenue, Block 2369, Lot 38, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

249-07-BZ

APPLICANT – Harold Weinberg, P.E., for Varda Grodtko, owner.

SUBJECT – Application November 2, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary side yard requirement (23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 1865 East 28th Street, east side, 215' north of Avenue S between Avenue R and S, Block 6834, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

JANUARY 29, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 29, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

280-06-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Charles P. Green, owner; Exxon Mobil Oil Corporation, lessee.

SUBJECT – Application October 18, 2006 – Under (§ 73-211) to permit in a C2-2 within R3-2 zoning district, the reestablishment of a Special Permit granted by the BSA for an Automotive Service Station with accessory uses, including an existing accessory convenience store which expired on December 20, 2002.

PREMISES AFFECTED – 181-08 Horace Harding Expressway, southeast corner of Utopia Parkway and Horace Harding Expressway, Block 7070, Lot 2, Borough of Queens.

COMMUNITY BOARD #8Q

205-07-BZ

APPLICANT – Omnipoint Communications Inc., for Joseph Wroblewski, owner; Omnipoint Communications, Inc., lessee.

SUBJECT – Application August 20, 2007 – Special Permit (§73-30) to allow a non-accessory radio tower on the rooftop of an existing building. The tower will be disguised as a 25' flagpole. The site is located in an R4-1 zoning district.

PREMISES AFFECTED – 53-20 72nd Place, west side of the intersection of 53rd Road and 72nd Place, Block 2506, Lot 52, Borough of Queens.

COMMUNITY BOARD #5Q

233-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for TIAA-CREF, owner; Pure 86th Street Incorporated, lessee.

SUBJECT – Application October 11, 2007 – Special Permit (§73-36) to allow a physical culture establishment on the first floor, cellar, sub-cellar 1 and sub-cellar 2 in an existing 35-story mixed-use building. The proposal is contrary to section 32-10. C2-8A zoning district.

PREMISES AFFECTED – 203 East 86th Street, northeast corner of the intersection of 86th Street and Third Avenue, Block 1532, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 11, 2007
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0' east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

APPEARANCES –

For Applicant: Alan Sigman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, this is an application for a reopening, a waiver, an extension of the term for a previously granted variance for a Use Group 9 banquet hall, which expired on December 10, 2006, an amendment to permit the enlargement of the facility, and an amendment to extend the hours of operation; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in *The City Record*, with continued hearings on September 11, 2007, October 16, 2007, and November 20, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, State Senator Malcolm A. Smith recommends approval of this application; and

WHEREAS, the subject premises is located on the northeast corner of Linden Boulevard and 205th Street, partially within a C1-2 (R3-2) zoning district and partially within an R3-

2 zoning district; and

WHEREAS, on December 10, 1996, under the subject calendar number, the Board granted a variance to permit a change in use from Use Group 6 retail to Use Group 9 catering establishment at the site for a term of ten years; and

WHEREAS, the Board notes that the applicant requests to describe the use as a banquet hall, which is within the same use group as catering establishment; and

WHEREAS, the site is occupied by a one-story commercial building with a banquet hall, several independent retail units, and an accessory parking lot for 18 cars; and

WHEREAS, the banquet hall is operated as Thomasina's; and

WHEREAS, the applicant currently seeks an additional ten-year term; and

WHEREAS, the applicant also seeks to enlarge the banquet hall use horizontally into adjacent vacant space formerly used for retail; and

WHEREAS, the applicant proposes to construct a second assembly room, a bridal room, an expanded lobby, restrooms, and storage areas; and

WHEREAS, the applicant represents that the new assembly room will have a floor area of 1,272 sq. ft. and will be able to accommodate a maximum of 80 people; and

WHEREAS, the existing assembly room accommodates a maximum of 270 people and, the applicant represents, is not suited for smaller gatherings; and

WHEREAS, the applicant represents that the simultaneous use of the two assembly rooms will be an infrequent occurrence and that the additional space is primarily to broaden the range of services and to better accommodate the current needs; and

WHEREAS, specifically, the applicant represents that the proposed bridal room, improved lobby, handicapped-accessible restrooms, and expanded storage areas will serve the existing and proposed uses; and

WHEREAS, further, the applicant states that there is not an anticipation of increased attendance; and

WHEREAS, the applicant proposes to increase the hours of operation, which are currently: Monday through Friday, 12:00 p.m. to 3:00 p.m. and 8:00 p.m. to 1:30 a.m., and Saturday and Sunday, 9:00 a.m. to 1:30 a.m.; and

WHEREAS, the proposed hours of operation are: 9:00 a.m. to 1:30 a.m., daily; and

WHEREAS, the Board has determined that these hours of operation are appropriate; and

WHEREAS, at hearing the Board raised concerns about whether the 18 parking spaces at the site could accommodate the demand; and

WHEREAS, accordingly, the Board directed the applicant to provide information about the parking demand and availability of parking offsite; and

WHEREAS, the applicant modified the plans to allow for 35 attended parking spaces within the accessory parking lot; and

WHEREAS, the applicant stated that it will provide attended parking during peak hours, otherwise, the lot will remain a non-attended parking lot with 18 spaces; and

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WHEREAS, additionally, the applicant performed a survey of attendees at several banquet hall events and concluded that, on average, approximately 50 percent of attendees arrived by private automobile and there was an average of three attendees per automobile; and

WHEREAS, at the Board's direction, the applicant performed a survey of available on street parking within a 1,000-ft. radius of the site including along Linden Boulevard, Francis Lewis Boulevard, the boundaries of a nearby high school, and along a portion of 118th Avenue; and

WHEREAS, the applicant represents that the survey identified sufficient available offsite parking during the banquet hall's peak periods of Friday, after 8:00 p.m., and Saturday and Sunday after 5:00 pm.; and

WHEREAS, the applicant notes that for the parking analysis, the assumed demand was 350 persons (the maximum capacity during simultaneous use of the two assembly rooms), which is only projected to be reached on rare occasions of simultaneous use, yet could still be accommodated; and

WHEREAS, the applicant also notes that a commercial use occupying the same amount of space as the proposed enlargement would have a higher parking requirement than the proposed use; and

WHEREAS, finally, at hearing, the Board inquired about the use of the banquet hall and whether there was entertainment open to the public; and

WHEREAS, the applicant responded that once or twice a year, the banquet hall hosts charity benefits, which include entertainment and are open to the community; and

WHEREAS, based upon its review of the record, the Board finds that a ten-year extension of term and the enlargement of the catering facility are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 10, 1996, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on December 10, 2016 and to permit the enlargement of the banquet hall; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received October 2, 2007"- (1) sheet and "April 25, 2007"- (4) sheets; and *on further condition*:

THAT this grant shall expire on December 10, 2016;

THAT attended parking shall be provided during hours of operation and when functions are scheduled, from 5:00 p.m. Friday until the close of business Sunday;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.
(DOB Application No. 402562151)

Adopted by the Board of Standards and Appeals,
December 11, 2007.

299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§22-10). R7-1 district.

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100' north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx.

COMMUNITY BOARD # 6BX

APPEARANCES –

For Applicant: Daniel Braff.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeals,
December 11, 2007.

16-36-BZ, Vol. II

APPLICANT – Vassalotti Associates, Architects, for Cumberland Farms Incorporated, owners.

SUBJECT – Application July 17, 2007 – Extension of Term of a previously granted variance for the operation of a gasoline service station (Exxon) which expired November 1, 2007 in a C2-2/R-5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, northwest corner of Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

673-81-BZ

APPLICANT – David L. Businelli, for Joseph Montalbano, owner.

SUBJECT – Application August 20, 2007 – Extension of Term of variance granted pursuant to §72-21 permitting, in an R3-2 zoning district, the erection of a one story and cellar retail store and office building with accessory parking in the open area. The application was previously approved for a 15 year term which expired on January 5, 1997.

PREMISES AFFECTED – 2075 Richmond Avenue, East

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side of Richmond Avenue 461.94' N. feet from corner of Rockland Avenue, Block 2015, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: David Businelli.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

426-83-BZ

APPLICANT – Glen V. Cutrona, AIA, for Giuseppe Emmanuele, owner; S & E Landholding, Incorporated, lessee.

SUBJECT – Application November 3, 2006 – Extension of Term/Amendment/Waiver-Request extension of term of an existing retail stores on the first floor and offices on the second floor (UG6 in a R3-1 zoning district), approved pursuant to §72-21. The amendment seeks to legalize a reduction in parking from the 27 to 20 vehicles and approve the change in parking layout. The application also seeks to amend the signage and extend the term for an additional twenty (20) years from its expiration on November 27, 2004. PREMISES AFFECTED – 1880 Hylan Boulevard, Hylan Boulevard and Slater Boulevard, Block 3657, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Glen V. Cutrona.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for decision, hearing closed.

16-92-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §§72-01 & 72-22 to permit a waiver of the rules of practice and procedure, a re-opening, an amendment, and an extension of the term of the variance. The requested application would permit the legalization from the change in use from auto repair and warehouse to a charity auto donation facility (Use Group 16 automotive storage), container storage (Use Group 16), a woodworking and metal working company (Use Group 16) and a legalization of a 2,420 square foot mezzanine addition. The premises is located in a R5/C1-1 zoning district.

PREMISES AFFECTED – 115 King Street, 78 Sullivan Street, lot front King Street and Sullivan Street, between Richardson and Van Brunt Street, Block 556, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jesscia Loeser.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

67-95-BZ

APPLICANT – Francis R. Angelino, Esq., for Times Square JV LLC, owner; Town Sports International, lessee.

SUBJECT – Application May 17, 2007 – Extension of Term of a previously approved Special Permit granted pursuant to §73-36 allowing the operation of a physical culture establishment on the 14 & 15 floors of the Crowne Plaza Hotel located in a C6-7T (MID) zoning district.

PREMISES AFFECTED – 1591/1611 Broadway, west side, the blockfront between West 48th & West 49th Streets, Block 1020, Lot 46, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

105-07-A thru 108-07-A

APPLICANT – Paul Bonfilio Architect, P.C., for Tom and Angelika Davis, owners.

SUBJECT – Application May 2, 2007 – Proposed construction of four two family semi detached dwellings located within the bed of mapped street (199th) contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED –

198-24 47th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49.

198-28 47th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5619, Lot 20.

47-17 199th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49.

47-18 199th Street, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown.....5

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Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Queens Borough Commissioner dated April 20, 2007 and revised on November 27, 2007, acting on Department of Buildings Application Nos. 402572943, 402572300, 402572934, and 402572952, read in pertinent part:

“Objection #2 – Proposed development is contrary to General City Law #35 building in the bed of mapped street, required BSA approval”; and

WHEREAS, this application as originally filed was for a four two-family semi-detached homes to be built within the bed of 199th Street, between 47th Avenue and 48th Avenue; and

WHEREAS, the applicant revised the plans to reflect three two-family attached and semi-detached homes with frontage on 47th Avenue and one detached two-family home with frontage on the dead end of 199th Street; and

WHEREAS, a public hearing was held on this application on October 23, 2007, after due notice by publication in the *City Record*, with a continued hearing on December 4, 2007, and then to decision on December 11, 2007; and

WHEREAS, Community Board 11, Queens, recommended disapproval of the earlier iteration of the proposal, citing concerns about traffic, parking, and drainage and sewer issues, incompatibility with neighborhood character, and overburdening utilities and infrastructure; and

WHEREAS, State Senator Frank Padavan submitted written testimony in opposition to the proposal, citing concerns about the potential for additional flooding in the area and an increase in traffic; and

WHEREAS, the Auburndale Improvement Association provided testimony in opposition to the application, citing concerns about increased residential density, the potential for flooding during and after the construction process, and the potential need to open up 199th Street in the future; and

WHEREAS, by letter dated August 15, 2007, the Fire Department stated that it reviewed the original application and that it has no objections to the two homes that front on 47th Avenue, but it would require that the two homes that front on the dead end of 199th Street be fully sprinklered; and

WHEREAS, in response, the applicant submitted a revised site plan with reflecting three homes fronting on 47th Avenue and one home fronting on the dead end of 199th Street; and

WHEREAS, by letter dated November 20, 2007, the Fire Department stated that it reviewed the revised site plan and would require only the home that fronts on the dead end of 199th Street (tentative Lot 49) to be fully sprinklered; and

WHEREAS, the applicant revised the site plan to include a note stating that the home on Lot 49 would be fully sprinklered; and

WHEREAS, by letter dated August 21, 2007, the Department of Transportation (DOT) stated that it reviewed the application and advises the Board that it would require the curbs and sidewalks abutting the proposed development to conform to the existing width and alignment that currently exists on 47th Avenue and 199th Street; as to the dead end of

199th Street, DOT stated that it defers to the Fire Department; and

WHEREAS, DOT also notes that Lots 50 and 51, which are not part of this application, require access to 199th street via a common driveway; accordingly, DOT requests that the applicant provide perpetual easements to Lots 50 and 51, allowing them to have access to the common driveway on Lot 49, and that said easement be duly recorded and the deed filed with the County Clerk; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS by letter dated November 30, 2007, DOT states that it has reviewed the applicant’s revised submission and has no further comments; and

WHEREAS, by letter dated June 11, 2007, the Department of Environmental Protection (DEP) states that it reviewed the above application and advises the Board that there is an existing 10-in. private sanitary sewer and an 8-in. city water main in 199th Street, between 47th Avenue and 48th Avenue; and

WHEREAS, additionally, DEP states that there is an existing 10-in. private sanitary sewer and a 12-in. city water main in the bed of 47th Avenue, between 198th Street and Francis Lewis Boulevard; and

WHEREAS, further, amended drainage plans 33E(46), 33GS(11), and 33ESW(17) reflect a future 10-in. sanitary sewer and a 12-in. storm sewer in 199th Street, between 47th Avenue and 48th Avenue; and

WHEREAS, DEP notes that that the proposed construction on existing Lots 50 and 51 will not have access to the existing or future sewers in 199th Street; and

WHEREAS, by letters dated June 29, 2007 and July 27, 2007, and after consultation with DEP staff, the applicant states that Lots 50 and 51 will have sufficient access via a proposed common driveway to 199th Street for both vehicular traffic and water/sewer connections; and

WHEREAS, by letter dated August 23, 2007, DEP states that the proposed width of the common driveway in the bed of 199th Street between 47th Avenue and 48th Avenue for Lots 50 and 51 is not adequate, stating that the minimum 30 feet width is required for the utility access, ingress and egress; and

WHEREAS, in response, the applicant revised the site plan to reflect a layout, which addresses the concerns about access as well as provides for a sewer/corridor easement in the bed of the southwest portion of 199th Street south of 47th Avenue, which will be available for the installation, maintenance, and/or reconstruction of the future 12-in. storm sewer, future 10-in. sanitary sewer and extension of the 8-in. city water main; and

WHEREAS, the Board notes that the revised plans provide for the ingress and egress for existing Lots 50 and 51; the width of the sewer corridor/easement varies from 58’-0” to 42’-0” and length varies from 60.43’ to 18’-0”; and

WHEREAS, the revised plans also reflect that 50’-0” of 47th Avenue between 198th Street and Francis Lewis Boulevard will be available for installation, maintenance, and/or reconstruction of the future 10-in. sanitary sewer, existing 10-

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in. private sanitary sewer, and 12-in. city water main; and

WHEREAS, DEP requests that no permits will be issued until easement documents are approved by DEP and DOB legal counsel and duly recorded in the City Register, with an irrevocable Declaration of Street Opening; and

WHEREAS, DEP has stated that it will accept the proposal, given the noted conditions; and

WHEREAS, based upon its review of the record, the Board finds that the proposal is appropriate with certain conditions as set forth below; and

Therefore it is Resolved that the decisions of the Queens Borough Commissioner, April 20, 2007 and revised on November 27, 2007, acting on Department of Buildings Application Nos. 402572943, 402572300, 402572934, and 402572952 are 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 December 3, 2007"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT no permits shall be issued until easement documents are approved by both the Department of Environmental Protection and Department of Buildings and recorded with the City Register of the County Clerk;

THAT the existence of the easement shall be noted on the certificate of occupancy for the home on Lot 49;

THAT the home on Lot 49 shall be fully sprinklered and the certificate of occupancy shall note this requirement;

THAT an irrevocable Declaration of Street Opening shall be submitted prior to the issuance of any permits;

THAT the lot subdivision is to be approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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, December 11, 2007.

147-07-BZY

APPLICANT – Cozen O’Connor Attorneys, for North Seven Associates, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

Recused: Commissioner Hinkson.....1

Abstain: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application citing the following: (1) the incongruity of the building with the current zoning and its inconsistency with the 197-a plan adopted for the community; (2) invalidity of the DOB permit; and (3) lack of affordable housing or community facilities, despite utilizing a community facility bonus; and

WHEREAS, City Council Member David Yassky has provided written testimony also recommending disapproval of the application; and

WHEREAS, Neighbors Allied for Good Growth and other local residents (collectively, the "Opposition") provided written and oral testimony citing concerns about the validity of the building permit and financial evidence, the safety of the subject building, and its nonconformance with the recently-adopted contextual zoning regulations; and

WHEREAS, the subject premises is located on the south side of North 8th Street, 100 feet east of Berry Street; and

WHEREAS, the premises is currently located within an R6B zoning district; and

WHEREAS, however, the development complies with the prior R6 (M1-2) zoning district regulations; and

WHEREAS, however, on May 11, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the

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Greenpoint Williamsburg Rezoning; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial construction and substantial expenditures subsequent to the issuance of building permits; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such

requirement has been met"; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was issued to the owner by DOB, prior to the Enactment Date: Permit No. 301784399-01 NB, (hereinafter, the "New Building Permit"); and

WHEREAS, the New Building Permit is for a 16-story building and mezzanine which meets open space requirements through the use of rooftops of adjacent properties located at 115 Berry Street and 138 North 8th Street; and

WHEREAS, litigation is pending concerning the applicant's rights to the use of the rooftops at 115 Berry Street and 138 North 8th Street; in the event of a negative decision, the applicant will not be permitted to build higher than ten stories; and

WHEREAS, on January 26, 2006, DOB issued a stop work order because in the absence of a legal determination on the rooftop question, the approved 16-story building is not permitted; and

WHEREAS, in response, the applicant submitted a revised zoning analysis to the DOB in support of a request for reconsideration in connection with the stop work order issued against the site; and

WHEREAS, the revised zoning analysis excluded 5,300 sq. ft. of floor area permitted only if the disputed open space is available; and

WHEREAS, the zoning analysis reflected that the amount of open space not in dispute complies with the requirements for a ten-story building with 40,539 sq. ft. of floor area in an R6 zoning district; and

WHEREAS, the Board notes that, based on the revised zoning analysis, DOB issued a reconsideration on February 26, 2006, partially rescinding the stop work order to permit construction to proceed on the lower ten stories up to a limit of 40,539 sq. ft. in floor area; and

WHEREAS, the Community Board has raised concerns about the validity of the building permit; and

WHEREAS, in oral and written testimony, the Opposition contended that the dispute concerning the applicant's rights to the open space in the adjacent properties invalidates the DOB permit, since the permit is for 16 stories; and

WHEREAS, ZR § 11-31(a) provides that "[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution;" and

WHEREAS, Section 645 (b) (1) of the Charter vests the Commissioner of Buildings with "exclusive power . . . to examine and approve or disapprove plans for the construction or alteration of any building or structure . . .", and

WHEREAS, in response to a request by the Board, the Department of Buildings has confirmed by a letter dated November 19, 2007 that the New Building Permit issued was

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valid when issued; and

WHEREAS, the Board accepts that this letter establishes the validity of the New Building Permit when issued; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit meets the requirements of ZR §11-31(a); and

WHEREAS, in oral and written testimony, the Opposition has also raised questions concerning the validity of the New Building Permit – which approved a 16-story building – to authorize continued construction in the event of a ruling that the applicant has no right to the rooftops of the adjacent properties and can therefore build no higher than ten stories; and

WHEREAS, the applicant represents that, if it is found to have no rights to the rooftops of the adjacent properties, it will seek to amend its permit to allow a complying building; and

WHEREAS, ZR § 11-31(b) provides that building permits issued before the effective date of amendment may be modified after the effective date of the zoning amendment so long as the modifications to such plans do not create a new non-compliance or non-conformity or increase the degree of non-compliance or non-conformity; and

WHEREAS, the Board notes that an amendment to permit a ten-story building with 40,539 sq. ft. of floor area would not create a new non-compliance or non-conformity or increase the degree of non-compliance or non-conformity; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes installation of structural steel and floor slabs, and partial installation of exterior walls, internal partitions and electrical infrastructure; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing the completed building form for the lower ten stories with partially completed façade work; building infrastructure; floors; ceilings; and partial interior wall construction; and

WHEREAS, the applicant represents that all remaining work can be completed in 12 to 18 months; and

WHEREAS, the Board has reviewed all documentation

and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$12,986,900.00, or 60 percent out of the \$21,805,747.00 cost to complete; and

WHEREAS, the applicant has submitted copies of financial records and invoices; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, the Opposition questioned the validity of the financial evidence; and

WHEREAS, the Board notes that even if certain expenditures were eliminated from consideration, considerable expenditures are evidenced by the large portion of the building which is above grade and visible; and

WHEREAS, at hearing the Board asked the applicant to address the violations associated with the construction of the building; and

WHEREAS, in response, the applicant submitted a statement describing each violation and explaining that each has been corrected but not removed from administrative records; and

WHEREAS, the Opposition testified that serious safety violations remained; and

WHEREAS, in response to the Opposition's concerns, the Board requested that DOB inspect the site; and

WHEREAS, the results of subsequent safety inspections filed with the Board by the Department of Buildings and Fire Department indicated that the building was in safe condition, but that the hoist to be used to access the upper floors in the event of a fire was inoperable; and

WHEREAS, in a written submission, the applicant established that the hoist was not operating due to a suspension of electrical power at the building, pending approval of the subject application; and

WHEREAS, the Opposition also raised concerns with the failure of the building to conform to the recently adopted contextual zoning regulations, and with a purported lack of affordable housing or community facilities; and

WHEREAS, the Board recognizes that the community sought and obtained the rezoning and adoption of a 197-a plan but notes that the scope of its review under ZR § 11-332 is limited to ascertaining whether an applicant seeking an extension of a lapsed building permit completed substantial construction and made substantial expenditures prior to its lapse; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this

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resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 301784399-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on December 11, 2009.

Adopted by the Board of Standards and Appeals, December 11, 2007.

2-07-A thru 5-07-A

APPLICANT – Sheldon Lobel, P.C., for Ron Karo, owner.
SUBJECT – Application January 8, 2007 – To allow construction of four-3story 2 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 3212, 3214, 3216, 3218, Tiemann Avenue, northeast corner of Tiemann Avenue and unnamed Street, Block 4752, Lots 128, 129, 132, 133, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh RhinSmith.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 10 A.M., for continued hearing.

39-07-BZ thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of a 3 story, 3 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 3248, 3250, Givan Avenue, unnamed street between Wickham and Givan Avenue, Block 4755, Lots 65 & 66, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

138-07-A

APPLICANT – New York City Department of Buildings.

OWNER: 614 NYC Partners, Incorporated

SUBJECT – Application May 24, 2007 – Appeal seeking to revoke Certificate of Occupancy No. 104114487 that allowed the conversion of single room occupancy units (SRO) to Class A apartments without obtaining a Certificate of No Harassment from NYC Housing Preservation and Development (HPD). R8 Zoning District.

PREMISES AFFECTED – 614 West 138th Street, West 138th Street, east of Riverside Drive and west of Broadway, Block 2086, Lot 141, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 10 A.M., for continued hearing.

155-07-A

APPLICANT – Jorge F. Canepa, for Sonja Keyser, owner.
SUBJECT – Application June 11, 2007 – Proposed construction of a swimming pool, tennis court and changing room located within the bed of a mapped street (Tiber Place) contrary to General City Law Section 35. R1-2 Zoning District.

PREMISES AFFECTED – 55 Chipperfield Court, 413.88' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 21, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Jorge Canepa.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 8, 2008, at 10 A.M., for decision, hearing closed.

204-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Washington-Hall Holdings, LLC, owner.

SUBJECT – Application August 17, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development of a 15 story mixed use building under the prior R6/C1-3 Zoning District.

PREMISES AFFECTED – 163-167 Washington Avenue, approximately 80' from the northeast corner of Myrtle Avenue and Washington Avenue, Block 1890, Lots 1, 4, 82, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Ron Mandel, Jordan Most and Richard Esposito.

For Opposition: Jacqueline Stallings, Sophia Chang, Sharon Barnes, Scott Witter, Peter Eide, Olga Akselrod, Patti Haga.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

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REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 11, 2007
1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

ZONING CALENDAR

240-07-A

APPLICANT – Sheldon Lobel, P.C., for 1270 Bay Ridge Parkway Development, LLC, owner.

SUBJECT – Application October 24, 2007 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R4/C1-2 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1270 Bay Ridge Parkway, 12th Avenue and 13th Avenue, Block 6221, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Irving Minkin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

378-04-BZ

CEQR #05-BSA-066K

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 29, 2005, acting on Department of Buildings Application No. 301803680, reads in pertinent part:

“Proposed residential use is not permitted in M1-1 zoning district pursuant to Z.R. Section 42-00.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a three-story residential building, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in the *City Record*, with continued hearings on February 6, 2007 and March 20, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of the application, citing concerns about neighborhood character, a change in use, and the absence of uniqueness of the site; and

WHEREAS, the proposed building will have a total floor area of 5,317 sq. ft. (1.945 FAR), a street wall and total height

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of 33'-9", six dwelling units, and four enclosed parking spaces (the "Proposed Building"); and

WHEREAS, the applicant initially proposed to construct a four-story building, with 6,705.84 sq. ft. of floor area (2.45 FAR), a street wall and total height of 45'-0", and eight dwelling units; and

WHEREAS, the Board expressed concern about this proposal, noting that the context in the immediate vicinity is of small two and three-story single-family and multi-family buildings; and

WHEREAS, the Board suggested to the applicant that the initially-proposed height and bulk would not be compatible with the character of the neighborhood, given the heights of the surrounding buildings, and that the amount of FAR did not appear to be economically justified; and

WHEREAS, the Board directed the applicant to reduce the building's height and to provide an FAR which is permitted in an R6 zoning district; the residential district across Kingsland Street is zoned R6; and

WHEREAS, the applicant responded to the Board's concerns by submitting revised plans, which reflect a reduced height and an FAR that complies with R6 zoning district regulations; and

WHEREAS, the Board finds the current version acceptable in terms of impact and compatibility with the surrounding context; and

WHEREAS, the site is located on the northeast corner of Kingsland Avenue and Richardson Street within an M1-1 zoning district; and

WHEREAS, the site has a width ranging from 25'-0" to 25'-6", a depth ranging from 106'-9" to 111'-11", and a lot area of 2,733.3 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance application was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is narrow; and (2) the site is small and irregularly-shaped; and

WHEREAS, as to the width, the applicant represents that the site has a width of 25'-6" on Kingsland Avenue and a width of 25'-0" at the interior portion of the site; and

WHEREAS, additionally, the applicant represents that the site has a varying length, from 111'-11" on Richardson Street to 106'-09" on the interior portion of the site; and

WHEREAS, the applicant represents that these conditions, which result in a lot area of approximately 2,733 sq. ft., cannot accommodate a conforming use; and

WHEREAS, specifically, the applicant represents that a lot of this width and size would not be able to accommodate facilities for loading and storing goods for a conforming warehouse or manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that other conforming uses in the zoning district on similarly narrow lots are either (1) part of larger sites under common ownership or (2) old buildings occupied by

established uses; and

WHEREAS, the applicant provided information on the sites within the M1-1 zoning district within a 400-ft. radius of the site, which documents these representations; and

WHEREAS, specifically, the applicant documents that all but two of the other 25-ft. wide sites within the radius are occupied by either residential uses or buildings which date back to 1920 through 1950; the other two sites are vacant; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant initially submitted a feasibility study analyzing a conforming industrial building and an as of right community facility; and

WHEREAS, the applicant concluded that these as of right scenarios would not realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including those across the street, and others on the subject block; and

WHEREAS, the applicant represents that nearly half of the sites within the M1-1 zoning district within a 400-ft. radius of the site are occupied by residential uses; the proportion is even higher when including the sites within the R6 zoning district within the radius; and

WHEREAS, as to the adjacent uses, the applicant represents that there are residential uses along Kingsland Avenue to the north of the site and across the street from the subject site; and

WHEREAS, the applicant asserts that the adjacent residential uses compromise access to the site and compromise its marketability for a conforming use; and

WHEREAS, the applicant represents that all of the seven other sites on the subject blockfront on Kingsland Avenue are occupied by residential uses; and

WHEREAS, the applicant notes that the blocks across the Kingsland Avenue are within a large R6 zoning district and are occupied primarily with residential uses; and

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WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of six dwelling units and four accessory parking spaces will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, further, the Board notes that the earlier iterations would not have been contextual with the surrounding neighborhood, which is characterized by two and three-story residential buildings; and

WHEREAS, specifically, at hearing, the Board directed the applicant to reduce the building height and FAR so that it would be within the R6 zoning district parameters; and

WHEREAS, the Board notes that the proposal has been reduced in terms of FAR and height, which makes it more compatible with the surrounding context; and

WHEREAS, additionally, the Board notes that the proposal includes four parking spaces, which will help minimize any impact on on-street parking; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a four-story building with 6,705.84 sq. ft. of floor area (2.45 FAR), a street wall and total height of 45'-0", and eight dwelling units; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

WHEREAS, in response to the Community Board's recommendation that there be a conforming use on the ground floor, the Board directed the applicant to analyze a residential scenario with ground floor commercial use; and

WHEREAS, the applicant submitted revised plans and a supplemental feasibility analysis which indicate that this scenario would not provide a reasonable return; and

WHEREAS, further, the applicant represents that there is not a strong context for ground floor commercial uses; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA066K, dated

April 29, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: April 29, 2005 EAS and the February 28, 2005 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality and Noise; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on October 27, 2006 and submitted for proof of recording on February 7, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment based on the conditions set forth in the Restrictive Declaration; and

WHEREAS, based upon the above, the Board agrees that the findings required under ZR §73-49 have been met; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a three-story residential building, which is contrary to ZR §42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2007" – eleven (11) sheets; and *on further condition*:

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a

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written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the following are the bulk parameters of the building: three stories, 5,317 sq. ft. of floor area (1.945 FAR), a street wall and total height of 33'-9" (without mechanicals), six dwelling units, and four enclosed parking spaces, all as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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, December 11, 2007.

426-05-BZ

CEQR #06-BSA-046Q

APPLICANT – Sheldon Lobel, P.C., for Expert Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a two-level enlargement of an existing one-story commercial building contrary to FAR regulations (§43-12). M1-1 district.

PREMISES AFFECTED – 57-02/08 39th Avenue and 39-02 58th Street, Block 1228, Lots 48, 52, 57, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

Adopted by the Board of Standards and Appeals, December 11, 2007.

331-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Putnam Holding Corp., owner.

SUBJECT – Application December 27, 2006 – Variance under §72-21 to allow a three-family dwelling to violate front yard (§23-45) and side yard (§23-462(a)) requirements. R4 district.

PREMISES AFFECTED – 3647 Palmer Avenue, south side of Palmer Avenue, between Needham Avenue and Crawford Avenue, Block 4917, Lot 17, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
Abstain: Commissioner Montanez.1

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated December 11, 2007, acting on Department of Buildings Application No. 201057701, reads in pertinent part:

“ZR 23-461(a) Proposed plans only provide one side yard. . . . Two are required;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the construction of a two-story two-family home on a lot that does not comply with side yard requirements, contrary to ZR § 23-461(a); and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, with a continued hearing on November 27, 2007 and then to decision on December 11, 2007; and

WHEREAS, Community Board 12, Bronx, recommended disapproval of an earlier iteration of this application, citing concerns with the height of the home and impacts of front yard and side yard waivers on the character of the neighborhood; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the proposed building will have the following non-complying parameter: a single side yard of with a width of 8'-0" on the southern portion of the lot; and

WHEREAS, two side yards with a total width of 13'-0" are required in the subject R4 zoning district; and

WHEREAS, the site is a vacant lot located on the west side of Palmer Avenue, between Needham Avenue and Crawford Avenue; and

WHEREAS, the applicant originally proposed a three-story three-family home which required a side yard waiver of 8'-0" (because such development requires two side yards with minimum widths of 8'-0" each) and a front yard waiver, and

WHEREAS, the original proposal provided for a floor area of 2,511 sq. ft. and 1.35 FAR (reflecting the floor area bonus available in a predominately built-up area, under certain circumstances); and

WHEREAS, the current proposal is for a two-story two-family home with one complying side yard of 8'-0", floor area of 2,053 sq. ft. and an FAR of 0.82 (0.75 FAR is the minimum permitted, or 0.9 FAR with an attic); and

WHEREAS, the applicant states that the site cannot be developed without a variance, due to its narrow width, thus, the

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instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the site in compliance with underlying district regulations: the lot's narrow width of 25 feet; and

WHEREAS, as to the lot's width, the applicant notes that without a side yard waiver, the site could not feasibly be developed; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot has been in existence and vacant since at least 1933; and

WHEREAS, the applicant notes that, given the narrow width, the provision of two side yards would result in an uninhabitable home with a width of 12'-0", which would severely constrain the floor plates; and

WHEREAS, the Board notes that the site is one of three uniquely small sites that are vacant or under-developed within a 200' radius; and

WHEREAS, further, the Board notes that no comparably sized residential lot within the immediate area provides two complying side yards; and

WHEREAS, the Board agrees that the side yard waiver is necessary in order to construct a habitable home; and

WHEREAS, thus, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create a practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that a complying and viable building could be constructed; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed house complies with all R4 zoning district regulations aside from the side yard requirement, and that the proposed bulk and height is compatible with the other residential buildings in the immediate vicinity; and

WHEREAS, as to concerns raised by the Community Board regarding the home's height, the Board notes that the original proposal reviewed by the Community Board was for a three-story three-family home which the applicant subsequently revised and that the two-story two-family home now proposed is compatible with the surrounding neighborhood; and

WHEREAS, based upon the above based and upon its review of the submitted land use map, the submitted pictures, and site visits, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted, the applicant originally sought to build a three-story three-family home, with a floor area of 2,511 sq. ft. (1.35 FAR) and without the required front yard or one of the two required 8'-0" side yards; and

WHEREAS, at the Board's direction, the applicant modified the plans to reflect a two-story two-family home with a 10'-0" front yard, a floor area of 2,053 sq. ft. and an FAR of 0.82; and

WHEREAS, the Board finds that this proposal for a side yard waiver of 5'-0" is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, in an R4 zoning district, the construction of a two-story two-family home on a lot that does not comply with the side yard requirements, contrary to ZR § 23-461(a); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 21, 2007" – six (6) sheets; and *on further condition*:

THAT the parameters of the proposed home are as follows: one side yard of 8'-0" along the southern portion of the lot, floor area of 2,053 sq. ft., and an FAR of 0.82; as illustrated on the BSA-approved plans

THAT there shall be no habitable space in the cellar;

THAT the above condition shall appear on the Certificate of Occupancy

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, December 11, 2007.

16-07-BZ

CEQR #07-BSA-055X

APPLICANT – Juan D. Reyes, III, for Daytop Village, Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit (§73-44) to permit a reduction in required parking for a Use

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Group 4A ambulatory and diagnostic treatment center located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue, Halperin Avenue between Blandell Avenue and Williamsburg Road, Block 4074, Lot 11, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Juan D. Reyes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated December 6, 2007, acting on Department of Buildings Application No. 200918061, reads in pertinent part:

“Proposed reduction in required accessory parking under Sections 44-21 and 36-21 ZR, for Use Group 6 (B-1 parking use) in an M1-1/C1-2 (R2) zoning district requires a special permit from the Board of Standards and Appeals pursuant to Section 73-44 ZR”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit on a site partially within an M1-1 zoning district and partially within a C1-2 (R6) zoning district, a reduction in the required number of accessory parking spaces for a proposed Use Group 6 use from 36 to 18, contrary to ZR §§ 36-21 and 44-21; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in *The City Record*, with continued hearings on September 18, 2007 and October 23, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, a representative of State Assemblywoman Naomi Rivera provided a letter in opposition to the application; and

WHEREAS, a representative for City Councilmember James Vacca requested information on the offsite parking plans; and

WHEREAS, certain community members appeared at hearing and provided written testimony in opposition to the proposal (the “Opposition”), citing concerns about (1) a purported incompatibility of the proposed use with the neighborhood, (2) the potential for increased traffic, (3) insufficient on-street parking in the area, and (4) a purported lack of available space in the identified offsite parking facilities; and

WHEREAS, the application is brought on behalf of Daytop Village Foundation, a nonprofit institution; and

WHEREAS, the applicant proposes to open a community outreach center for substance abuse and socio-psychological counseling at the site; and

WHEREAS, the subject site is located on the south side of Halperin Avenue, between Blondell Avenue and Williamsbridge Road, and has a lot area of 8,067 sq. ft.; and

WHEREAS, the site is currently occupied by a 5,038 sq. ft. two-story commercial building, with accessory parking spaces; and

WHEREAS, the applicant proposes to enlarge the existing building to result in a total floor area of 10,785 sq. ft. (1.34 FAR); and

WHEREAS, the applicant proposes to provide six parking spaces onsite and 12 parking spaces at other parking facilities within a 600-ft. radius of the site, pursuant to ZR § 36-43; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed parking, complies and conforms with all zoning district regulations; and

WHEREAS, accordingly, the Board’s review was limited to the request for a parking reduction from 36 to 18 spaces, pursuant to the special permit; and

WHEREAS, the Board notes that the enlargement of the building must be approved by DOB for compliance with all zoning district regulations; and

WHEREAS, the applicant submitted a preconsideration from DOB stating its approval of the parking layout for the proposed six onsite parking spaces provided that there be a parking attendant onsite during all hours of operation; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject M1-1 and C1-2 (R6) zoning districts, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provisions, for the noted Use Group 6 use in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, the total number of required parking spaces at the site for the proposed use is 36; and

WHEREAS, accordingly, the special permit allows for a 50 percent reduction for qualifying spaces and this would reduce the required parking for these uses to 18 spaces; and

WHEREAS, the applicant represents that only six parking spaces can be accommodated onsite and the remaining 12 required spaces will be provided at parking facilities within a 600-ft. radius of the site; and

WHEREAS, at hearing, the Board stated that it will request that DOB confirms that the 12 offsite spaces are provided within the requisite 600-ft. radius of the site, per ZR § 36-43, prior to permitting; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

MINUTES

WHEREAS, the applicant has submitted sufficient evidence of good faith in maintaining the proposed use at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, at the Board's request, the applicant prepared a parking analysis based upon a transportation survey for the existing use at the site and studied a 600-ft. radius; and

WHEREAS, the applicant completed a survey of the surrounding area and found that there are a number of other parking facilities with available space; and

WHEREAS, as to public transportation, the applicant represents that the site is well-served by (1) New York City Transit Bx4, Bx8, Bx14, Bx21, Bx31, Bx40, and Bx42 bus lines at Tremont Avenue and Westchester Avenue, and (2) the Westchester Square subway stop of the 6 subway line, which is four blocks away; and

WHEREAS, additionally, the Board asked the applicant to describe the anticipated parking demand at the site; and

WHEREAS, the applicant represents that ten current employees and 16 current clients would drive to the site; and

WHEREAS, however, the applicant notes that (1) not all of the employees who drive would be onsite at the same time and (2) the clients come in shifts and it is unlikely that there would be significant overlap of the clients who drive; and

WHEREAS, further, the site has a maximum occupancy of 20 clients; and

WHEREAS, the projections reflect that the average parking demand by clients would be three spaces at one time; and

WHEREAS, accordingly, the applicant projects that the peak total combined parking demand for clients and employees would be 13 parking spaces; and

WHEREAS, at hearing, the Board suggested that the six onsite parking spaces be limited to use by employees since most of them would stay parked for the entire day and would therefore minimize traffic in and out of the site; and

WHEREAS, the applicant agrees to limit the use of the six onsite parking spaces to employees and to post signs noting the location of the required offsite parking spaces; and

WHEREAS, in response to the Opposition's concerns that the proposed offsite parking spaces have not been substantiated, the Board notes that the applicant has identified five potential offsite parking facilities and that DOB must approve the proposal for required offsite parking spaces prior to issuance of permits; and

WHEREAS, in response to the concern about increased traffic, the Board notes that the former use of the site was commercial offices with 20 accessory parking spaces; and

WHEREAS, the applicant asserts that the former use

generated more vehicle traffic to the site than what is proposed; and

WHEREAS, further, the Board notes that the proposed use is as of right and the only issue it has reviewed for this application is the appropriateness of the parking reduction; and

WHEREAS, based upon the above, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA055X, dated November 1, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit on a site partially within an M1-1 zoning district and partially within a C1-2 (R6) zoning district, a reduction in the required number of accessory parking spaces for the proposed Use Group 6 use from 36 to 18, contrary to ZR § 44-21 and 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received November 20, 2007"-(2) sheets; and *on further condition*:

THAT there shall be no change in ownership or use of the site or the building without prior application to and approval from the Board;

THAT a minimum of six parking spaces shall be provided onsite;

THAT an attendant shall be provided for the six onsite parking spaces during the office's hours of operation;

MINUTES

THAT a minimum of 12 parking spaces shall be provided in offsite parking facilities;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the location and agreements for the use of 12 offsite parking spaces shall be reviewed and approved by DOB prior to the issuance of permits;

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

THAT the layout and design of the onsite accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2007.

33-07-BZ

CEQR #07-BSA-057K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (§72-21) to permit the conversion of the upper four floors of an existing five-story manufacturing building for residential use. The Premises is located in a M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of Carroll Street, 200’ east of intersection with Van Brunt Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 18, 2007, acting on Department of Buildings Application No. 302193212, reads in pertinent part:

“Proposed residential use in M1-1 zoning district is non-conforming per ZR 42-00, hence is not

permitted.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the conversion of the second through fifth floors of a five-story manufacturing building to residential use, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 7, 2007 after due notice by publication in the *City Record*, with continued hearings on October 2, 2007 and November 20, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the north side of Carroll Street, between Columbia Street and Van Brunt Street; and

WHEREAS, the site has a lot area of 5,000 sq. ft.; and

WHEREAS, the site is occupied by a five-story building, built in the 1890s, which was previously occupied by commercial/manufacturing uses, but has been primarily vacant in recent years; and

WHEREAS, the proposed building will have a total floor area of 21,912 sq. ft. (4.38 FAR), a residential floor area of 17,112 sq. ft. (3.42 FAR), a commercial/manufacturing floor area of 4,800 sq. ft. (0.96 FAR), and a street wall and total height of 60’-0”;

WHEREAS, the first floor will be occupied by conforming commercial/manufacturing use and a residential lobby and the second through fifth floors will be occupied by four dwelling units per floor for a total of 16 dwelling units; and

WHEREAS, because the proposed building will contain Use Group 2 dwelling units, the instant variance application was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformity with applicable regulations: (1) an undersized freight elevator, (2) lack of adequate egress, (3) low ceiling height, (4) small floor plates, and (5) inadequate loading and unloading facilities; and

WHEREAS, as to the freight elevator, the applicant states that the dimensions of the freight elevator are 5’-0” wide by 5’-10” deep by 7’-9” high, with a maximum capacity of 2,000 pounds; and

WHEREAS, the applicant represents that the elevator is too small to accommodate modern manufacturing demands, which far exceed the noted capabilities; and

WHEREAS, as to egress, the applicant represents that the existing egress design precludes the building from being divided into smaller spaces for multiple conforming users; and

WHEREAS, as to the ceiling heights, the applicant represents that the first two floors have heights of 11’-6” and 11’-7”, respectively, and the heights of the upper three floors range from 10’-9” to 10’-11”;

MINUTES

WHEREAS, the applicant represents that greater ceiling height is required for modern manufacturing uses; and

WHEREAS, similarly, the applicant represents that the floor plates of approximately 4,350 sq. ft. cannot accommodate modern manufacturing uses; and

WHEREAS, the applicant notes that the current trend in manufacturing and warehouse uses is more easily accessible, horizontal buildings with large floor plates and high ceilings that utilize material storage and moving equipment that was not available or foreseeable at the time the subject building was constructed in the 1890s; and

WHEREAS, as to the loading berth, the applicant represents that it is insufficient to accommodate many trucks, which extend onto the sidewalk or into the street when loading and unloading; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant represents that the owner hired a consultant to market the building for conforming manufacturing and/or commercial use; and

WHEREAS, the applicant made improvements to the building in order to help attract conforming tenants and actively marketed it for more than a year through newspaper and onsite advertisements and a website dedicated to the building; and

WHEREAS, the Board notes that evidence reflecting these efforts was submitted into the record; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial building, which concluded that the as of right scenario would not realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject building's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that more than half of the subject block, including the adjacent lot to the rear of the site, is within an R6 zoning district; and

WHEREAS, further, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses and mixed residential/commercial use; and

WHEREAS, the applicant represents that approximately half of Carroll Street between Columbia Street and Van Brunt Street is occupied with residential or mixed residential/commercial uses; and

WHEREAS, the applicant notes that the majority of the proposed changes will be confined to the existing building envelope and that the proposed FAR of 4.38 is less than the existing 4.48 due to the elimination of a portion of the ground floor space; and

WHEREAS, the applicant represents that the existing conforming commercial use on the first floor will remain and is compatible with the mix of uses in the area; and

WHEREAS, the applicant represents that the proposed conversion meets the light and air requirements of ZR § 15-23 and meets the relevant provisions of the Multiple Dwelling Law; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of 16 dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board notes that the applicant originally proposed to add a partial sixth floor to the existing building to accommodate an additional dwelling unit, which the Board determined was not necessary to achieve a reasonable return; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA057K, dated January 19, 2007; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront

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Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: November 2006 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality and Noise; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on December 6, 2007 and submitted for proof of recording on December 7, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment based on the conditions pursuant to the Restrictive Declaration; and

WHEREAS, based upon the above, the Board agrees that the findings required under ZR § 73-49 have been met; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, the conversion of the second through fifth floors of a five-story manufacturing building to residential use, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 29, 2007"—Six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: five stories, 17,112 sq. ft. (3.42 FAR) of residential floor area on the second through fifth floors, 4,800 sq. ft. (0.96 FAR) of commercial/manufacturing floor area on the first floor, a total floor area of 21,912 sq. ft. (4.38 FAR), a street wall and total height of 60'-0" (without mechanicals), and 16 dwelling units, all as indicated on the BSA-approved plans;

THAT DOB shall confirm the floor area calculations prior to the issuance of permits;

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial

measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all 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, December 11, 2007.

135-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Ester Loewy, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 920 East 24th Street. West side of East 24th Street, 140' north of Avenue L, Block 7587, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Edward Gourdine.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 17, 2007, acting on Department of Buildings Application No. 302342695, reads in pertinent part:

- “1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.

MINUTES

3. Plans are contrary to Z.R. 23-461(a) in that the existing total side yards are less than the required 13'-0".
4. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".
5. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in *The City Record*, with continued hearings on October 16, 2007 and November 20, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, 140 feet south of Avenue I; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,336.8 sq. ft. (0.58 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,336.8 sq. ft. (0.58 FAR), to 3,523.4 sq. ft. (0.88 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 65.9 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with widths of 4'-8" and 8'-1" (side yards with a minimum width of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a 23'-1" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing the Board directed the applicant to remove the portion of the proposed roof which encroached into the sky exposure plane and to confirm that all dormers comply with zoning district regulations; and

WHEREAS, in response, the applicant modified the plans to reflect complying roof and dormer conditions; and

WHEREAS, additionally, the Board directed the applicant to identify all attic space with a height of eight feet or greater and to include that space in the floor area

calculations; and

WHEREAS, in response, the applicant modified the plans to clearly reflect all of the attic space with a heights of 8'-0" or greater; 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 R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 7, 2007"-(7) sheets and "December 3, 2007"-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 765 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 3,523.4 sq. ft. (0.88 FAR), a rear yard with a minimum depth of 23'-1", an open space ratio of 69.9 percent, and side yards with minimum widths of 4'-8" and 8'-1", as illustrated on the BSA-approved plans;

THAT all dormers shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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.

MINUTES

Adopted by the Board of Standards and Appeals,
December 11, 2007.

136-07-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Leora Fenster, owner.

SUBJECT – Application May 22, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141(a)); less than the required side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1275 East 23rd Street, East side of East 23rd Street, 160’ north of Avenue M, Block 7641, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Edward Gourdine.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 14, 2007, acting on Department of Buildings Application No. 302341240, reads in pertinent part:

- “1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.
3. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5’-0”.
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30’-0””; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 18, 2007, after due notice by publication in *The City Record*, with continued hearings on October 16, 2007 and November 20, 2007, and then to decision on December 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, 160 feet north of Avenue M; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 1,909.9 sq. ft. (0.63 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 1,909.9 sq. ft. (0.63 FAR), to 2,967.4 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 103 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 2’-11” (side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement will provide a 23’-9” rear yard (a minimum rear yard of 30’-0” is required); and

WHEREAS, the enlargement of the building is not located within 20’-0” of the rear lot line; and

WHEREAS, at hearing the Board directed the applicant to either establish a context for the initially proposed 37’-5” building height or to reduce the building height; and

WHEREAS, in response, the applicant modified the plans to reflect a reduction in the height of the building from 37’-5” to 34’-3””; and

WHEREAS, additionally, the Board directed the applicant to confirm that all proposed dormers and bay windows comply with zoning district regulations and to eliminate any encroachment into the sky exposure plane; and

WHEREAS, in response, the applicant revised the plans to eliminate any encroachment into the sky exposure plane and submitted calculations reflecting that the dormers and bay windows comply with zoning district regulations; 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.

MINUTES

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; on condition that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 7, 2007"–(7) sheets and "December 3, 2007"–(5) sheets; and on further condition:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 576.3 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,967.4 sq. ft. (0.99 FAR), a rear yard with a minimum depth of 23'-9", an open space ratio of 103 percent, and side yards with minimum widths of 2'-11" and 9'-11", as illustrated on the BSA-approved plans;

THAT all dormers shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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; 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, December 11, 2007.

181-07-BZ

CEQR #08-BSA-005Q

APPLICANT – Omnipoint Communications Inc., for Pat Quadrozzi, owner; Omnipoint Communications Inc., lessee.
SUBJECT – Application July 20, 2007 – Special Permit (§73-30) For a proposed 20-foot extension to an existing 50-foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 72-18 Amstel Boulevard, north side of Amstel Boulevard between 72nd Street, and Beach 73rd Street, Block 16070, Lot 13, Borough of Queens.

COMMUNITY BOARD # 14Q

APPEARANCES –

For Applicant: Robert Bardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 8, 2006, acting on Department of Buildings Application No. 402281954, reads in pertinent part:

"Proposed monopole extension exceeds the sky exposure plane. Monopole must be filed at BSA as per 73-30. TPPN is not applicable since there is no use group for non accessory radio towers;"
and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an M1-1 zoning district, the proposed extension of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 42-00; and

WHEREAS a public hearing was held on this application on November 20, 2007 after due notice by publication in *The City Record*, and then to decision on December 11, 2007; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the proposed monopole will be located on the north side of Amstel Avenue between Beach 72nd Street and Beach 73rd Street; and

WHEREAS, the applicant states that the proposed extension will add 20 feet to an existing telecommunications facility consisting of a 50-foot high monopole, for a final height of 70 feet; and

WHEREAS, the proposed monopole has been designed as a narrow pole to minimize its height, with six small panel antennas at the top of the extension; and

WHEREAS, three small equipment cabinets and a battery cabinet will be located at the base of the monopole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds "that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood"; and

WHEREAS, the applicant represents that (1) the pole has been designed and sited to minimize adverse visual effects; (2) the construction and operation of the pole will comply with all applicable laws, and that no noise or smoke, odor or dust will be emitted; and (3) no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be situated behind the existing monopole adjacent to an existing building and will therefore be minimally visible to the public; and

WHEREAS, the applicant further represents that the

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height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-005Q, dated July 20, 2007; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §§ 73-03 and 73-30, to permit, within an M1-1 zoning district, the proposed extension of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 42-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received July 20, 2007"-(7) sheets; and *on further condition*;

THAT the monopole and equipment cabinets will be maintained in accordance with BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2007.

197-05-BZ

APPLICANT – Blank Rome LLP, by Marvin Mitzner, for B & E 813 Broadway, LLC & Broadway Realty, owner.

SUBJECT – Application August 17, 2005 – Variance (§72-21) to allow a 11-story residential building with ground floor retail; contrary to regulations for FAR and open space ratio (§23-142), front wall height, setback and sky-exposure plane (§33-432), and maximum number of dwelling units (§23-22). C6-1 district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner and Robert Pauls.

For Opposition: Martin Tessier.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for continued hearing.

31-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Frank Falanga, owner.

SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR §§22-00 and 32-00.

PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Jordan Most and Mark London.

ACTION OF THE BOARD – Laid over to February 5, 2008, at 1:30 P.M., for continued hearing.

48-06-BZ

APPLICANT – Jack A. Adesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under § 72-21 to allow an eight (8) story residential building

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containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is contrary to use regulations (§42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Jack Adesso, Bill Seevers and Mario Cangeras and Robert Pauls.

ACTION OF THE BOARD – Laid over to February 12, 2008, at 1:30 P.M., for continued hearing.

134-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under §72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking spaces. Proposal is contrary to regulations for use (§22-12), floor area and FAR (§23-141), open space (§23-141), front yard (§23-45), height and setback (§23-631) and maximum number of dwelling units (§23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 5, 2008, at 1:30 P.M., for continued hearing.

212-06-BZ

APPLICANT – Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application August 22, 2006 – Variance (§72-21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to §22-10.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 8, 2008, at 1:30 P.M., for continued hearing.

233-06-BZ

APPLICANT – Blank Rome LLP, by Marvin Mitzner, for B & E 813 Broadway, LLC & Broadway Realty, owner.

SUBJECT – Application August 17, 2005 – Variance (§72-21) to allow a 11-story residential building with ground floor retail; contrary to regulations for FAR and open space ratio

(§23-142), front wall height, setback and sky-exposure plane (§33-432), and maximum number of dwelling units (§23-22). C6-1 district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Kathleen R. Bradshaw and Edward Dickman.

ACTION OF THE BOARD – Laid over to January 29, 2008, at 1:30 P.M., for continued hearing.

315-06-BZ

APPLICANT– Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35, 24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Oposition: Leonid Zolofarer and Edward Shusterman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for decision, hearing closed.

48-07-BZ

APPLICANT – Alfonso Duarte, for Jerry Trianfaffillou, owner.

SUBJECT – Application February 20, 2007 – Variance (§72-21) for the enlargement of an existing single family residence on an undersized lot which seeks to vary (§23-47) less than the required rear yard and (§23-141(b)) for lot coverage in an R2A zoning district.

PREMISES AFFECTED – 7-12 126th Street, west side 90' south of 7th Avenue, Block 3970, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4
Negative:.....0

ACTION OF THE BOARD – Laid over to January

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15, 2008, at 1:30 P.M., for decision, hearing closed.

151-07-BZ

APPLICANT – Harold Weinberg, P.E., for John Perrone, owner.

SUBJECT – Application June 8, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage, open space (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 1133 83rd Street, north side, 256' east of 11th Avenue between 11th Avenue and 12th Avenue, Block 6301, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for continued hearing.

169-07-BZ

APPLICANT – Jacqueline M. Cigliano, for Chen Lai Ho, owner.

SUBJECT – Application June 18, 2007 – Variance (§72-21) to allow a single-family home; contrary to regulations for minimum lot width (§23-32). R1-1(NA-2) district.

PREMISES AFFECTED – 626 West 254th Street, southerly line of 254th Street, east of intersection of West 254th Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jacquiline Cigliano.

For Opposition: Deborah Kirschner.

ACTION OF THE BOARD – Laid over to February 5, 2008, at 1:30 P.M., for continued hearing.

182-07-BZ

APPLICANT – Harold Weinberg, P.E, for Harry Shlyonsky, owner.

SUBJECT – Application July 20, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (§23-141) in an R3-1 zoning district.

PREMISES AFFECTED – 229 Exeter Street, east side 220' south of Oriental Boulevard, between Oriental Boulevard and Esplanade, Block 8743, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Selutto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson..4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 15, 2008, at 1:30 P.M., for decision, hearing closed.

200-07-BZ

APPLICANT – Rampulla Associates Architects, for Ortho Health Care Realty, LLC, owner.

SUBJECT – Application August 10, 2007 – Variance (§72-21) for new horizontal and vertical addition to existing commercial building for medical offices (UG 4). Proposal is contrary to §22-14. R3-1 district within Special South Richmond District and Special Growth Management District.

PREMISES AFFECTED – 3333 Hylan Boulevard, north west side of Hylan Boulevard, east of Spratt Avenue, Block 4987, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil Rampulla and John Reilly.

For Opposition: James G. Shawgig, Carole Timko, Linda Nigio, William Koman, Keith Turro, John Timko, Ed Converg, Roh LaFemina, Nevgul Laverie.

ACTION OF THE BOARD – Laid over to February 26, 2008, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.