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# BULLETIN

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

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January 17, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

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**TELEPHONE - (212) 788-8500**  
**FAX - (212) 788-8769**

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### CONTENTS

|                                     |     |
|-------------------------------------|-----|
| DOCKET .....                        | 3-4 |
| <b>CALENDAR</b> of January 29, 2008 |     |
| Morning .....                       | 5   |
| Afternoon .....                     | 6   |

---

# CONTENTS

---

**MINUTES of Regular Meetings,  
Tuesday, January 8, 2008**

Morning Calendar .....7

**Affecting Calendar Numbers:**

|               |  |
|---------------|--|
| 651-60-BZ     | 600 West 246 <sup>th</sup> Street, Bronx                 |
| 426-83-BZ     | 1880 Hylan Boulevard, Staten Island                      |
| 170-47-BZ     | 1982 Crotona Parkway, Bronx                              |
| 742-70-BZ     | 830 Bay Street, Staten Island                            |
| 1199-88-BZ    | 29 Nelson Avenue, Staten Island                          |
| 83-97-BZ      | 214-18 24 <sup>th</sup> Street, Queens                   |
| 1038-80-BZ    | 31-07/09/11 Downing Street, Queens                       |
| 222-03-BZ     | 30-04 73 <sup>rd</sup> Street, Queens                    |
| 155-07-A      | 55 Chipperfield Court, Staten Island                     |
| 162-06-A&     |  |
| 165-06-A      | 2852 & 2848 Faber Terrace, Queens                        |
| 219-06-A thru |  |
| 225-06-A      | 241-10/16/22/28/15/21/25 128 <sup>th</sup> Drive, Queens |
| 154-07-A      | 441 East 57 <sup>th</sup> Street, Manhattan              |

Afternoon Calendar .....11

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 227-06-BZ | 2066 Richmond Avenue, Staten Island         |
| 48-07-BZ  | 7-12 126 <sup>th</sup> Street, Queens       |
| 202-07-BZ | 2160-2170 McDonald Avenue, Brooklyn         |
| 216-07-BZ | 255 East 74 <sup>th</sup> Street, Manhattan |
| 223-07-BZ | 12 West 57 <sup>th</sup> Street, Manhattan  |
| 39-06-BZ  | 245 Varet Street, Brooklyn                  |
| 160-06-BZ | 2199 Richmond Avenue, Staten Island         |
| 212-06-BZ | 242-02 61 <sup>st</sup> Avenue, Queens      |
| 293-06-BZ | 54-07 254 <sup>th</sup> Street, Queens      |
| 306-06-BZ | 50 Lawrence Avenue, Brooklyn                |
| 68-07-BZ  | 102-48 65 <sup>th</sup> Road, Queens        |
| 79-07-BZ  | 114-05 Farmers Boulevard, Queens            |
| 88-07-BZ  | 1633 East 29 <sup>th</sup> Street, Brooklyn |
| 152-07-BZ | 8701 Fourth Avenue, Brooklyn                |
| 158-07-BZ | 184-20 Union Turnpike, Queens               |
| 173-07-BZ | 1061 East 21 <sup>st</sup> Street, Brooklyn |
| 176-07-BZ | 50-34 69 <sup>th</sup> Street, Queens       |
| 209-07-BZ | 187-30 Grand Parkway, Queens                |
| 235-07-BZ | 1148 East 27 <sup>th</sup> Street, Brooklyn |

CORRECTION .....24

**Affecting Calendar Number:**

|           |                                     |
|-----------|-------------------------------------|
| 262-06-BZ | 71-13 60 <sup>th</sup> Lane, Queens |
|-----------|-------------------------------------|

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# DOCKETS

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New Case Filed Up to January 8, 2008

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## 280-07-A

158 Dikeman Street, Premises is situated on the north side of Dikeman Street, 100 feet west of Conover Street., Block 574, Lot(s) 34, Borough of **Brooklyn, Community Board: 6**. Construction within mapped street, contrary to Section 35 of the General City Law.

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## 281-07-BZ

1960 East 4th Street, West side of East 4th Street between Kings Highway and Avenue S (approximately 100' north of Avenue S)., Block 6681, Lot(s) 263, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home.

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## 282-07-BZ

774 Scheneck Avenue, Linden Boulevard and Hendrix Avenue, Block 4330, Lot(s) 28C, Borough of **Brooklyn, Community Board: 5**. Variance to allow the construction of two, two family dwellings on one zoning lot where the dwellings, garages , and open parking spaces encroach within one front yard.

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## 283-07-BZ

774 Schenck Avenue, Linden Boulevard and Hendrix Avenue., Block 4330, Lot(s) 28C, Borough of **Brooklyn, Community Board: 5**. Variance to allow construction of two, two family dwellings on one zoning lot, where the dwellings, garage, and open parking spaces encroach within one front yard.

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## 284-07-BZ

52-54 East 13th Street, South side of East 13th Between Broadway and University Place., Block 564, Lot(s) 11, Borough of **Manhattan, Community Board: 2**. Special Permit (73-03; 73-36) to allow legalization of a Physical Culture Establishment.

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## 285-07-BZ

312 Fifth Avenue, Located on the northwest side of Fifth Avenue between West 31st and 32nd Streets, Block 833, Lot(s) 44, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow legalization of a Physoical Culture Establishment.

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## 286-07-BZ

129-01 Merrick Boulevard, Located on the north side of Merrick Boiulevard between Zoller and Eveleth Roads., Block 12490, Lot(s) 11, Borough of **Queens, Community**

**Board: 12**. Special Permit (73-36) to allow legalization of a Physical Culture Establishment.

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## 287-07-A

697 West Street, North side of West 247th Street between Palisade Avenue and Indenpence Avenue. Block 5926 is also located on the property and tennis court., Block 5937, Lot(s) 300, Borough of **Bronx, Community Board: 8**. Construction within mapped street, contrary to Section 35 of the General City Law.

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## 288-07-BZY

421 Burgher Avenue, Bound by Burgher and Mason Avenue, Block 3361, Lot(s) 27, Borough of **Staten Island, Community Board: 2**. Extension of Time (11-332) to complete construction under the prior zoning district.

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## 289-07-BZY

425 Burgher Avenue, Bound by Burgher and Mason Avenue, Block 3361, Lot(s) 27 & 25, Borough of **Staten Island, Community Board: 2**. Extension of Time (11-332) to complete construction under the prior zoning district.

-----

## 290-07-A

10 Clinton Walk, East of Clinton Walk (unmapped street) north of Rockaway Point Boulevard (mapped)., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Section 35 of General City Law.

-----

## 291-07-BZ

1912 New York Avenue, Between Avenues J and K., Block 7614, Lot(s) 66, Borough of **Brooklyn, Community Board: 18**. Variance to allow a synagouge and Rabbi's quarters, contrary to bulk regulations.

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## 292-07-A

41 Queens Walk, East side of Queens Walk (unmapped street) south of Oceanside Avenue (mapped street)., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Section 35 of the General City Law.

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## 1-08-A

65 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Constructionnot fronting a legally mapped street contrary to Section 36of the General City

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# DOCKETS

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Law. -----

**2-08-A**

69 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
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**3-08-A**

73 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
-----

**4-08-A**

77 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
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**5-08-A**

83 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
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**6-08-A**

87 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
-----

**7-08-A**

91 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
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**8-08-A**

93 Giegerich Avenue, West side 154'.75' to Minerva, Block 7792, Lot(s) 242(ten. 286), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 36 of the General City Law.  
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**9-08-BZ**

555 Foster Road, East side 0'0" from the intersection of Foster Road and Stafford Avenue., Block 6892, Lot(s) 8, Borough of **Staten Island, Community Board: 3**. Variance to allow asingle family home. Contrary to bulk regulations.

**10-08-BZ**

66-68 Bradhurst Avenue, Easterly side of Bradhurst Avenue 0 feet easterly of West 145th Street., Block 2045, Lot(s) 21, Borough of **Manhattan, Community Board: 10**. Special Permit (73-36) to allow the operation of a physical culture establishment.  
-----

**11-08-BZ**

3573 Bedford Avenue, Bedford Avenue between Avenue N and Avenue O., Block 7679, Lot(s) 23, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) to legalize the enlargement of a single family residence.  
-----

**12-08-BZ**

317 Lenox Avenue, Premises is situated on the west side of Lenox Avenue, between 125th Stret and 126th Street., Block 1910, Lot(s) 7501, Borough of **Manhattan, Community Board: 10**. Special Permit to allow the operation of a physical culture establishment.  
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**13-08-BZ**

40-42 Charlton Street, Bounded by Varick and Charlton Streets, Avenue of the Americas, and Vandam Street., Block 506, Lot(s) 11,12, Borough of **Manhattan, Community Board: 2**. Variance to enlarge an existing school, contrary to bulk regulations.  
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**14-08-BZ**

1958 East 13th Street, West side of East 13th Street between Avenue S and Avenue T., Block 7291, Lot(s) 108, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family residence.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**



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# CALENDAR

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**JANUARY 29, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 29, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **531-86-BZ**

**APPLICANT** – Spencer Groff, P.E., for Vincent Fantauzzi (agent for owner); Athletic Club at the Equitable Center, lessee.

**SUBJECT** – Application December 14, 2007 – Extension of Term/Waiver for a Physical Culture Establishment in a portion of the concourse, mezzanine and sub-cellar levels of a fifty-one (51) story office building in a C6-6/C6-6.5 MID zoning district which expired on December 16, 2006.

**PREMISES AFFECTED** – 787 Seventh Avenue, Seventh Avenue, West 51<sup>st</sup> Street and 52<sup>nd</sup> Street, Block 1004, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **190-03-BZ**

**APPLICANT** – Sheldon Lobel, P.C, for Satya Sanatan Dharma Sabha Incorporated, owner.

**SUBJECT** – Application December 19, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the enlargement and legalization of a portion of a two-story building to a temple and conversion of the remainder of the building to a temple in an R2 zoning district which expired on January 13, 2008.

**PREMISES AFFECTED** – 87-48 215<sup>th</sup> Place, Hillside Avenue and 215<sup>th</sup> Place, Block 10682, Lot 45, Borough of Queens.

**COMMUNITY BOARD #13Q**

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## **APPEALS CALENDAR**

### **229-07-A**

**APPLICANT** – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Patricia & Dennis Kane, lessees.

**SUBJECT** – Application October 9, 2007 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to General City Law §36 and the upgrade of an existing non-conforming private disposal system partially in the bed of a service road contrary to Building Department Policy. R4 Zoning district.

**PREMISES AFFECTED** – 9 Gotham Walk, east side, 106.78' south of Oceanside Avenue, Block 16350, Lot 400,

Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **260-07-A**

**APPLICANT** – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Catherine & George Chave, lessees.

**SUBJECT** – Application November 9, 2007 – 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.

**PREMISES AFFECTED** – 14 Devon Walk, west side, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**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, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **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**

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### **119-07-BZ**

**APPLICANT** – Sheldon Lobel, P.C., for SCO Family of Services, owner.

**SUBJECT** – Application May 11, 2007 – Variance under (§ 72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§ 42-10), rear yard (§ 43-26) and parking (§ 44-21). M1-2 district.

**PREMISES AFFECTED** – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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# CALENDAR

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**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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

**COMMUNITY BOARD #5Q**

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**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 86<sup>th</sup> Street, northeast corner of the intersection of 86<sup>th</sup> Street and Third Avenue, Block 1532, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**273-07-BZ**

APPLICANT – Moshe M. Friedman, for Abraham Greenstein, owner.

SUBJECT – Application November 29, 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(a)); side yards (§23-461) and rear yard (§23-45) in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 22<sup>nd</sup> Street, 140' north from the intersection of East 22<sup>nd</sup> Street and Avenue N, Block 7658, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 8, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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 246<sup>th</sup> Street, Located on an irregularly shaped lot bounded by the south side of West 246<sup>th</sup> 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 –

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

Abstain: Commissioner Montanez.....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 valet service/ packaged goods store and a stationery store, which expired on March 7, 2001; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, and then to decision on January 8, 2008; and

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

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

WHEREAS, the subject site is bounded by the south side of West 246<sup>th</sup> Street, the east side of Independence Avenue, and the north side of Blackstone Avenue; and

WHEREAS, the site is located within an R4 zoning

district and is occupied by a 13-story apartment building; and  
WHEREAS, the Board notes that at some point subsequent to 1961 the Block was re-numbered from Block 3418 to Block 5909; and

WHEREAS, on March 7, 1961, under the subject calendar number, the Board granted a variance to allow the conversion of one apartment in the cellar of an existing apartment building into a valet service's office; and

WHEREAS, this grant was extended three times; and

WHEREAS, most recently on February 8, 1994, the grant was extended for a term of ten years from the expiration of the prior grant, and was also amended to permit the legalization of the enlargement of the space to accommodate office space, which is now occupied by a stationery store; and

WHEREAS, on August 14, 2002, the Board approved a change to permit the sale of packaged non-perishable goods in a portion of the converted space; and

WHEREAS, the applicant now 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, the Board inquired as to whether the store was accessible to the general public; and

WHEREAS, in response, the applicant stated that there was no access to the valet space/package goods store from outside the building, but that the stationery store is accessible from outside the building; 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 7, 1961, 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 March 7, 2011; on condition that the use and operation shall substantially conform to the approved drawings; and on further condition:

THAT the term of this grant shall expire on March 7, 2011;

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 App. No. 201107202)

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# MINUTES

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Adopted by the Board of Standards and Appeals,  
January 8, 2008.

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**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** – None.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to permit construction of an elevator and ramp for disabled access and to legalize non-complying signage and changes to the previously approved plans for parking, and an extension of the term of a previously granted variance permitting a Use Group 6 building in an R3-1 zoning district, which expired on November 27, 2004; and

WHEREAS, a public hearing was held on this application on October 30, 2007, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2007 and then to decision on January 8, 2008; and

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

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

WHEREAS, the subject site is located on the northeast corner of Hylan Boulevard and Slater Boulevard, within an R3-1 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building with six stores (Use Group 6) on the first floor and office uses above; and

WHEREAS, on November 27, 1984, under BSA Cal. No. 426-83-BZ, the Board granted a variance to permit the

construction of a two-story commercial building for use as retail stores on the first floor and offices on the second floor, for a term of twenty years; and

WHEREAS, the term of the grant expired on November 27, 2004; and

WHEREAS, the applicant now seeks an additional twenty-year term; and

WHEREAS, because the grant has expired, the Board has determined that the new term shall be reduced for the period between the expiration of the prior term on November 27, 2004 and the date of this grant; and

WHEREAS, additionally, the applicant seeks an amendment of the previously approved plans to reduce the number of parking spaces to 20 spaces from the 27 spaces required by the previous grant; and

WHEREAS, the applicant represents that the parking stalls and circulation aisles in the previously approved parking plans for 27 cars were too narrow; and

WHEREAS, the applicant further represents that the as-built condition of 20 spaces allows for improved vehicle circulation and access to refuse dumpsters; and

WHEREAS, the applicant further seeks permission to install a ramp along the southeast side of the building and a passenger elevator to make the building accessible to persons with disabilities; and

WHEREAS, the Board notes that no changes are proposed to the building envelope; and

WHEREAS, the applicant initially also sought to legalize two non-complying signs which each exceed the maximum size of 50 sq. feet, with one sign calculated at 52.50 sq. ft. and the second sign calculated at 59.50 sq. ft.; and

WHEREAS, at hearing, the Board directed the applicant to instead replace the non-complying signage; and

WHEREAS, applicant agreed to replace one sign immediately and to replace the second non-complying sign after the existing tenant vacates in July 2008; and

WHEREAS, based upon its review of the record, the Board finds that the requested waiver of the Rules of Practice and Procedure, the reopening, amendment to install an elevator and ramp and to legalize the non-complying parking, and extension of the 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, as adopted November 27, 1984, so that as amended this portion of the resolution shall read: “to reflect the actual parking conditions, to permit construction of an elevator and ramp, and to extend the term for twenty years from November 27, 2004 to expire on November 27, 2024, *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 November 3, 2006”-(5) sheets and “October 2, 2007”-(1) sheet; and *on further condition:*

THAT this grant shall expire on November 27, 2024;

THAT the premises shall remain graffiti-free;

THAT all signage shall comply with C1 zoning district

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# MINUTES

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regulations;

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

THAT subsequent to construction of the ramp that landscaping be installed and maintained in accordance with ZR § 25-60;

THAT a new certificate of occupancy shall be obtained by January 8, 2009;

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. 500855461)

Adopted by the Board of Standards and Appeals, January 8, 2008.

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## 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 178<sup>th</sup> Street, Block 3121, Lot 11, Borough of Bronx.

### COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Kenneth M. Koons.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 10 A.M., for decision, hearing closed.

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## 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: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 10 A.M., for continued hearing.

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## 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 and 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.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 10 A.M., for continued hearing.

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## 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 Safian.

**ACTION OF THE BOARD** – Laid over to January 19, 2008, at 10 A.M., for continued hearing.

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## 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

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Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for decision, hearing closed.

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**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 73<sup>rd</sup> Street, south west corner of 30<sup>th</sup> Avenue, Block 1121, Lot 6, Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Alfonse Duarte. P.E.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 10 A.M., for decision, hearing closed.

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## 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 §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 – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 1, 2007, acting on Department of Buildings Application No. 500907753, reads in pertinent part: “Objection #1 – Proposed swimming pool, tennis court and changing room in the bed of mapped street is contrary to the General City Law”; and

WHEREAS, this application requests permission to build a proposed in-ground swimming pool, tennis court, and changing room within the bed of a mapped street (Tiber Place); and

WHEREAS, a public hearing was held on this application on December 11, 2007 after due notice by publication in the *City Record*, and then to decision on January 8, 2008; 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, which 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, accordingly, DEP requires a sewer corridor on Lot 21 in the bed of Tiber Place with a minimum width of 32’-0” for the future 10-in. diameter sanitary sewer and 15-in. diameter storm sewer and for the purpose of installation, maintenance, and/or reconstruction of these sewers; and

WHEREAS, in response to DEP’s request, the applicant has agreed to provide a sewer corridor with a width of 32’-0” on Lot 21 in the bed of Tiber Place for the future drainage plan; and

WHEREAS, by letter dated November 14, 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. 500907753, 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 November 2, 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*:

# 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 a sewer corridor with a width of 32'-0" shall be provided for DEP access on Lot 21 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, January 8, 2008.

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## 162-06-A & 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 §35. R2 Zoning district.

PREMISES AFFECTED – 2852 & 2848 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 February 12, 2008, at 10 A.M., for an adjourned hearing.

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## 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 (128<sup>th</sup> Drive) contrary to §35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, §36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128<sup>th</sup> 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 February 12, 2008, at 10 A.M., for an adjourned hearing.

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## 154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57<sup>th</sup> 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 §23-692(a) and is not listed as a permitted obstruction in Section 23-62. R10 Zoning district.

PREMISES AFFECTED – 441 East 57<sup>th</sup> Street, north side of east 57<sup>th</sup> Street, between 1<sup>st</sup> Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for an adjourned hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:30 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, JANUARY 8, 2008 1:30 P.M.

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

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## ZONING CALENDAR

### 227-06-BZ

#### CEQR #07-BSA-015R

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 – 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 Staten Island Borough Commissioner, dated June 13, 2006, acting on Department of Buildings Application No. 500834868, reads in pertinent part:

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“ZR 22-00 Proposed Office Building (Use Group 6) is not permitted as-of-right in a Residential R3-2 Zoning District;”

and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of a two-story commercial office building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, the Board notes that the application as originally filed contemplated a two-story building with a basement and cellar with floor area of 9,040 sq. ft. (0.56 FAR), a rear yard of 5'-6", a front yard of 20'-0", a total height of 36'-0", and 23 parking spaces; and

WHEREAS, additionally, the applicant initially filed a companion application under BSA Cal. No. 228-06-A, pursuant to General City Law Section 35, to permit accessory off-street parking to be provided on the northern side of the site in the bed of a mapped but unbuilt portion of Rivington Avenue; and

WHEREAS, the applicant withdrew BSA Cal. No. 228-06-A due to a plan by the Department of Transportation to open Rivington 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 August 7, 2007, September 25, 2007, October 30, 2007, and November 27, 2007 and then to decision on January 8, 2008; and

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

WHEREAS, Community Board 2, Staten Island, recommended approval of this application, while recommending disapproval of BSA Cal. No. 228-06-A; and

WHEREAS, the proposed building will have two stories and a cellar with a total floor area of 8,528 sq. ft. and an FAR of 0.54, a rear yard of 30'-0", a front yard ranging from 10'-0" to 15'-0", a total height of 26'-0", and 30 parking spaces; and

WHEREAS, the subject premises is located within an R3-2 zoning district on the west side of Richmond Avenue south of Rivington Avenue, a mapped but unbuilt street, and

WHEREAS, the site has a slightly irregular rectangular shape, with approximately 139 feet of frontage on Richmond Avenue extending approximately 112'-0" in depth at its shortest point and 120'-0" in depth at its longest point; and

WHEREAS, the site is currently vacant and has a lot area of 15,972 sq. ft.; and

WHEREAS, the site is the subject of a prior Board action, under BSA Cal. No. 752-87-BZ, which permitted the construction of a two-story building for medical use (Use Group 4) and commercial use (Use Group 6) with 22 parking spaces; and

WHEREAS, the approved development was not constructed; and

WHEREAS, the applicant states that the proposed first and second floors will be occupied by commercial office use; the cellar will be occupied by storage; and

WHEREAS, as noted above, however, the proposed

building requires a use waiver; 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 development: (1) the need to install a sanitary sewer connection; (2) the site's slope; and (3) the site's location on a heavily-traveled arterial road; and

WHEREAS, as to the lack of a sanitary sewer, the applicant represents that the site is more than 200 feet from an existing sanitary sewer and that no sewers exist on Richmond Avenue from Draper Place to Amsterdam Avenue; and

WHEREAS, the applicant further represents that Richmond Avenue is unique in being a developed arterial roadway in Staten Island without sewers; and

WHEREAS, in response to a question by the Board, the applicant submitted materials confirming that that no capital sewer projects were planned for the area of the subject site; and

WHEREAS, the construction of a sanitary sewer would therefore have to be undertaken by the owner at his or her expense; and

WHEREAS, the Board asked the applicant to evaluate possible options for providing a sanitary sewer to the subject property; and

WHEREAS, in response, the applicant submitted an evaluation of three possible options: (1) construction of a private sanitary sewer connection in Richmond Avenue; (2) construction of a septic system; and (3) construction of an internal sanitary drain through an adjacent property to connect to the nearest existing sanitary sewer; and

WHEREAS, the applicant represents that construction of a private sanitary sewer connection in Richmond Avenue would require construction of a drain extending approximately 950 linear feet from the subject property to a drainage plan outlet in Draper Place; and

WHEREAS, the applicant further represents that the installation of the private sanitary connection would be cost-prohibitive; and

WHEREAS, regarding the second option evaluated -- construction of a septic system -- materials submitted by the applicant indicate that construction of a private septic system would require a minimum lot size of 10,000 sq. ft. and minimum frontage of 100 feet, and be costly; and

WHEREAS, the applicant represents that compliance with these requirements would allow development only of a two-family home or a commercial building on the subject site, either of which could be served by the one permissible septic system; and

WHEREAS, the applicant further represents that a septic system also imposes numerous restrictions on as-of-right development, including certain separation distances between the system and buildings, property lines, drywells and water service that taken together constrain the placement of buildings on the site; and

WHEREAS, regarding the third option evaluated by the applicant -- that of connecting the subject site to the nearest



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# MINUTES

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sanitary sewer at Freeman Street – the applicant submitted materials indicating that doing so would require the execution of a “homeowners association” (HOA) with the owner of adjacent tax lot 45 legally outlining the relationship between the two properties to allow for common internal sanitary drains; and

WHEREAS, the applicant notes that the owner of the adjacent tax lot is under no obligation to execute such an HOA; and

WHEREAS, the applicant represents that a connection to the nearest sanitary sewer would necessitate construction of a pump station and force main at considerable cost, reduce the buildable area of the property, and be noisy and unsightly; and

WHEREAS, the applicant also notes that this construction would also require the performance of a topographical survey to determine whether the subject property could have uninterrupted gravity flow and, if that were the case, DEP might refuse approval of the connection to the Freeman Street sewer and may instead require construction of a private sewer to the Draper Place outlet 950 linear feet from the site; and

WHEREAS, as to the site’s slope and irregular shape, the applicant states that the site has a six percent slope; and

WHEREAS, the applicant represents that this topographical condition impedes the development of the site for a complying use; and

WHEREAS, as to the historic use of the site, the applicant has submitted evidence establishing that the subject lot has been in existence and vacant since at least 1985; 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, as to its location, the applicant states that the site is located on Richmond Avenue, an eight-lane north/south arterial roadway approximately 150’-0” in width; and

WHEREAS, the applicant represents that the heavy incidence of traffic on Richmond Avenue stifles demand for residential development; and

WHEREAS, the Board notes that the previous grant under BSA Cal. No. 752-87-BZ acknowledged that the site’s frontage on a busy thoroughfare in Staten Island when coupled with the difficulty in obtaining the necessary sanitary sewer system creates 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 two as-of-right residential alternatives: a single two-family house that could be constructed without installation of sanitary sewer service, and a development consisting of two two-family and four one-family homes which included a sewage pumping station; and

WHEREAS, the study concluded that neither complying scenario would realize a reasonable return; and

WHEREAS, the Board directed the applicant to examine three additional scenarios: (1) a complying scenario consisting of two two-family homes and three one-family homes which substituted a pumping station for a sewer connector with an FAR of 0.59; (2) a non-complying scenario consisting of six two-family homes with an FAR of 0.9, which included the sewer connector; and (iii) a non-complying scenario consisting of three one-family and two two-family homes with an FAR of 0.8, which included a pumping station; and

WHEREAS, the response by the applicant concluded that none of these three scenarios would realize a reasonable return given the high per unit cost associated with construction of either a sewer connector or a pumping station; and

WHEREAS, the Board questioned whether the expense of a sewer connection could be recouped from charging adjacent property owners a fee to obtain a connection; and

WHEREAS, a submission by the applicant in response indicated that only one property on Richmond Avenue could potentially take advantage of the sewer extension and that the potential expense recovery would not compensate for the premium cost; and

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

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

WHEREAS, the applicant represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400’ radius of the site, slightly more than half of the frontage along the east and west sides of Richmond Avenue has been developed for commercial uses; and

WHEREAS, further, photographs submitted by the applicant depict two two-story commercial office buildings similar in scale to the proposed building located across Richmond Avenue; and

WHEREAS, the Board notes that the current proposal respects the height and yard requirements of the subject zoning district; and

WHEREAS, the Board also notes that after reducing the amount of floor area and FAR, the applicant also increased the number of parking spaces provided, from 23 to 30; and

WHEREAS, the Board further notes that the provision of one wide curb cut on Richmond Avenue will mitigate the impact of entering and exiting vehicular traffic from the site on the four bus lines that service it; and

WHEREAS, the Board notes that the original plans did not provide buffering landscaping surrounding the parking area, as would now be required by ZR § 25-60 if the proposed building were in a commercial district; and

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# MINUTES

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WHEREAS, at the Board's request, the applicant submitted revised plans which indicate that landscaping, including shrubbery and plantings will screen the open parking area from the adjoining frontage and from Rivington Avenue; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's pre-existing slope and its lack of a sewer connection; and

WHEREAS, the Board notes that the application as originally filed contemplated a two-story building with basement and cellar, with a floor area of 9,040 sq. ft. (0.56 FAR), a rear yard of 5'-6", a total height of 36'-0", and 23 parking spaces; and

WHEREAS, because the applicant reduced the size of the proposed building and will provide yards which comply with those required for a residential use in the zoning district, 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 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. 07BSA015R, dated May 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 ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, the proposed construction of a two-story commercial building,

which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 13, 2007"- nine (9) sheets and "Received January 3, 2008" – two (2) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 8,528 sq. ft. (0.54 FAR), a rear yard of 30'-0", a front yard ranging from 10'-0" to 15'-0", a total height of 26'-0", and 30 parking spaces, as indicated on the BSA-approved plans;

THAT landscaping, including shrubbery and plantings screening the open parking area, shall be provided and maintained as per 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, January 8, 2008.

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**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 – 7-12 126<sup>th</sup> Street, west side 90' south of 7<sup>th</sup> Avenue, Block 3970, Lot 11, 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

Abstain: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 26, 2007, acting on Department of Buildings Application No. 402314848, reads in pertinent part:

"Non-compliant of minimum 30'-0" required rear yard;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2A zoning district, the proposed

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# MINUTES

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enlargement of a two-story single-family home that does not provide the required rear yard and is contrary to ZR § 23-47; and

WHEREAS, an earlier iteration of the application required the noted rear yard waiver and a lot coverage waiver; 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 11, 2007, and then to decision on January 8, 2008; and

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

WHEREAS, Community Board 7, Queens, recommends disapproval of the earlier iteration of the proposal, which required lot coverage and rear yard waivers, citing concerns about neighborhood character and whether the request for two waivers reflected the minimum variance; and

WHEREAS, City Council Member Tony Avella provided written testimony questioning the FAR calculations; and

WHEREAS, the site is located on the west side of 126<sup>th</sup> Street, 90 feet south of Seventh Avenue, in an R2A zoning district; and

WHEREAS, the site has a width of approximately 75 feet, a depth ranging from 70.11 feet to 52.31 feet, and a total lot area of approximately 4,590 sq. ft.; and

WHEREAS, the site comprises two lots, Lot 11 (on the northern portion of the site) and Lot 13 (on the southern portion of the site), which will be merged into a new Lot 11; and

WHEREAS, the site is currently occupied by a single-family home, built in 1935, on the northern portion of the lot and a detached garage on the southern portion of the lot; and

WHEREAS, the applicant proposes to construct a two-story enlargement to the existing home on the southern portion of the lot and to reduce the size of the existing detached garage; and

WHEREAS, the applicant initially proposed to provide for an enlargement that retained all of the existing garage and resulted in a non-complying lot coverage of 36 percent (30 percent lot coverage is the maximum permitted); and

WHEREAS, the proposed home will have the following complying parameters: 2,256 sq. ft. of floor area (0.49 FAR), a lot coverage of 30 percent, a perimeter wall height of 21'-0", a total height of 28'-7", and a front yard of 15'-0"; and

WHEREAS, however, the applicant proposes to provide a rear yard with a depth of 20'-0" (a minimum depth of 30'-0" is required); and

WHEREAS, the applicant states that rear 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 subject lot is shallow; and (2) the subject lot is irregularly-shaped; and

WHEREAS, as to the shallow depth, the applicant represents that the site has a range of depths from 52.31 feet along the southern lot line to 70.11 feet along the northern lot line; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary to develop the site with a viable enlargement; and

WHEREAS, specifically, the applicant represents that the lot depth cannot feasibly accommodate as of right development; and

WHEREAS, the applicant states that if a complying front yard of 15 feet and a complying rear yard of 30 feet were provided, any proposed enlargement would have an exterior depth of only approximately seven feet at the southernmost point and then reach a depth of approximately 16 feet at the center of the site; and

WHEREAS, accordingly, the applicant represents that the rear yard waiver is necessary to create an enlargement of a reasonable depth; and

WHEREAS, the applicant represents that the subject lot has the shallowest depth of any lot within a 200-ft. radius; and

WHEREAS, as to the irregular shape, the applicant states that the shape constrains a conforming development because the varying depth prohibits the provision of a uniform complying rear yard across the site; and

WHEREAS, the applicant represents that the site is one of only three such irregularly shaped lots within the 200-ft. radius; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create 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 Board notes that the applicant also asserted that until the rezoning of the site on September 28, 2005, from an R3-2 zoning district to an R2A zoning district, a rear yard with a depth of 20'-0" would have been permitted under the shallow lot provisions; and

WHEREAS, the Board does not find the prior zoning relevant to the proposed variance request; 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

WHEREAS, specifically, the applicant provided information on the six homes on the adjacent lots, which reflects a range in FAR from 0.25 to 0.55; and

WHEREAS, the applicant states that the home will remain a single-family home after the enlargement; and

WHEREAS, as to the question, raised by the Board and Council Member Avella, of whether any floor area associated

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# MINUTES

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with the detached garage would be included in floor area calculations, the applicant submitted a determination from DOB which states that, within the subject zoning district, up to 300 sq. ft. of floor space associated with an accessory garage may be excluded from floor area calculations; and

WHEREAS, accordingly, the revised plans provide for a single car garage with floor space of 249 sq. ft., which is not included in the floor area calculations; and

WHEREAS, in response to the Board's concerns about lot coverage and neighborhood context, the applicant reduced the size of the garage so that the lot coverage, initially proposed to be 36 percent, did not exceed the maximum permitted in the zoning district of 30 percent; and

WHEREAS, the Board agrees that the location of the enlargement on the lot and the non-complying rear yard is compatible with the neighborhood context; and

WHEREAS, the Board notes that the existing home does not provide a complying front yard on the northern portion of the site, yet the proposed enlargement will provide the required front yard; 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 proposal complies with all R2A zoning district regulations except for the required rear yard on a portion of the lot; and

WHEREAS, further, the Board notes that during the hearing process, the applicant reduced the proposed lot coverage from 36 percent to 30 percent and agreed to demolish a portion of the existing garage; 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 R2A zoning district, the proposed enlargement of a two-story single-family home that does not provide the required rear yard and is 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 27, 2007"– (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 2,256 sq. ft. of floor area (0.49 FAR), a maximum lot coverage of 30 percent, two stories, a wall height of 21'-0", a total height of 28'-7", a rear yard with a minimum depth of 20'-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, January 8, 2008

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## 202-07-BZ

### CEQR #07-BSA-013K

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 §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.

**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 July 16, 2007, acting on Department of Buildings Application No. 302368303, reads, in pertinent part:

“Proposed School, UG3 is not permitted in M1 Zoning District. Refer to Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR § 73-19 to permit, within an M1-1 zoning district, the proposed operation of a religious pre-school and kindergarten; and

WHEREAS, the application is brought on behalf of Mattan Basseter, a nonprofit corporation (the “applicant”), and the building will be occupied by Magen David Yeshiva (“Magen David”), an operator of religious schools in Brooklyn; and

WHEREAS, a public hearing was held on this

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# MINUTES

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application on October 30, 2007, after due notice by publication in the *City Record*, with a continued hearing on December 4, 2007 and then to decision on January 8, 2008; and

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

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighborhood residents testified in opposition to the school (the "Opposition") citing concerns with traffic, lack of parking, and the preservation of a nearby historic home; and

WHEREAS, the site is located on the west side of McDonald Avenue, 40 feet north of Avenue T in the Gravesend section of Brooklyn; and

WHEREAS, the site is located in an M1-1 zoning district and has a lot area of 16,286 sq. ft.; and

WHEREAS, the subject site is occupied by a vacant two-story office building with approximately 27,016 sq. ft. in floor area; and

WHEREAS, the building runs the entire length of the site's 225'-0" frontage and is predominately built to a depth of 75'-0" abutting the rear lot line; and

WHEREAS, the applicant proposes to renovate the existing building for use as a pre-school and kindergarten (UG 3) with a floor area of 27,016 sq. ft. and an FAR of 1.65; and

WHEREAS, the applicant proposes no change to the building envelope or increase in floor area; and

WHEREAS, the applicant represents that the special permit request is necessitated by the need to provide religious and secular education to benefit members of the surrounding Orthodox Jewish community; and

WHEREAS, a Magen David school serving kindergarten through eighth grade is located north of the subject site on the west side of McDonald Avenue; and

WHEREAS, the proposed building will allow Magen David to offer religious education to approximately 410 pre-school and kindergarten students: 100 three-year-olds; 140 four-year-olds; and 170 five-year-olds; and

WHEREAS, the applicant represents that the proposed pre-school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as-of-right, sufficient to meet the programmatic needs of the school; and

WHEREAS, the applicant notes that Magen David must vacate its existing facility pursuant to a lease agreement that will expire in 2008; and

WHEREAS, the applicant represents that most of the families to be served by the school live within the area bounded by Avenue P to the north, Avenue V to the south, Coney Island Avenue to the east and West 6<sup>th</sup> Street to the

west; and

WHEREAS, additionally, the applicant states that a one-story or two-story building with floor area of least 15,000 sq. ft. is necessary to accommodate Magen David's program; and

WHEREAS, thus, Magen David undertook a search for a property of adequate size in a zoning district near its families which permitted the proposed use; and

WHEREAS, the applicant further represents that there are no available sites near the current location of Magen David's pre-school where construction of a new pre-school and kindergarten would be feasible; and

WHEREAS, according to information submitted to the Board, all adequately-sized sites in the community are built upon; and

WHEREAS, at hearing, the Opposition identified two sites as potential alternatives; and

WHEREAS, a response by the applicant indicated that one of the identified sites was significantly smaller in size, and the other was in a location too remote to be feasible; and

WHEREAS, the applicant maintains that the results of the site search shows that there is no practical possibility of obtaining a site of adequate size for the school in a district where it is permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, evidence in the record indicates that the rear lot line of the site directly abuts an R5 district in which a school would be permitted as of right; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating window and wall construction; and

WHEREAS, the applicant has submitted evidence supporting the above representation; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant has submitted a school safety plan addressing measures necessary for the safety of the students and staff traveling to and from the school; and

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# MINUTES

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WHEREAS, a bus loading and unloading area will be provided along McDonald Avenue which permits children to be delivered to and picked up from the school entirely within the safety of the school property; and

WHEREAS, the New York City Department of Transportation (“DOT”) has conducted a traffic safety review of the subject proposal; and

WHEREAS, the Board notes that the DOT School Safety Engineering Office has also begun preparations for the installation of signs and marking at intersections surrounding the preschool; and

WHEREAS, the Board finds that the movement of the traffic through the street on which the school is located can be controlled so as to protect children going to and from the school; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, neighborhood residents testified to a lack of available parking in the area surrounding the school and raised concerns with the need for staff parking for the school; and

WHEREAS, the applicant notes that there is no parking requirement for a school located in an M1 zoning district; and

WHEREAS, at hearing, the applicant agreed to try to identify available parking for Magen David’s staff; and

WHEREAS, neighborhood residents also testified to the need to take protect a historic house located at 2138 McDonald Avenue (“Hubbard House”) during construction; and

WHEREAS, the Board notes that there will be no change to the building envelope and that no below-ground or in-ground construction is contemplated at the subject site; and

WHEREAS, the Landmarks Preservation Commission has determined that no adverse impacts to the Hubbard House are anticipated as a result of the development of the preschool; and

WHEREAS, the Board accordingly agrees that there is no need for additional protective measures for Hubbard House during construction of the school; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §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. 08BSA013K, dated November 14, 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 Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: August 2007 EAS, the July 2007 Phase I Environmental Site Assessment Report; and the November 30, 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, DEP waived their request for further hazardous materials assessment based on the proposal being a conversion and not new construction; and

WHEREAS, DEP has determined that there would not be any potential air quality and noise impacts from the subject proposal, based on the November 30, 2007 submission; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a pre-school and kindergarten (Use Group 3), located within 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 October 10, 2007”–(4) sheets and “Received November 10, 2007”–(2) sheets; and *on further condition*:

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA approved plans;

THAT the certificate of occupancy shall state that the number of students shall be limited to 500;

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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# MINUTES

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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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 8, 2008.

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## **216-07-BZ**

### **CEQR #08-BSA-013K**

APPLICANT – Rothkrug, Rothkrug & Spector, for Casa 74<sup>th</sup> 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 §32-10. C1-9 district.

PREMISES AFFECTED – 255 East 74<sup>th</sup> Street, a/k/a 1429 Second Avenue, corner of East 74<sup>th</sup> Street and Second Avenue, Block 1429, Lot 21, Borough of Manhattan.

### **COMMUNITY BOARD #8M**

#### 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 Otley-Brown and Commissioner Hinkson..4

Negative:.....0

Abstain: Commissioner Montanez.....1

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 2, 2007, acting on Department of Buildings Application No. 104845250, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in C1-9 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 C1-9 zoning district, the establishment of a physical culture establishment (PCE) on portions of the first and second floors and in the three cellar levels of a proposed 30-story mixed-use commercial/residential building, contrary to ZR § 32-10; and WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, and then to decision on January 8, 2008; and

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

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

WHEREAS, the subject site is located on the northwest corner of Second Avenue and East 74<sup>th</sup> Street; and

WHEREAS, a 30-story mixed-use commercial/residential building is currently under construction at the site; and

WHEREAS, the PCE will occupy a total of approximately 13,745 sq. ft. of floor area on the first and second floors and 25,530 sq. ft. of floor space on the cellar and two sub-cellar levels; and

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

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the hours of operation will be: 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, at hearing, the Board asked the applicant if there will be residential use on the third floor of the proposed building; and

WHEREAS, the applicant responded that there will be residential use on the third floor and on a small portion of the second floor, but that any residential purchaser would be aware that a PCE is planned to occupy the second floor, among other portions of the building; and

WHEREAS, further, the applicant represents that there will be buffer space occupied by mechanicals above the second floor and sound attenuation measures provided between the PCE and residential use on the second and third floors; 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. 08BSA018M, dated December 5, 2007; and

WHEREAS, the EAS documents that the operation of

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# MINUTES

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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 C1-9 zoning district, the establishment of a physical culture establishment on portions of the first and second floors and in the three cellar levels of a proposed 30-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 December 27, 2007"- (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 8, 2018;

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

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

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

THAT 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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

THAT sound attenuation measures shall be installed and maintained in accordance with 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);

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 8, 2008.

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**223-07-BZ**

**CEQR #08-BSA-024M**

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 §32-10. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57<sup>th</sup> Street, a/k/a 10-14 W. 57<sup>th</sup> Street, south side of West 57<sup>th</sup> Street, between Fifth and Sixth Avenues, Block 1272, Lot 47, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES – None.

For Applicant: Meloney McMurry.

**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 Manhattan Borough Commissioner, dated September 19, 2007, acting on Department of Buildings Application No. 104729698, reads in pertinent part:

“Proposed use of physical culture establishment in Commercial C5-3/(Midtown) district at third 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 C5-3 zoning district in the Special Midtown District, the legalization of a physical culture establishment (PCE) on the third floor of a ten-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, and then to decision on January 8, 2008; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 57<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue; and

WHEREAS, the PCE occupies 5,463 sq. ft. of floor area on the third floor of a ten-story commercial building; and

WHEREAS, the PCE is operated as Bliss Spa; and

WHEREAS, the Board notes that the PCE has been in



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# MINUTES

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operation at this site since June 15, 2007 when it relocated from a nearby location; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time, between June 15, 2007 and the date of this grant, when the PCE operated without the special permit; and

WHEREAS, the applicant represents that the services at the PCE include body treatments and beauty services, including massages, facials, and manicures; and

WHEREAS, the hours of operation are: Monday through Friday, 9:00 a.m. to 8:30 p.m.; Saturdays, 9:30 a.m. to 6:30 p.m.; and Sundays, 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. 08BSA024M, dated November 19, 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 C5-3 zoning district in the Special Midtown District, the legalization of a physical culture establishment on the third floor of a ten-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 20, 2007"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 15, 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, January 8, 2008.

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**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 February 26, 2008, at 1:30 P.M., for deferred decision.  
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**160-06-BZ**

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under

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# MINUTES

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§72-21 to permit the proposed one-story and cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to §22-00. R3-1 district.

PREMISES AFFECTED – 2199 (a/k/a 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug and Frank Tioglio, R.A..

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 1:30 P.M., for continued hearing.

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## 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 61<sup>st</sup> Avenue, Douglaston Parkway and 61<sup>st</sup> Avenue, Block 8286, Lot 185, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey A. Chester and Harvey M. Guman.

For Opposition: Anna Levine, J.D., Davie Kerpen and Rosemarie Guidice.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 10 A.M., for decision, hearing closed.

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## 293-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Veronica Nicastrò, 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 – 54-07 254<sup>th</sup> Street, east side of 254<sup>th</sup> Street, 189<sup>th</sup> north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 1:30 P.M., for continued hearing.

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## 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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for decision, hearing closed.

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## 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 65<sup>th</sup> Road, southwest corner Yellowstone Boulevard and 65<sup>th</sup> Road, Block 2130, Lot 37, Borough of Queens.

## COMMUNITY BOARD #6Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 1:30 P.M., for an adjourned hearing.

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## 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 114<sup>th</sup> Road, Block 11007, Lot 5, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

# MINUTES

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 1:30 P. M., for an adjourned 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 29<sup>th</sup> Street, eastern border of 29<sup>th</sup> 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 January 15, 2008, at 1:30 P.M., for deferred decision.

**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 §32-00 of the Zoning Resolution. C4-2A zoning district.

PREMISES AFFECTED – 8701 Fourth Avenue, southeast corner of Fourth Avenue and 87<sup>th</sup> Street, Block 6050, Lot 8, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 1:30 P.M., for deferred decision.

**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 and Julia Shildkret.

**ACTION OF THE BOARD** – Laid over to February 12, 2007, 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 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, 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 §22-12 (use), §23-45(a) (front yard), and §23-461(a) (required 5' side yard). R4 district.

PREMISES AFFECTED – 50-34 69<sup>th</sup> Street, a/k/a 68-18 Garfield Avenue, southwest corner of the intersection of Garfield Avenue and 69<sup>th</sup> Street, Block 2425, Lot 33, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for decision, hearing closed.

**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 188<sup>th</sup> Street and Grand Central Parkway, Block 9969, Lot 12, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Raymond J. Irrera, Howard Gordan and

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# MINUTES

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Judith Gordon Phd.

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 1:30 P.M., for continued hearing.

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**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 27<sup>th</sup> Street, East 27<sup>th</sup> Street between Avenue K and Avenue L, Block 7626, Lot 65, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman and David Shteirman.

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:40 P.M.*

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# MINUTES

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## \*CORRECTION

This resolution adopted on September 11, 2007, under Calendar Nos. 262-06-BZ and printed in Volume 92, Bulletin Nos. 34-35, is hereby modified to read as follows:

### 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 60<sup>th</sup> Lane, between 71<sup>st</sup> 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 60<sup>th</sup> Lane, between Myrtle Avenue and 71<sup>st</sup> 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 60<sup>th</sup> 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 71<sup>st</sup> 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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# MINUTES

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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 60<sup>th</sup> 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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# MINUTES

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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

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# MINUTES

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frontage and demolished more of the building, in order to 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 units with non-complying windows from 44 to 21 and agreed to find alternate means of light and ventilation for remaining windows 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 DOB shall confirm compliance with the light and air requirements of Section 277 of the Multiple Dwelling Law for all units;

THAT the driveway on 71<sup>st</sup> 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.

**\*The resolution has been modified in the 77<sup>th</sup> WHEREAS and second THAT clauses. Corrected in Bulletin No. 1, Vol. 93, dated January 17, 2008.**



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# BULLETIN

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

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Volume 93, No. 3

January 24, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

|                                   |
|-----------------------------------|
| <b>TELEPHONE - (212) 788-8500</b> |
| <b>FAX - (212) 788-8769</b>       |

### CONTENTS

|                                     |       |
|-------------------------------------|-------|
| DOCKET .....                        | 31    |
| <b>CALENDAR</b> of February 5, 2008 |       |
| Morning .....                       | 32    |
| Afternoon .....                     | 32-33 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, January 15, 2008**

Morning Calendar .....34

**Affecting Calendar Numbers:**

|                           |   |
|---------------------------|---|
| 67-95-BZ                  | 1591/1611 Broadway, Manhattan                   |
| 16-36-BZ, Vol. II         | 1885 Westchester Avenue, Bronx                  |
| 146-59-BZ                 | 686-88 Gerard Avenue, Bronx                     |
| 390-61-BZ                 | 148-150 East 33 <sup>rd</sup> Street, Manhattan |
| 673-81-BZ                 | 2075 Richmond Avenue, Staten Island             |
| 16-92-BZ                  | 115 King Street, Brooklyn                       |
| 121-95-BZ                 | 37 West 46 <sup>th</sup> Street, Manhattan      |
| 297-99-BZ, Vol. II        | 45-05 Bell Boulevard, Queens                    |
| 6-04-BZ, Vol. II          | 7118-7124 Third Avenue, Brooklyn                |
| 196-07-A thru<br>199-07-A | 9 Federal Place, Staten Island                  |
| 240-07-A                  | 1270 Bay Ridge Parkway, Brooklyn                |
| 39-07-A thru<br>40-07-A   | 3248, 3250 Givan Avenue, Bronx                  |
| 64-07-A                   | 1704 Avenue "N", Brooklyn                       |
| 140-07-A                  | 607 Bayside Drive, Queens                       |
| 204-07-BZY                | 163-167 Washington Avenue, Brooklyn             |
| 270-07-A                  | 163-167 Washington Avenue, Brooklyn             |

Afternoon Calendar .....40

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 315-06-BZ | 1739 Ocean Avenue, Brooklyn                 |
| 88-07-BZ  | 1633 East 29 <sup>th</sup> Street, Brooklyn |
| 182-07-BZ | 229 Exeter Street, Brooklyn                 |
| 53-07-BZ  | 1901 Eighth Avenue, Brooklyn                |
| 65-07-BZ  | 146-93 Guy R. Brewer Boulevard, Queens      |
| 78-07-BZ  | 2515 McDonald Avenue, Brooklyn              |
| 730-72-BZ | 2515 McDonald Avenue, Brooklyn              |
| 111-07-BZ | 155 Norfolk Street, Brooklyn                |
| 114-07-BZ | 7-05 152 <sup>nd</sup> Street, Queens       |
| 121-07-BZ | 400 Victory Boulevard, Staten Island        |
| 122-07-BZ | 1630 East 15 <sup>th</sup> Street, Brooklyn |
| 124-07-BZ | 521 Broome Street, Manhattan                |
| 143-07-BZ | 6404 Strickland Avenue, Brooklyn            |
| 151-07-BZ | 1133 83 <sup>rd</sup> Street, Brooklyn      |
| 193-07-BZ | 3591 Bedford Avenue, Brooklyn               |
| 201-07-BZ | 2317 Ralph Avenue, Brooklyn                 |
| 211-07-BZ | 1149 East 22 <sup>nd</sup> Street, Brooklyn |
| 217-07-BZ | 25 Beaumont Street, Brooklyn                |
| 236-07-BZ | 53-65 Hope Street, Brooklyn                 |
| 249-07-BZ | 1865 East 28 <sup>th</sup> Street, Brooklyn |

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# DOCKET

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New Case Filed Up to January 15, 2008  
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**15-08-A**

3229 North Chestnut Drive, West side of North Chestnut Drive and North Oak Drive., Block 4606, Lot(s) 40, Borough of **Bronx, Community Board: 12**. Construction not fronting a legally mapped street, contrary to Article 3, Section 36 of the General City Law.  
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**16-08-BZ**

2614 Avenue L, Avenue L between East 26th and East 27th Streets., Block 7644, Lot(s) 46, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**FEBRUARY 5, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 5, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**254-06-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Sarah Weiss.

SUBJECT – Application October 19, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1327 East 21<sup>st</sup> Street, corner of Avenue L and East 21<sup>st</sup> Street, Block 7639, Lot 41, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**35-07-A & 36-07-A**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Seven Waters Incorporated.

SUBJECT – Application January 31, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3411 & 3413 Barker Avenue, west side of Barker Avenue between Duncomb Avenue and Magenta Street, Block 4626, Lot 25, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**62-07-A**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Alberto Laniado.

SUBJECT – Application March 8, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1582 East 17<sup>th</sup> Street, western side of East 17<sup>th</sup> Street, between Avenue O and Avenue P, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**109-07-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Sano Construction Corporation.

SUBJECT – Application May 3, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, Triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**FEBRUARY 5, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 5, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**299-06-BZ**

APPLICANT – Blank Rome LLP by Marvin Mitzner, for Three Partners LLC, owner.

SUBJECT – Application November 13, 2006 – Variance under (§72-21) to legalize the operation 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 East Tremont Avenue, Block 3121, Lots 10 & 25, Borough of Bronx.

**COMMUNITY BOARD #6BX**

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**51-07-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

**COMMUNITY BOARD #8Q**

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**237-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Foundation for Sephardic Studies, Inc., owner.

SUBJECT – Application October 22, 2007 – Variance (§72-21) to permit the construction of a two-story community facility building to serve as an annex to the Main Building, two lots east of the subject premises. The proposal is contrary to §23-631 (maximum perimeter wall height and required setback) and §25-31 (minimum parking requirement). R5 zoning district in the Ocean Parkway Special Zoning District.

PREMISES AFFECTED – 718 Avenue S, south side of Avenue S, midblock between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, Block 7089, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**263-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Aliza

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# CALENDAR

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Goldbrenner and Isaac Goldbrenner, owners.

SUBJECT – Application November 14, 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 (§23-461(a)); and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1169 East 21<sup>st</sup> Street, East 21<sup>st</sup> Street between Avenue J and Avenue K, Block 7603, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 15, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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 and 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 48<sup>th</sup> and West 49<sup>th</sup> Streets,  
Block 1020, Lot 46, 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, Commissioner Hinkson, and  
Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of the term for a previously granted special permit  
for a physical culture establishment (PCE), which expired on  
December 12, 2005; and

WHEREAS, a public hearing was held on this  
application on December 11, 2007 after due notice by  
publication in *The City Record*, and then to decision on  
January 15, 2008; and

WHEREAS, the subject premises is located on the west  
side of Broadway, between West 48<sup>th</sup> Street and West 49<sup>th</sup>  
Street; and

WHEREAS, the site is located within a C6-7T zoning  
district in the Special Midtown District and is occupied by a  
46-story hotel building; and

WHEREAS, the PCE occupies 15,540 sq. ft. on the 14<sup>th</sup>  
floor and 9,369 sq. ft. on the 15<sup>th</sup> floor; and

WHEREAS, on July 18, 1990, under BSA Cal. No. 71-  
90-BZ, the Board granted a special permit to convert an  
existing accessory health club to a physical culture  
establishment on the 15<sup>th</sup> floor of the existing hotel; and

WHEREAS, on May 12, 1992, under BSA Cal. No.  
567-91-BZ, the Board granted a new special permit to legalize

the enlargement of the PCE into additional space on the 14<sup>th</sup>  
and 15<sup>th</sup> floors; and

WHEREAS, on December 12, 1995, under the subject  
calendar number, the Board granted another new special  
permit, to permit the legalization of the enlargement of the  
PCE into additional space on the 14<sup>th</sup> floor 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 represents that the special  
permit was not renewed earlier due to changes in personnel;  
and

WHEREAS, the Board notes that the PCE has  
remained in operation since December 12, 2005 when the  
prior term expired; and

WHEREAS, accordingly, the Board has determined  
that the new term shall be reduced for the period of time,  
between December 12, 2005 and the date of this grant, when  
the PCE operated without a valid special permit; 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 12, 1995, 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 December 12,  
2015; *on condition* that the use and operation of the site shall  
substantially conform to the approved drawings, filed with this  
application marked “Received May 17, 2007” – (3) sheets; and  
*on further condition*:

THAT this grant shall expire on December 12, 2015;

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

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

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. 100946336)

Adopted by the Board of Standards and Appeals,  
January 15, 2008.

# MINUTES

## 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 February 26, 2008, at 10 A.M., for continued hearing.

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## 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 153<sup>rd</sup> Street, Block 2473, Lot 8, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Larry Dean Merritt.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 10 A.M., for decision, hearing closed.

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## 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 33<sup>rd</sup> Street, southside of East 33<sup>rd</sup> Street, east of East 33<sup>rd</sup> Street and Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 10 A.M., for decision, hearing closed.

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## 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 #2SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 10 A.M., for postponed hearing.

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## 16-92-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R. §72-01 and §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, Michael Goodall, Jozsef Keinal, Rishalorig and Adam Armstrong.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 121-95-BZ

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> 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 46<sup>th</sup> Street, north/south West 46<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 1262, Lot 20, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for decision, hearing closed.

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## 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 45<sup>th</sup> 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 10 A.M., for decision, hearing closed.

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## 6-04-BZ, Vol. II

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 §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 72<sup>nd</sup> Street, Block

5890, Lot 43, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for continued hearing.

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## 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

APPEARANCES –

For Applicant: Willy C. Yuin, R.A.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated August 4, 2007, acting on Department of Buildings Application Nos. 510006208 and 510006217, read in pertinent part:

“The street giving access to the proposed construction of a new two family attached building Use Group 2 in R-5 Residential District is not duly placed on the official map of the City of New York contrary to General City Law 36 and therefore is referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated January 9, 2008, acting on Department of Buildings Application Nos. 510006226 and 510006235, read in pertinent part:

“The street giving access to the proposed construction of a new one family attached building Use Group 2 in R-5 Residential District is not duly placed on the official map of the City of New York contrary to General City Law 36 and therefore is referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by



# MINUTES

publication in the *City Record*, and then to continued hearing on January 15, 2008, with decision on that same date; and

WHEREAS, this application requests to build two one-family homes (at 15 and 17 Federal Place) and two two-family homes (at 9 and 11 Federal Place) which do not front on a legally mapped street, contrary to Section 36 of the General City Law; and

WHEREAS, by letter dated September 8, 2007, the Fire Department states that it has reviewed the application and raised objections regarding access to the site as well as the layout of the proposed homes; and

WHEREAS, in response, the applicant states that all proposed homes will be fully sprinklered; the applicant submitted revised site plans which note that the homes will comply with Local Law 10 of 1999; and

WHEREAS, by letter dated December 24, 2007, the Fire Department states that it has reviewed the revised site plans and does not have any 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 August 4, 2007, and January 9, 2008, acting on Department of Buildings Application Nos. 510006208, 510006217, 510006226, and 510006235 are 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 drawings filed with the application marked "Received January 7, 2008"-(-2) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall approve the lot subdivision prior to the issuance of permits;

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 15, 2008.

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## 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, 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, Block 6221, Lot 34, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Sheldon Lobel.

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

THE VOTE TO GRANT –

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

Negative:.....5  
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 mixed-use building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on December 11, 2007 after due notice by publication in *The City Record*, and then to decision on January 15, 2008; and

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

WHEREAS, Council Member Gentile provided a letter in support of the proposal; and

WHEREAS, certain neighbors also submitted letters in support of the proposal; and

WHEREAS, the applicant states that the subject site consists of a 6,000 sq. ft. lot fronting on the south side of Bay Ridge Parkway between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue in the Dyker Heights neighborhood of Brooklyn; and

WHEREAS, the applicant proposes to develop the site with a three-story mixed-use building with six dwelling units and a total floor area of 13,477 sq. ft. containing 3,050 sq. ft. of commercial floor area, 590 sq. ft. of community facility floor area and 6,617 sq. ft. of residential floor area; and

WHEREAS, the subject site was formerly located within an R4 zoning district with a C1-2 overlay on a portion of the site; and

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

WHEREAS, however, on July 25, 2007 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Dyker Heights Rezoning, which rezoned the site to R4-1; and

WHEREAS, the building does not comply with the R4-1 district parameters as to residential density, permitted uses, and front and side yards; 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, DOB has confirmed that New Building Permit No. 302298500 (hereinafter, the "New Building Permit") was lawfully issued to the owner by DOB on July 12, 2007, prior to the Rezoning Date; and

WHEREAS, thus, the Board finds that the permits were

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# MINUTES

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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, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 had completed site preparation, shoring of adjacent properties and nearly all the excavation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site; affidavits of the architect and general contractor; an invoice from the general contractor stating the amount of work completed; cancelled checks; and accounting summaries; and

WHEREAS, the architect and general contractor both state that 90 percent of the excavation and all site clearance and shoring activities were completed by the Rezoning Date; and

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

WHEREAS, the Board also notes that the site preparation and excavation at the site indisputably occurred prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Rezoning Date, and that said work 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 \$1,670,093, including hard and soft costs and irrevocable commitments, out of \$3,291,463 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the budgeted expenditures included site purchase costs which, for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost and these particular site purchase costs, the Board concludes that the actual construction costs for the proposed construction, both soft and hard, approximate \$2 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$102,761 for demolition, disposal of excavated fill, shoring materials, manufacture of structural steel, construction waste containers, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$1.8 million in connection with the proposed construction, because it had executed binding contracts for work and materials, including \$284,500 in outstanding fees to the construction manager; and

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

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

WHEREAS, as to serious loss, 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 \$387,261 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 the residential density limits, front and side yard requirements, and restrictions on commercial use of the new zoning were imposed; and

WHEREAS, specifically, the inability to develop the proposed building would require the owner to re-design the development; and

WHEREAS, the applicant represents that a complying development would have a maximum of four dwelling units

# MINUTES

in two buildings with a total floor area of 4,200 sq. ft., due to the R4-1 zoning district's required front and side yard and density and use restrictions; and

WHEREAS, additionally, as noted by the applicant, soil excavated along the western lot line would have to be backfilled for such a complying building, further compounding the economic harm to the owner; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying development, and the \$387,020 of actual expenditures and outstanding fees 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, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302298500, 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, January 15, 2008.

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## 39-07-A 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 February 26, 2008, at 10 A.M., for continued hearing.

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## 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 17<sup>th</sup> Street, southeast corner lot at

intersection of East 17<sup>th</sup> Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Edward McCabe and Ellen Messing.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 10 A.M., for decision, hearing closed.

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## 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** – Off calendar without date.

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## 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: Jordan Most and Richard Esposito.

For Opposition: Council Member Lelita James, Olga Akselrod, Rosaria Sinisi, Scott Witter, Jane Flanders, Peter Eide, Schellie Hagan and Patti Hagan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 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

APPEARANCES –

For Applicant: Jordan Most and Richard Esposito.

For Opposition: Council Member Lelita James, Olga Akselrod, Rosaria Sinisi, Scott Witter, Jane Flanders, Peter Eide, Schellie Hagan and Patti Hagan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 11:30 A.M.

## REGULAR MEETING

**TUESDAY AFTERNOON, JANUARY 15, 2008**

**1:30 P.M.**

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

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## ZONING CALENDAR

### 315-06-BZ

#### CEQR #07-BSA-042K

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** – 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 November 24, 2006, acting on Department of Buildings Application No. 301914542, reads, in pertinent part:

“Proposed development does not comply with:

- ZR 24-34 Front Yard

- ZR 24-35 Side Yard

- ZR 24-36 Rear Yard

- ZR 24-11 Floor Area Ratio

- ZR 24-11 Lot Coverage;

- ZR-24-521 Height and Setback;” and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site partially within an R5B zoning district and partially within an R2 zoning district, the construction of a three-story and cellar synagogue and accessory religious-based preschool (Use Group 4), which does not comply with the requirements for front, side and rear yards, floor area ratio, lot coverage, and height and setback, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-511, and 24-521; and

WHEREAS, the application is brought on behalf of Merkaz – The Center, Inc. (“Merkaz”) 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 continued hearings on June 19, 2007, August 7, 2007, September 25, 2007, November 20, 2007 and December 11, 2007, and then to decision on January 15, 2008; 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 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing concerns with impact on neighborhood character; and

WHEREAS, City Council Member Bill deBlasio provided testimony in support of the application; and

WHEREAS, certain congregation members provided testimony in support of the application; and

WHEREAS, the subject site is located on the east side of Ocean Avenue, between Avenue L and Avenue M in the Midwood section of Brooklyn and is currently vacant; and

WHEREAS, the subject lot is approximately 3,630 sq. ft. and is located partially within an R5B zoning district and partially within an R2 zoning district; and

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# MINUTES

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WHEREAS, as originally proposed, the three-story and cellar synagogue with accessory preschool (UG 4) was to have the following parameters: 10,255 sq. ft. of floor area and an FAR of 2.825, a lot coverage of greater than 95.6 percent, a wall height of 36'-3", a front yard of 3'-6", and no rear or side yards; and

WHEREAS, during the hearing process the proposal was substantially modified; the current proposal provides for: floor area of 7,373 sq. ft., an FAR of 2.0; a lot coverage ratio of 82 percent, a wall height of 34'-6", a front yard of 5'-0", a rear yard of 15'-0" up to the second story and one side yard of 2'-0" on the northern lot line; and

WHEREAS, the zoning district regulations limit lot coverage to 56 percent and requires a front yard of 10'-0", a rear yard of 30'-0" and two side yards with minimum widths of 8'-0" each; and

WHEREAS, the proposed building will have the following program: (1) a playroom/gym, kitchen, mechanical room and storage in the cellar; (2) synagogue space and rabbi's office on the first floor; (3) nursery and pre-school classrooms on the second and third floors; and (4) outdoor play space on the roof; and

WHEREAS, the first floor will have 2,790 sq. ft. of floor area, the second floor will have 2,970 sq. ft. of floor area and the third floor will have 1,612 sq. ft. of floor area, for a total of 7,323 sq. ft. of floor area and an FAR of approximately 2.0; and

WHEREAS, the maximum permitted floor area is 7,095 sq. ft. and the maximum FAR for community facility buildings or buildings used partly for community facility uses is 1.9; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of Merkaz, which includes its mission to provide a synagogue for its new congregation, a pre-school school for religious and secular education to benefit children in the surrounding Orthodox Jewish community, and adult education classes; and

WHEREAS, the applicant represents that Merkaz has a congregation of approximately 20 families and has no formal place of worship; and

WHEREAS, the proposed building will also allow Merkaz to offer religious-based education for up to 80 children aged two to five; and

WHEREAS, the Board acknowledges that Merkaz, as a religious and 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, 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, religious educational institutions

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, religious institutions are entitled to locate on their property facilities for other uses that are reasonably associated with their overall purposes and a day care center/preschool has been found to constitute such a use. See Uni. Church v. Shorten, 63 Misc.2d 978, 982 (Sup. Ct. 1970); 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 site has a width of 33'-0" and if both the required 8'-0" side yards were provided, the complying building would have a width of approximately 17'-0"; and

WHEREAS, the applicant notes that this scenario, 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 Merkaz's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard, FAR and lot coverage waivers would enable Merkaz 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 building's height to fit into the context of the neighborhood; and

WHEREAS, in response to the request of the Board, the applicant has submitted a detailed analysis of the program needs of Merkaz on a space-by-space and time-allocated basis which confirms that the daily simultaneous use of the overwhelming majority of the spaces requires the proposed floor area and layout and associated waivers; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Merkaz, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Merkaz 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

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# MINUTES

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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 adjacent site to the north is developed with a six-story multiple-dwelling; and

WHEREAS, the applicant further represents that the surrounding area is developed with buildings comparable in size to the proposed building; and

WHEREAS, the applicant submitted photographic documentation in support of the proposed building's consistency with the character of the neighborhood; and

WHEREAS, during the hearing process, the proposal was substantially modified to reduce the height, floor area and lot coverage, to provide a 2'-0" side yard and a larger front yard, and a 15'-0" rear yard, which increases above the second floor to a setback of 47'-0"; and

WHEREAS, as a community facility, Merkaz would be permitted to build to the rear lot line up to a height of 23 feet; and

WHEREAS, the Board agrees that the proposed three-story with cellar building is compatible with the surrounding residential area with respect to both use and bulk; and

WHEREAS, concerns were raised by the Fire Department concerning the lack of a secondary means of egress from the site; and

WHEREAS, in response the applicant stated that a secondary means of egress would be provided by the adjacent property; and

WHEREAS, the Board directed the applicant to maintain an easement guaranteeing such egress; 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, as originally proposed, the building was to have 10,255 sq. ft. of floor area and an FAR of 2.825, a lot coverage of greater than 95.6 percent, a wall height of 36'-3", a front yard of 3'-6", and no rear or side yards; and

WHEREAS, in response to concerns raised by the Board, the applicant revised the proposal to provide for 7,373 sq. ft. of floor area and an FAR of 2.0, lot coverage of 82 percent, a wall height of 34'-6", a front yard of 5'-0", a rear yard of 15'-0", and one side yard of 2'-0" on the northern lot line; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow Merkaz 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 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 a site located partially within an R5B zoning district and partially within an R2 zoning district, the construction of a three-story and cellar synagogue and accessory religious-based preschool (Use Group 4), which does not comply with the requirements for front, side and rear yards, floor area ratio, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-511, and 24-521, *on condition* that any and all work

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# MINUTES

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shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 29, 2007" – (15) sheets; and *on further condition*:

THAT, the proposed synagogue/accessory pre-school shall have a floor area of 7,373 sq. ft., an FAR of 2.0, lot coverage of 82 percent, a 2'-0" side yard along the northern lot line, a front yard of 5'-0", and a rear yard of 15'-0";

THAT any change in ownership or use of the building shall be reviewed and approved by the Board;

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, prior to the issuance of the Certificate of Occupancy, an easement to provide a secondary means of egress to the site be recorded against the title of the adjacent property located at Block 7638, Lot 22;

THAT the aforementioned condition be noted on the approved plans and 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, January 15, 2008.

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## 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 29<sup>th</sup> Street, eastern border of 29<sup>th</sup> 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** – 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 October 22, 2007, acting on Department of Buildings Application No. 302263903, reads in pertinent part:

"1. Proposed floor area exceeds that which is

permitted and is contrary to ZR 23-141(b).

2. Proposed lot coverage exceeds that which is permitted and is contrary to ZR 23-141(b).

3. Proposed rear yard does not meet minimum required and is contrary to ZR 23-47."; 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, lot coverage, and rear yard, contrary to ZR §§ 23-141(b) and 23-47; 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 27, 2007, and then to decision on January 15, 2008; 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, the subject site is located on the east side of East 29<sup>th</sup> 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 2,086 sq. ft. (0.42 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 2,086 sq. ft. (0.42 FAR), to 5,068 sq. ft. (1.01 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide a lot coverage of 38 percent (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (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 proposed to enlarge the existing home in the front and in the rear; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained; and

WHEREAS, in response, the applicant redistributed the new floor area so that it was confined to the rear and side of the existing home and would not encroach into the existing front yard; and

WHEREAS, additionally, the applicant identified which portions of the existing building would be retained; and

WHEREAS, further, the Board directed the applicant to either justify the proposed perimeter wall height of 24'-2"

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# MINUTES

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or reduce it to 21'-0"; and

WHEREAS, in response, the applicant reduced the perimeter wall height to 21'-0"; and

WHEREAS, finally, at hearing, the Board asked the applicant to confirm that the proposed building fit within the permitted building envelope and did not penetrate the sky exposure plane; and

WHEREAS, in response, the applicant revised the plans to reflect a new roof design which fits within the permitted building envelope; and

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

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and rear yard, contrary to ZR §§ 23-141(b) 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 13, 2007"-(6) sheets and "January 10, 2008"-(8) 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 1,313 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 5,068.27 sq. ft. (1.01 FAR), a rear yard with a minimum depth of 20'-0", and a maximum lot coverage of 38 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the 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 15, 2008.

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**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.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 16, 2008, acting on Department of Buildings Application No. 302358277, 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 open space and is contrary to Section 23-141 of the Zoning Resolution (ZR).
2. Increases the degree of non-compliance with respect to floor area ratio and is contrary to Sections 23-141 & 54-31 ZR.
3. The proposed enlargement in the rear yard extends the degree of non-compliance with respect to rear yards and is contrary to Sections 23-47 and 54-31 of the Zoning Resolution.”; 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 lot coverage, open space, 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 December 11, 2007, after due notice by



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# MINUTES

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publication in *The City Record*, and then to decision on January 15, 2008; and

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

WHEREAS, the subject site is located on the east side of Exeter Street, between Oriental Avenue and the Esplanade; 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 2,349.9 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 2,349.9 sq. ft. (0.59 FAR), to 3,982.2 sq. ft. (0.99 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will provide a lot coverage of 39.8 percent (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement will provide an open space of 2,409.1 sq. ft. (2,600 sq. ft. is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (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 lot coverage, open space, floor area, and rear yard, contrary to ZR §§ 23-141, 23-47, and 54-31; and; *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 14, 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 800.48 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 3,982.22 sq. ft. (0.99 FAR), a rear yard with a minimum depth of 20'-0", a maximum lot coverage of 39.8 percent, and a minimum open space of 2,409.1 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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 15, 2008.

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## **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 19<sup>th</sup> Street, Block 888, Lot 7, Borough of Brooklyn.

## **COMMUNITY BOARD #7BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for deferred decision.

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# MINUTES

## 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 147<sup>th</sup> Avenue and Guy R. Brewer Boulevard, Block 13354, Lot 12, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2008, at 10 A.M., for decision, hearing closed.

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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.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for adjourned hearing.

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## 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.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for adjourned hearing.

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## 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 and Frank Sellitto.

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for adjourned hearing.

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## 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 – 7-05 152<sup>nd</sup> Street, 152<sup>nd</sup> 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.

For Opposition: Councilmember Tony Avella, James Raymond, Helen Paladino and Maria H. Stern.

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P. M., for continued hearing.

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## 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 §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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

# MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for decision, hearing closed.

## 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 §32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15<sup>th</sup> Street, westerly side of East 15<sup>th</sup> Street, 50’ north of Kings Highway, Block 6777, Lots 17 and 24, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2008, 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 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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for decision, hearing closed.

## 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 §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 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Moshe Friedman and Lori Shenetz.

For Opposition: Saul Needle of Community Board 18, Alan DeBlase and others.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.

## 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 83<sup>rd</sup> Street, north side, 256’ east of 11<sup>th</sup> Avenue between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue, Block 6301, Lot 65, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

For Opposition: Vito Mancini.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 1:30 P.M., for decision, hearing closed.

## 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.

# MINUTES

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for continued 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.

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for adjourned hearing.

## 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 22<sup>nd</sup> Street, north of Avenue K, south of Avenue J, Block 7604, Lot 13, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2008, at 1:30 P.M., for decision, hearing closed.

## 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

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for continued hearing.

## 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

### APPEARANCES –

For Applicant: Jay Segal and Melaney McMorny.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for decision, hearing closed.

## 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 28<sup>th</sup> Street, east side, 215’ north of Avenue S between Avenue R and S, Block 6834, Lot 58, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 1:30 P.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 4-5

February 7, 2008

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### DIRECTORY

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**DARA OTTLEY-BROWN**

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**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                      |       |
|--------------------------------------|-------|
| DOCKET .....                         | 51    |
| <b>CALENDAR</b> of February 12, 2008 |       |
| Morning .....                        | 52    |
| Afternoon .....                      | 52-53 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, January 29, 2008**

Morning Calendar .....54

**Affecting Calendar Numbers:**

170-47-BZ            1982 Crotona Parkway, Bronx  
146-59-BZ           686-88 Gerard Avenue, Bronx  
390-61-BZ           148-150 East 33<sup>rd</sup> Street, Manhattan  
222-03-BZ           30-04 73<sup>rd</sup> Street, Queens  
841-76-BZ           651 Fountain Avenue, Brooklyn  
78-79-BZ            671 Fountain Avenue, Brooklyn  
673-81-BZ           2075 Richmond Avenue, Staten Island  
531-86-BZ           787 Seventh Avenue, Manhattan  
83-97-BZ            214-18 24<sup>th</sup> Street, Queens  
190-03-BZ           87-48 215<sup>th</sup> Place, Queens  
229-07-A            9 Gotham Walk, Queens  
260-07-A            14 Devon Walk, Queens  
2-07-A thru  
5-07-A               3212, 3214, 3216, 3218, Tiemann Avenue, Bronx  
123-07-A            723R Driggs Avenue, Brooklyn  
138-07-A            614 West 138<sup>th</sup> Street, Manhattan

Afternoon Calendar ..... 60

**Affecting Calendar Numbers:**

342-05-BZ &  
343-05-BZ           1, 3 & 5 Maya Drive, Bronx  
212-06-BZ           242-02 61<sup>st</sup> Avenue, Queens  
151-07-BZ           1133 83<sup>rd</sup> Street, Brooklyn  
160-07-BZ thru  
162-07-BZ           3880, 3882, 3884 Cannon Place, Bronx  
211-07-BZ           1149 East 22<sup>nd</sup> Street, Brooklyn  
233-06-BZ           813/815 Broadway, Manhattan  
280-06-BZ           181-08 Horace Harding Expressway, Queens  
293-06-BZ           54-07 254<sup>th</sup> Street, Queens  
311-06-BZ thru  
313-06-BZ           300/302/304 Columbia Street, Brooklyn  
68-07-BZ            102-48 65<sup>th</sup> Road, Queens  
79-07-BZ            114-05 Farmers Boulevard, Queens  
119-07-BZ           443 39<sup>th</sup> Street, Brooklyn  
205-07-BZ           53-20 72<sup>nd</sup> Place, Queens  
233-07-BZ           203 East 86<sup>th</sup> Street, Manhattan  
235-07-BZ           1148 East 27<sup>th</sup> Street, Brooklyn  
273-07-BZ           1435 East 22<sup>nd</sup> Street, Brooklyn

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# DOCKET

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New Case Filed Up to January 29, 2008

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**17-08-A**

130 Reid Avenue, West side of Reid Avenue 135' north of Thetford Lane, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting on a legally mapped street, contrary to Section 36, Article 3 of the General City Law.

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**18-08-A**

15 Jamaica Walk, East side of Jamaica Walk 203.4' south of Oceanside Avenue., Block 16350, Lot(s) p/o 406, Borough of **Queens, Community Board: 14**. Construction not fronting on a legally mapped street, contrary to Section 36, Article 3 of the General City Law.

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**19-08-BZY**

3871 Amboy Road, North side of Amboy Road-546.55 feet west of Greaves Avenue., Block 4633, Lot(s) 294, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction under the prior zoning.

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

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# CALENDAR

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**FEBRUARY 12, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 12, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**710-55-BZ**

APPLICANT – Vincent L. Petraro, PLLC, for Tserpes Realty LLC, owner.

SUBJECT – Application October 19, 2007 – Extension of Term for a gasoline service station (Emporium) which expired on January 10, 2008 in an R3-2 zoning district.

PREMISES AFFECTED – 246-02 South Conduit Avenue, intersection of South Conduit Avenue & 139<sup>th</sup> Street, Block 13622, Lot 5, Borough of Queens.

**COMMUNITY BOARD #13Q**

-----  
**824-61-BZ**

APPLICANT – Vincent L. Petraro, PLLC, for Thomas E. Quinn, owner.

SUBJECT – Application November 16, 2007 – Extension of Term allowing the use of surplus parking spaces for transient parking within a multiple dwelling presently located in a C1-9 /R8B zoning district granted by the Board pursuant to Section 60 (1d) of the Multiple Dwelling Law.

PREMISES AFFECTED – 200-266 East 66<sup>th</sup> Street, block bounded by East 66<sup>th</sup>, East 65<sup>th</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Avenues, Block 1420, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**50-92-BZ II**

APPLICANT – Walter T. Gorman, P.E. for Higinio Caballero, owner.

SUBJECT – Application December 5, 2007 – Extension of Term (§72-01 and §72-22) to reopen the variance for a (UG8) public parking lot for a period of five years.

PREMISES AFFECTED – 1282 Shakespeare Avenue, Bronx, south east corner of west 169<sup>th</sup> Street, Block 2506, Lot 111, Borough of the Bronx

**COMMUNITY BOARD #4BX**

-----  
**120-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Anthony Ariola, owner.

SUBJECT – Application January 23, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the commercial use (UG6) in an existing two-story building, which expired on May 14, 2006, located in an R4 zoning district and a Waiver

of the rules.

PREMISES AFFECTED – 134-02 Cross Bay Boulevard, western side of Cross Bay Boulevard, between Gold and Silver Roads, Block 11374, Lot 134, Borough of Queens.

**COMMUNITY BOARD #10Q**

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**APPEALS CALENDAR**

**261-07-A**

APPLICANT – Krygztof Rostek for Belvedere III LLC, owner.

SUBJECT – Application November 9, 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 (M1-2) zoning district. R6B Zoning District.

PREMISES AFFECTED – 135 North 9<sup>th</sup> Street, north side 125' from east corner of Berry Street, Block 2304, Lot 36, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**FEBRUARY 12, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 12, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**218-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Matthew Foglia, owner.

SUBJECT – Application September 24, 2007 – Variance (§72-21) to allow the conversion and enlargement of an existing building to office use; contrary to use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 110-11 Astoria Boulevard, located at the intersection of Astoria Boulevard and Ditmars Boulevard, Block 1679, Lot 34, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**221-07-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP c/o Elise Wagner, Esq., for Kipper Productions, Inc., owner.

SUBJECT – Application September 27, 2007 – Variance (§72-21) to permit a music rehearsal studio on the first and second floors in a two-story vacant building. The proposal is contrary to 32-10. C1-4/R7-2 zoning districts.

PREMISES AFFECTED – 165 Lenox Avenue, west side of



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# CALENDAR

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Lenox Avenue between West 118<sup>th</sup> and West 119<sup>th</sup> Streets,  
Block 1903, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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**281-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Falah and Victor Falah, owners.

SUBJECT – Application December 12, 2007 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R2X (OP) zoning district.

PREMISES AFFECTED – 1960 East 4<sup>th</sup> Street, west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S, Block 6681, Lot 263, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**286-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Shauwana Dill-Darby, owner.

SUBJECT – Application December 20, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment in a one-story building. The proposal is contrary to §32-10. C8-1 district.

PREMISES AFFECTED – 129-01 Merrick Boulevard, north side of Merrick Boulevard between Zoller and Eveleth Roads, Block 12490, Lot 11, Borough of Queens.

**COMMUNITY BOARD #12Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 29, 2008  
10:00 A.M.**

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

**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 178<sup>th</sup> Street, Block 3121, Lot 11, Borough of Bronx.

**COMMUNITY BOARD #6BX**

APPEARANCES – None.

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

**THE VOTE TO GRANT –**

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a factory and warehouse building, which expired on November 25, 2007; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2008, and then to decision on January 29, 2008; and

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

WHEREAS, Community Board 6, Bronx, recommends approval of this application with the following conditions: that the owner (1) hire locally, as much as possible, (2) participate in the Buy Bronx Campaign, and (3) provide the Community Board with quarterly status reports regarding the subject application until the Board renders a decision; and

WHEREAS, the subject site is on the east side of Crotona Parkway, 39.41 feet south of East 178<sup>th</sup> Street; and

WHEREAS, the site is located within an R7-1 zoning district and is occupied by a one-story factory and warehouse building; and

WHEREAS, on February 10, 1948, under the subject calendar number, the Board granted a variance to allow the

change in occupancy of the existing building from storage to non-storage garage and factory for a term of five years; and

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

WHEREAS, most recently on November 25, 1997, the grant was extended for a term of ten years; and

WHEREAS, the applicant now 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, the Board notes that the Community Board’s requested conditions may be established with the property owner but are not within the purview of the Board; 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, dated February 10, 1948, 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 November 25, 2017; on condition that the use and operation shall substantially conform to the previously approved drawings; and on further condition:

THAT the term of this grant shall expire on November 25, 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 App. No. 210016356)

Adopted by the Board of Standards and Appeals, January 29, 2008.

**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 153<sup>rd</sup> Street, Block 2473, Lot 8, Borough of Bronx.

# MINUTES

## COMMUNITY BOARD #4BX

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, this is an application for a reopening, and an extension of the term for a previously granted variance for a parking lot with parking and storage of more than five vehicles, which expired on May 6, 2007; and

WHEREAS, a public hearing was held on this application on October 20, 2007, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2008, and then to decision on January 29, 2008; and

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

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

WHEREAS, the subject site is on the east side of Gerard Avenue, 180 feet north of 153<sup>rd</sup> Street; and

WHEREAS, the site is located within an R8 zoning district and is occupied by a parking lot; and

WHEREAS, on July 14, 1959, under the subject calendar number, the Board granted a variance to allow a parking lot with parking and storage of more than five vehicles on a monthly basis at the site for a term of five years; and

WHEREAS, on March 26, 1963, the grant was extended and amended to include transient parking limited to that associated with events at Yankee Stadium during the daytime; and

WHEREAS, on May 16, 1989, the granted was extended and amended to permit parking during all Yankee Stadium events regardless of the time of day; and

WHEREAS, the grant was also extended and amended at various other times; and

WHEREAS, most recently, on May 6, 1997, the grant was extended for a term of ten years; and

WHEREAS, the applicant now 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, at hearing, the Board directed the applicant to (1) remove the razor wire along the top of the fence and (2) to document the operation of the gate; and

WHEREAS, in response, the applicant provided photographs which reflect that the razor wire has been removed and that the gate has a secure closure mechanism; and

WHEREAS, the applicant represents that there are spaces for 24 cars in the standard monthly parking configuration and that during Yankee Stadium events 34 cars

are accommodated under the supervision of a parking attendant; 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, dated July 14, 1959, 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 May 6, 2017; on condition that the use and operation of the site shall substantially conform to the approved drawings, filed with this application marked “Received October 19, 2008”–(2) sheets; and on further condition:

THAT the term of this grant shall expire on May 6, 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.” (Alt. No. 528/1960)

Adopted by the Board of Standards and Appeals, January 29, 2008.

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## 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 33<sup>rd</sup> Street, southside of East 33<sup>rd</sup> Street, east of East 33<sup>rd</sup> Street and Lexington Avenue, Block 888, Lot 51, 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

Abstain: Commissioner Montanez.....1

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# MINUTES

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## THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a parking garage which will expire on March 3, 2008; 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 January 15, 2008, and then to decision on January 29, 2008; and

WHEREAS, Community Board 6, Manhattan, has recommended approval of this application; and

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

WHEREAS, the site is located on the south side of East 33<sup>rd</sup> Street, approximately 151 feet east of Lexington Avenue; and

WHEREAS, the site is located in an R8B zoning district and is occupied with a four-story and cellar structure for use as a parking garage for not more than 149 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 18, 1961, when, under the subject calendar number, the Board granted a variance for the construction of the parking garage for a term of 20 years; and

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

WHEREAS, most recently, on March 3, 1998, the grant was amended to permit an extension of the term of the variance for an additional ten years, until March 3, 2008, and the extension of time to obtain a new certificate of occupancy; and

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

WHEREAS, during its site examination the Board noted the placement of a rooftop sign that was not approved under the original grant; and

WHEREAS, as a result, at hearing, the Board directed the applicant at hearing to remove signage which did not comply with C1 zoning district requirements; and

WHEREAS, the applicant removed the non-complying signage and submitted photographs reflecting its removal; 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 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 18, 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 March 3, 2008, to expire on March 3, 2018, *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of this grant shall expire on March 3, 2018;

THAT the above condition shall be listed on the

certificate of occupancy;

THAT signage shall comply with C1 zoning district regulations;

THAT a revised certificate of occupancy shall be obtained by June 29, 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.” (N.B. 46-61)

Adopted by the Board of Standards and Appeals, January 29, 2008.

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## 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 73<sup>rd</sup> Street, south west corner of 30<sup>th</sup> Avenue, Block 1121, Lot 6, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

## THE RESOLUTION:

WHEREAS, this is an application for a reopening and amendment of a previously granted variance permitting the enlargement of the attic level of a one-family dwelling and its conversion into a two-family dwelling for an extension of time to complete construction; and

WHEREAS, a public hearing was held on this application on January 8, 2008, after due notice by publication in *The City Record*, and then to decision on January 29, 2008; and

WHEREAS, the site is located on the southwest corner of 30<sup>th</sup> Avenue and 73<sup>rd</sup> Street; and

WHEREAS, the site is located in an R4 zoning district and is occupied with a one-story dwelling with attic; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 18, 2003 when, under the subject calendar number, the Board granted a variance

# MINUTES

permitting the enlargement of the attic level of a one-family dwelling to be converted to a two-family dwelling; and

WHEREAS, the applicant states that he was unable to proceed on the enlargement due to the cost of medical treatment for a close family member; and

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

WHEREAS, pursuant to ZR § 72-01, the Board may permit an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds 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 November 18, 2003, so that as amended this portion of the resolution shall read: "to permit a two-year extension of time to complete construction, *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT substantial construction be completed by January 29, 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)/configuration(s) not related to the relief granted." (DOB Application No. 401019821)

Adopted by the Board of Standards and Appeals, January 29, 2008.

## 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 – None.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for an adjourned 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 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 – None.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for an adjourned 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 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 L. Businelli.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 10 A.M., for decision, hearing closed.

## 531-86-BZ

APPLICANT – Spencer Groff, P.E., for Vincent Fantauzz- (agent for owner); Athletic Club at the Equitable Center, lessee.

SUBJECT – Application December 14, 2007 – Extension of Term/Waiver for a Physical Culture Establishment in a portion of the concourse, mezzanine and sub-cellar levels of a fifty-one (51) story office building in a C6-6/C6-6.5 MID

# MINUTES

zoning district which expired on December 16, 2006.  
PREMISES AFFECTED – 787 Seventh Avenue, Seventh Avenue, West 51<sup>st</sup> Street and 52<sup>nd</sup> Street, Block 1004, Lot 20, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Spencer Groff

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 10 A.M., for decision, hearing closed.

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## 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 Safian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 12, 2008, at 10 A.M., for decision, hearing closed.

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## 190-03-BZ

APPLICANT – Sheldon Lobel, P.C, for Satya Sanatan Dharma Sabha Incorporated, owner.

SUBJECT – Application December 19, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the enlargement and legalization of a portion of a two-story building to a temple and conversion of the remainder of the building to a temple in an R2 zoning district which expired on January 13, 2008.

PREMISES AFFECTED – 87-48 215<sup>th</sup> Place, Hillside Avenue and 215<sup>th</sup> Place, Block 10682, Lot 45, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 229-07-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Patricia & Dennis Kane, lessees.

SUBJECT – Application October 9, 2007 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to General City Law §36 and the upgrade of an existing non-conforming private disposal system partially in the bed of a service road contrary to Building Department Policy. R4 Zoning district.

PREMISES AFFECTED – 9 Gotham Walk, east side, 106.78’ south of Oceanside Avenue, 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 GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 28, 2007, acting on Department of Buildings Application No. 402608503, 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 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 and is contrary to Section 27-291 of the Administrative Code.

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

WHEREAS, a public hearing was held on this application on January 29, 2008, after due notice by

# MINUTES

publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated January 18, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated September 28, 2007, acting on Department of Buildings Application No. 402608503, 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 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, January 29, 2008.

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## 260-07-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Catherine & George Chave, lessees.

SUBJECT – Application November 9, 2007 – 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.

PREMISES AFFECTED – 14 Devon Walk, west side, 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 GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 29, 2007, acting on Department

of Buildings Application No. 402661375, 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 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.

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

WHEREAS, a public hearing was held on this application on January 29, 2008, 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 18, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated October 29, 2007, acting on Department of Buildings Application No. 402661375, 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, 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 29, 2008.

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# MINUTES

## 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 Rinesmith.

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for an adjourned hearing.

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## 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 April 8, 2008, at 10 A.M., for an adjourned hearing.

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## 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 138<sup>th</sup> Street, West 138<sup>th</sup> 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 Klein.

**THE VOTE TO CLOSE HEARING** –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 11,

2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 11:30 A.M.

## REGULAR MEETING

**TUESDAY AFTERNOON, JANUARY 29, 2008**

**1:30 P.M.**

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

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## 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

APPEARANCES – None.

**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, January 29, 2008.

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### 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 61<sup>st</sup> Avenue, Douglaston Parkway and 61<sup>st</sup> Avenue, Block 8286, Lot 185, Borough of Queens.

### COMMUNITY BOARD #11Q



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# MINUTES

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APPEARANCES – None.

**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, January 29, 2008.

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## 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 83<sup>rd</sup> Street, north side, 256’ east of 11<sup>th</sup> Avenue between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue, Block 6301, Lot 65, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

**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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 28, 2008, acting on Department of Buildings Application No. 302335934, reads in pertinent part:

“The proposed enlargement to the existing one-family residence in an R3X zoning district is contrary to the Zoning Resolution in that:

1. The proposed enlargement exceeds the allowable floor area ratio and increases the degree of non-compliance contrary to Sections 23-141 and 54-31 of the Zoning Resolution (ZR).
2. The proposed enlargement reduces the open space below the allowable open space and is contrary to Section 23-141 of the Zoning Resolution.
3. The lot coverage exceeds the maximum and is contrary to Section 23-141 of the Zoning Resolution.
4. The rear yard is less than the minimum required and is contrary to Section 23-47 ZR.
5. The proposed enlargement increases the degree of non-compliance with respect to side yards and is contrary to Sections 23-461 and

54-31 of the ZR.

6. The proposed enlargement increases the degree of non-compliance with respect to perimeter wall height and is contrary to Sections 23-631 and 54-31.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side and rear yards, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, 23-631, and 54-31; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, with continued hearings on November 20, 2007, December 11, 2007 and January 15, 2008, and then to decision on January 29, 2008; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors appeared in opposition to the application, citing concerns that (1) there would be an impact on access to light and air and (2) that the basement provides livable space, which has not been properly reflected; and

WHEREAS, the subject site is located on the north side of 83<sup>rd</sup> Street, between Eleventh Avenue and Twelfth Avenue; 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 1,997.7 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 1,997.7 sq. ft. (0.83 FAR) to 2,602.9 sq. ft. (1.08 FAR); the maximum floor area permitted is 1,440 sq. ft. (0.50 FAR, with attic bonus); and

WHEREAS, the proposed enlargement will provide 1,348.2 sq. ft. of open space (1,560 sq. ft. is the minimum required); and

WHEREAS, the proposed enlargement will provide a lot coverage of 43.8 percent (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 26’-3” (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 proposed enlargement will maintain the existing non-complying side yard and perimeter wall height; and

WHEREAS, at hearing, the Board asked the applicant about whether all appropriate portions of the basement had been included in the floor area calculations; and

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# MINUTES

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WHEREAS, in response, the applicant revised the floor area calculations to include 716.19 sq. ft. of floor area in the basement; and

WHEREAS, additionally, the applicant noted that 200 sq. ft. of floor area associated with the basement level garage may be subtracted from floor area calculations; and

WHEREAS, the applicant represents that the home is and will be occupied by one residential dwelling unit; and

WHEREAS, the Board noted that the floor area revision resulted in a proposed FAR of 1.14, after the garage deduction; and

WHEREAS, the Board directed the applicant to establish a context for the requested 1.14 FAR or to reduce the FAR; and

WHEREAS, in response, the applicant reduced the depth of the addition, which resulted in a proposed FAR of 1.08; and

WHEREAS, the applicant represents that a further reduction to the depth of the enlargement would not allow for viable rooms at the rear of the house; and

WHEREAS, the applicant provided alternate plans, which illustrated the compromised conditions of a further reduction in the floor area of the enlargement; and

WHEREAS, the applicant submitted a shadow study which reflects that shadows from the proposed enlargement would not fall on the adjacent properties; 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 R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side and rear yards, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, 23-631, 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 December 18, 2007"-(11) sheets; and *on further condition*:

THAT the habitable floor area in the basement shall be limited to 716.19 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 2,602.9 sq. ft. (1.08 FAR), a rear yard with a minimum depth of 26'-3", a maximum lot coverage of 43.8 percent, and a minimum open space of 1,348.2 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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 29, 2008.

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## **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.

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

**THE VOTE TO WITHDRAW** –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, January 29, 2008.

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## **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

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# MINUTES

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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 22<sup>nd</sup> 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** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 14, 2007, acting on Department of Buildings Application No. 302392738, 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 (OSR) is less than the required 150%.
3. Plans are contrary to ZR 23-461(a) in that the proposed side yards are less than the required 13'-0".
4. 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, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141(a), 23-461(a) and 23-47; 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 hearings on November 27, 2007 and January 15, 2008, and then to decision on January 29, 2008; 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, a neighbor testified in opposition to the application citing safety concerns with the entry to the garage; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Avenue J and Avenue K; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 2,211 sq. ft. (0.55 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 2,211 sq. ft. (0.55 FAR), to approximately 3,979 sq. ft. (1.00 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 47.6 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain existing non-complying side yards with widths of approximately 3'-0" and 7'-9 1/2", respectively (two side yards with minimum widths of 5'-0" and 8'-0" are required); and

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

WHEREAS, the enlargement of the home is not located within 20'-0" of the rear lot line; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained; and

WHEREAS, in response, the applicant identified which portions of the existing home would be retained; and

WHEREAS, at hearing, the Board also raised concerns about the practicability of the curb cut and ramp to a proposed two-car garage; and

WHEREAS, in response, the applicant replaced the proposed below-grade garage with an at-grade garage which could be accessed from the existing driveway; 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(a), 23-461(a) and 23-47; *on condition* that all

# MINUTES

work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 2, 2008"–(13) 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 336 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 3,978 sq. ft. (1.00 FAR), an open space ratio of 47.6 percent, one side yard with a width of approximately 3'-0" and a second side yard with a width of 7'-9 1/2,"and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

THAT the Department of Buildings must 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 29, 2008.

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## 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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Kathleen R. Bradshaw.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for decision, hearing closed.

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## 293-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Veronica Nicastro, 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 – 54-07 254<sup>th</sup> Street, east side of 254<sup>th</sup> Street, 189' north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik and Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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.

# MINUTES

## COMMUNITY BOARD #6BK

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for deferred decision.

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## 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 65<sup>th</sup> Road, southwest corner Yellowstone Boulevard and 65<sup>th</sup> Road, Block 2130, Lot 37, Borough of Queens.

## COMMUNITY BOARD #6Q

### APPEARANCES –

For Applicant: Jeffrey Chester, David Freire, Marina Saddok and Avram Babadzhyanov,

For Opposition: Meir Turner, Max Lamm and Jacob Schraefer.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

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## 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 114<sup>th</sup> Road, Block 11007, Lot 5, Borough of Queens.

## COMMUNITY BOARD #12Q

### APPEARANCES –

For Applicant: Josh Rinesmith.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for decision, hearing closed.

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## 119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§ 72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§ 42-10), rear yard (§

43-26) and parking (§ 44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

### APPEARANCES –

For Applicant: Richard Lobel, Maria Ferreira, Sister Mary Paul and Dan Radazzo.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.

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## 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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

## COMMUNITY BOARD #5Q

### APPEARANCES –

For Applicant: Robert Guardioso.

For Opposition: Assemblywoman Margaret Markey, 30<sup>th</sup> District; Councilmember Dennis Gallagher, Irving Poy, Angela D. Den Dekker, Congressman Crowley, Gary Giordano, Michael Johnson, State Senator Serphin Maltese; Manny Carvant, Eileen Reilly, Tony Nunziato, Diane DeSilva, Joseph G. Cimino, Anthony Moredo, Anne M. Zablutowicz and June Osman.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

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## 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 86<sup>th</sup> Street, northeast corner of the intersection of 86<sup>th</sup> Street and Third Avenue, Block 1532, Lot 1, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

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

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# MINUTES

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12, 2008, at 1:30 P.M., for decision, hearing closed.

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**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 27<sup>th</sup> Street, East 27<sup>th</sup> Street between Avenue K and Avenue L, Block 7626, Lot 65, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman and David Shteirman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for decision, hearing closed.

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**273-07-BZ**

APPLICANT – Moshe M. Friedman, for Abraham Greenstein, owner.

SUBJECT – Application November 29, 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(a)); side yards (§23-461) and rear yard (§23-45) in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 22<sup>nd</sup> Street, 140’ north from the intersection of East 22<sup>nd</sup> Street and Avenue N, Block 7658, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Yosef S. Gottdiener.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:40 P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 6

February 14, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                      |    |
|--------------------------------------|----|
| DOCKET .....                         | 69 |
| <b>CALENDAR</b> of February 26, 2008 |    |
| Morning .....                        | 70 |
| Afternoon .....                      | 71 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, February 5, 2008**

Morning Calendar .....72

**Affecting Calendar Numbers:**

1038-80-BZ, Vol. II    31-07/09/11 Downing Street, Queens  
121-95-BZ            37 West 46<sup>th</sup> Street, Manhattan  
254-06-BZ            1327 East 21<sup>st</sup> Street, Brooklyn  
35-07-A & 36-07-A    3411 & 3413 Barker Avenue, Bronx  
62-07-A               7118-7124 Third Avenue, Brooklyn  
154-07-A              441 East 57<sup>th</sup> Street, Manhattan  
264-07-A              76 Romer Road, Staten Island

Afternoon Calendar .....75

**Affecting Calendar Numbers:**

306-06-BZ            50 Lawrence Avenue, Brooklyn  
65-07-BZ            146-93 Guy R. Brewer Boulevard, Queens  
122-07-BZ            1630 East 15<sup>th</sup> Street, Brooklyn  
152-07-BZ            8701 Fourth Avenue, Brooklyn  
176-07-BZ            50-34 69<sup>th</sup> Street, a/k/a 68-18 Garfield Avenue, Queens  
249-07-BZ            1865 East 28<sup>th</sup> Street, Brooklyn  
197-05-BZ            813/815 Broadway, Manhattan  
31-06-BZ              102-10 159<sup>th</sup> Road, Queens  
134-06-BZ            241-15 Northern Boulevard, Queens  
160-06-BZ            2199 (a/k/a 2175) Richmond Avenue, Staten Island  
299-06-BZ            1976 Crotona Parkway, Bronx  
51-07-BZ              70-44 to 58 Kissena Boulevard, Queens  
169-07-BZ            626 West 254<sup>th</sup> Street, Bronx  
209-07-BZ            187-30 Grand Central Parkway, Queens  
237-07-BZ            718 Avenue "S", Brooklyn  
263-07-BZ            1169 East 21<sup>st</sup> Street, Brooklyn



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# DOCKET

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New Case Filed Up to February 5, 2008

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**20-08-BZ**

53-55 Beach Street, North side of Beach Street 0 feet West of Collister Street., Block 214, Lot(s) 1, Borough of **Manhattan, Community Board:1**. Special Permit (75-53) to permit a rooftop enlargement.

-----

**21-08-BZ**

1601 Brondale Avenue, Westerly side of Bronxdale Avenue 675 feet southerly of Van Nest Avenue., Block 4042, Lot(s) 200, Borough of **Bronx, Community Board: 11**. Special Permit (73-36) to allow a physical culture establishment.

-----

**22-08-A**

410 4th Avenue, 4th Avenue and 7th Street, Block 992, Lot(s) 38, Borough of **Brooklyn, Community Board: 6**. Appeal to lift Stop Work Order and reinstate building permit .

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**23-08-BZ**

182-69 80th Road, Located at the northwest corner of the intersection of 80th Road and Chevy Chase Street., Block 7248, Lot(s) 44, Borough of **Queens, Community Board: 8**. Variance to allow the construction of a community facility building.

-----

**24-08-BZ**

230-262 Arden Avenue, Southside of Arden Avenue directly across from Tarbes Avenue., Block 6025, Lot(s) 35, Borough of **Staten Island, Community Board: 3**. Special Permit (73-30) to allow an non-accessory radio tower and related equipment at grade.

-----

**25-08-BZ**

444 Beach 6th Street, Between jarvis and Meehan Avenues, Block 15591, Lot(s) 1, Borough of **Queens, Community Board: 14**. Variance to allow for the enlargement of the existing Yeshiva.

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

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# CALENDAR

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**FEBRUARY 26, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 26, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**119-01-BZ**

APPLICANT – Edward H. Odesser, Esq., for Lawrence J. Mass, owner.  
SUBJECT – Application January 11, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted variance to permit automotive repairs (light type) which expired on June 12, 2002 in a C4-2A (SBRD) zoning district.

PREMISES AFFECTED – 8818 Fourth Avenue, West side of Fourth Avenue, 120' north of 89<sup>th</sup> Street, Block 6062, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**211-03-BZ**

APPLICANT – Eric Palatnik P.C., for 5-33 48th Avenue Corporation, owner.  
SUBJECT – Application December 27, 2007 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the proposed expansion and the conversion of an existing warehouse to residential use, which expires on June 8, 2008, in an M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 529-535 48<sup>th</sup> Avenue, north side of 48<sup>th</sup> Avenue between Fifth Street and Vernon Boulevard, Block 30, Lot 9, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**42-06-BZ, Vol. II**

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for New York Hospital Queens, owner.  
SUBJECT – Application January 17, 2008 – Amendment to zoning variance (§ 72-21) to allow a two-story addition to previously approved five (5) story hospital building located on the campus of New York Hospital - Queens; contrary to regulations for height & setback (§ 24-522) and rear yard equivalent (§24-382). R6 district.

PREMISES AFFECTED – 56-45 Main Street, West side of Main Street between 56 and Booth Memorial Avenues, Block 5165, Lot 1, Borough of Queens.

**COMMUNITY BOARD #7Q**

-----

**67-06-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Rodriguez Clove, LLC, owner.

SUBJECT – Application November 9, 2007 – SOC Amendment to reduce the required 48 parking spaces from the prior variance granted on March 20, 2007 to 42 cars. This will allow the compliance with the recent DCP Text Amendment requiring landscaping for parking areas. C2-1/R2 zoning districts.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149 & 168, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**APPEALS CALENDAR**

**208-07-BZY**

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – 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.

PREMISES AFFECTED – 74 Grand Avenue (aka 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**231-07-BZY & 232-07-BZY**

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari & Farhad Nobari, owners.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R6 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144<sup>th</sup> Street, eastside between Hillside Avenue and 88<sup>th</sup> Avenue, Block 9689, Lots 6 & 7, Borough of Queens.

**COMMUNITY BOARD #12Q**

-----

**287-07-A**

APPLICANT – Greenberg Traurig by Jay A. Segal, Esq., for Jack Bendheim, owner.

SUBJECT – Application December 21, 2007 – Proposed construction of an accessory tennis court located partially within the bed of a mapped street (West 248<sup>th</sup> Street) contrary to General City Law Section 35. R1-1 SNAD.

PREMISES AFFECTED – 697 West 247<sup>th</sup> Street, north side of West 247<sup>th</sup> Street between Palisade Avenue and Independence Avenue, Block 5937, Lot 300, Borough of Bronx.

**COMMUNITY BOARD #8BX**

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# CALENDAR

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**FEBRUARY 26, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 26, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**109-07-BZ**

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (23-141); less than the required front yard (23-45) and less than the required side yards (23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

**COMMUNITY BOARD # 2Q**

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**145-07-BZ**

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for Maimonides Research & Development, owner.

SUBJECT – Application June 4, 2007 – Variance (§ 72-21) to allow the enlargement of an existing building to violate lot coverage requirements (§ 24-11) for a proposed community facility (medical facility). R6 district.

PREMISES AFFECTED – 1005 46<sup>th</sup> Street, Northeast corner of 46<sup>th</sup> Street and 10<sup>th</sup> Avenue Block 5614, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD # 12BK**

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**241-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Exxon Mobil Oil Corporation, owner.

SUBJECT – Application October 26, 2007 – Special Permit filed pursuant to §73-211 to allow an automotive service station with an accessory convenience store (use group 16) in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Victory Boulevard and Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**10-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for NYC Partnership Housing Development Fund Company, Inc.,

owner; TSI West 145<sup>th</sup> LLC, dba New York Sports Club, lessee.

SUBJECT – Application January 4, 2008 – Special Permit (§73-36) to allow the legalization of the existing Physical Culture Establishment on a portion of the cellar level and first floor in a nine-story mixed-use building. The proposal is contrary to section 32-10. C4-4D.

PREMISES AFFECTED – 66-68 Bradhurst Avenue, easterly side of Bradhurst Avenue, easterly of West 145<sup>th</sup> Street, Block 2045, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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**FEBRUARY 27, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a Special public hearing, Tuesday morning, February 27, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**247-07-A**

APPLICANT – Soho Alliance Community Group, for Bayrock/Sapir Organization, LLC, owner.

SUBJECT – Application October 30, 2007 – Appeal seeking to revoke permits and approvals to construct a residential condominium hotel in an M1-6 zoning district. Applicant argues that the residential use of the premises violates the underlying M1-6 zoning district prohibitions.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, Block 491, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 5, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**1038-80-BZ, VII**

APPLICANT – Davidoff Malito & Hatcher, 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**

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of a special permit, which expired on January 6, 2007; and

WHEREAS, a public hearing was held on this application on January 8, 2008 after due notice by publication in *The City Record*, and then to February 5, 2008 for decision; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; 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, subsequently, the term of the special permit has been extended at various times; and

WHEREAS, 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, *reopens and amends* the resolution, said resolution having been adopted on January 6, 1981 as amended May 13, 1986, 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, 2008 expiring on January 6, 2009; *on condition* that all conditions and drawings associated with the previous grant remain in effect; 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 more than 130 amusement games on the subject premises;

THAT the above conditions 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, February 5, 2008.

**121-95-BZ**

APPLICANT – Francis R. Angelino, Esq., for 37 West 46<sup>th</sup> 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 46<sup>th</sup> Street, north/south West 46<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 1262, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Francis R. Angelino and Joseph Lee.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted special permit for a physical culture establishment (“PCE”) which expired on February 6, 2006; and

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# MINUTES

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WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by publication in *The City Record*, and then to decision on February 5, 2008; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

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

WHEREAS, the sited is located within a C6-4.5 zoning district in the Special Midtown District and is occupied by a five-story mixed-use building, and

WHEREAS, the PCE occupies a total of approximately 2,033 sq. ft. on the third floor and third floor mezzanine; and

WHEREAS, the PCE is operated as Osaka Health Spa; and

WHEREAS, on February 6, 1996, under the subject calendar number, the Board granted a special permit to allow the PCE on the third floor and third floor mezzanine of the existing building 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 represents that the special permit was not renewed earlier due to the inability to locate the building file at the Department of Buildings and the consequential need to recreate it; and

WHEREAS, the Board notes that the PCE has remained in operation since February 6, 2006 when the prior term expired; and

WHEREAS, accordingly, the Board has determined that the new term shall be reduced for the period of time, between February 6, 2006 and the date of this grant, when the PCE operated without a valid special permit; 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, 1996, 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 February 6, 2016; *on condition* that the use and operation of the site shall substantially conform to the BSA-approved drawings associated with the prior approval; and *on further condition*:

THAT this grant shall expire on February 6, 2016;

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

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

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. 102961519)

Adopted by the Board of Standards and Appeals, February 5, 2008.

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## 254-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Sarah Weiss.

SUBJECT – Application October 19, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1327 East 21<sup>st</sup> Street, corner of Avenue L and East 21<sup>st</sup> Street, Block 7639, Lot 41, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES – None.

**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, February 5, 2008.

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## 35-07-A & 36-07-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Seven Waters Incorporated.

SUBJECT – Application January 31, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3411 & 3413 Barker Avenue, west side of Barker Avenue between Duncomb Avenue and Magenta Street, Block 4626, Lot 25, Borough of 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, February 5, 2008.

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# MINUTES

## 62-07-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Alberto Laniado.

SUBJECT – Application March 8, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 1582 East 17<sup>th</sup> Street, western side of East 17<sup>th</sup> Street, between Avenue O and Avenue P, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES – None.

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

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 6, 2007, acting on Department of Buildings Application No. 302073716, reads in pertinent part:

“Respectfully requested to permit us to continue with the construction at the premises listed above under ‘Other Construction’ as defined in ZR 11-31 not complete as of zoning change date April 5, 2006 as per ZR 11-332”; and

WHEREAS, this is an application to secure a common law vested right to continue construction of an enlargement to an existing single-family home at the subject site, which does not comply with the current zoning; and

WHEREAS, the applicant sought to enlarge an existing single-family home, which is on a site formerly within an R6 zoning district but, subsequent to the April 5, 2006 adoption of the Midwood Rezoning, is now within an R4-1 zoning district; and

WHEREAS, on April 6, 2006, DOB issued a stop work order because the enlargement did not comply with R4-1 zoning district regulations; and

WHEREAS, the vested rights application was filed on March 12, 2007; and

WHEREAS, on March 30, 2007, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, subsequently, the Comptroller’s Office notified the Board that the applicant’s check submitted with the application to cover the required filing fee was returned for insufficient funds; and

WHEREAS, on multiple occasions, Board staff notified the applicant that the filing fee was outstanding and the application would not be reviewed without it; and

WHEREAS, the applicant of record stated that it was unable to obtain the required funds from the property owner and was no longer prosecuting the case on behalf of the owner; and

WHEREAS, accordingly, in the absence of the required filing fee, the Board placed the matter on the calendar for a dismissal hearing; and.

WHEREAS, on January 10, 2008, Board staff issued a Notice of Hearing stating that the case had been scheduled for dismissal on February 5, 2008; and

WHEREAS, the Board received no subsequent response from the applicant; and

WHEREAS, neither the applicant nor the property owner appeared at the dismissal hearing on February 5, 2008; 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. 62-07-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, February 5, 2008.

## 6-04-BZ, Vol. II

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 §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 72<sup>nd</sup> Street, Block 5890, Lot 43, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra Atlman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 10 A.M., for decision, hearing closed

## APPEALS CALENDAR

### 154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57<sup>th</sup> 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 §23-692(a) and is not listed as a permitted obstruction in Section §23-62. R10 Zoning district.

PREMISES AFFECTED – 441 East 57<sup>th</sup> Street, north side of east 57<sup>th</sup> Street, between 1<sup>st</sup> Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCE –

For Applicant: Caroline G. Harris.

# MINUTES

For Opposition: Stuart Beckerman.

**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, February 5, 2008.

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## 264-07-A

**APPLICANT** – Ramulla Associates Architects, for Benjamin Rusi, owner.

**SUBJECT** – Application November 15, 2007 – Proposed legalization of an existing single family home not fronting a mapped street contrary to General City Law §36. R1-1(SNAD) (SGMD) Zoning district.

**PREMISES AFFECTED** – 76 Romer Road, east side of Romer Road, 449.51’ north of Four Corners Road, Block 870, Lot 111, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

**APPEARANCES** –

For Applicant: Philip Rampulla.

For Administration: Anthony Scaduto, FDNY.

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## **REGULAR MEETING**

**TUESDAY AFTERNOON, FEBRUARY 5, 2008**

**1:30 P.M.**

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

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## **ZONING CALENDAR**

### **306-06-BZ**

#### **CEQR #07-BSA-046K**

**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** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 17, 2008, acting on Department of Buildings Application No. 302250178, reads in pertinent part:

- “1. Proposed use of premises as a school (UG 3) in an M1-1 district is contrary to ZR 42-00
2. Proposed FAR in R5 district is contrary to ZR 113-11 and ZR 23-141
3. Proposed FAR in M1-1 district is contrary to ZR 43-122
4. Proposed max. lot coverage in R5 district is contrary to ZR 113-11 and ZR 23-141
5. Proposed min. open space in R5 district is contrary to ZR 113-11 and 23-141
6. Proposed height of street wall, lack of required setback and total height of building in R5 district is contrary ZR 113-11 and ZR 23-631(d)
7. Proposed height and number of stories of front wall with respect to sky exposure plane in M1-1 district is contrary to ZR 43-43
8. Proposed building with no front yard in R5 district is contrary to ZR 113-11 and ZR 23-45
9. Proposed min. side yard in R5 district is contrary to ZR 113-11 and ZR 23-461
10. Proposed building with no rear yard in R5 district beyond 100 feet of McDonald Ave is contrary to ZR 113-11 and ZR 23-47
11. Proposed building does not provide a loading berth for school, as required by ZR 113-22”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site, partially within an R5 zoning district and partially within an M1-1 zoning district within the Special Ocean Parkway District (OP), the construction of a six-story yeshiva building with 40,788 sq. ft. of floor area (3.53 FAR and 4.63 FAR respectively within the two zoning districts) which does not comply with regulations for use, FAR, lot coverage, open space, street wall height, setback, total height, sky exposure plane, front yard, side yard, rear yard and loading berth, contrary to ZR §§ 23-141, 23-45, 23-461, 23-47, 23-631(d), 42-00, 113-11, and 113-22; and

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# MINUTES

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WHEREAS, the application is brought on behalf of Talmud Torah Ohel Yochanan (the "Yeshiva"), a nonprofit religious educational 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 continued hearings on June 5, 2007, July 24, 2007, October 2, 2007, November 20, 2007, and January 8, 2008, and then to decision on February 5, 2008; and

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

WHEREAS, an earlier iteration of the proposal provided for a six-story building with 43,200 sq. ft. (4.32 FAR across the site) and 100 percent lot coverage, except for a cutout with a depth of five feet for the front entrance area; the school bus loading zone was located around the corner on McDonald Avenue; and

WHEREAS, Community Board 14, Brooklyn, recommended approval of the earlier iteration on the condition that (1) no Use Group 9 catering facility be permitted at the premises, (2) school bus loading and unloading take place on McDonald Avenue, not Lawrence Avenue, (3) the school provide supervision each morning and afternoon so that students are accompanied when walking to and from the corner of McDonald Avenue and Lawrence Avenue, and (4) that parents be advised to drop off and pick up students on McDonald Avenue; and

WHEREAS, City Council Member Simcha Felder provided testimony in support of the application; and

WHEREAS, community members submitted approximately 80 formal and informal notices of consent in support of the proposal; and

WHEREAS, the site is located on the south side of Lawrence Avenue, between McDonald Avenue and Seton Place; and

WHEREAS, the subject site is a 100 ft. by 100 ft. square lot, with approximately 10,000 sq. ft. of lot area; and

WHEREAS, a zoning district boundary line bisects the site; the western half of the site is within an M1-1 zoning district and the eastern half is within an R5 zoning district; and

WHEREAS, each half of the zoning lot has a lot area of approximately 5,000 sq. ft. and the applicant provided separate zoning calculations for both zoning districts; and

WHEREAS, as to use, the proposed community facility use is permitted as of right in the R5 zoning district, but a use variance is required within the M1-1 zoning district; and

WHEREAS, the applicant represents that except for the non-complying bulk parameters noted below, the proposed Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1-1 zoning district; and

WHEREAS, the site is currently occupied with a one-story manufacturing building, which will be demolished; and

WHEREAS, the applicant proposes to construct a six-story school building, with a one-story portion built at the rear

of the building to the lot line; and

WHEREAS, the proposed building will have: a total floor area of 40,788 sq. ft., 17,663 sq. ft. of floor area (3.53 FAR) within the R5 portion of the lot, and 23,125 sq. ft. of floor area (4.63 FAR) within the M1-1 portion of the lot; 1.25 FAR and 2.4 FAR are the maximum permitted for the proposed use in the respective zoning districts; and

WHEREAS, the proposed building will not provide a front or rear setback at the first floor and will have a floor plate of approximately 9,500 sq. ft. on the first floor; due to a rear setback of 30 feet, floors two through six will have a floor plate of approximately 6,500 sq. ft.; and

WHEREAS, the proposed building will have a wall and total height of 60 feet; 30 feet is the maximum permitted wall height for both zoning districts and 40 feet and 30 feet are the maximum permitted total heights for the proposed use in the respective zoning districts; and

WHEREAS, the proposed open space is ten percent and the proposed lot coverage is 90 percent; 45 percent is the minimum permitted open space within the R5 zoning district and 55 percent is the maximum permitted lot coverage in both zoning districts; and

WHEREAS, the applicant proposes not to provide a front yard; a front yard with a minimum depth of 10 feet is required in the residential zoning district; and

WHEREAS, the applicant proposes to provide one side yard with a width of five feet on the eastern lot line adjacent to the residential use; a side yard with a minimum width of eight feet is required within the R5 zoning district; and

WHEREAS, the applicant proposes not to provide a front setback and the building will penetrate the sky exposure plane above 30 feet in the R5 zoning district and above 50 feet in the M1-1 zoning district; a setback of 15 feet is required in the R5 zoning district above 30 feet and a setback of 20 feet is required above 30 feet in the M1-1 zoning district; and

WHEREAS, the applicant proposes not to provide a rear yard at the first floor, but provides a 30-ft. setback above the first floor at the rear of the building; no rear yard is required in the M1-1 zoning district and a rear yard of 30 feet is required for a portion of the site within the R5 zoning district; and

WHEREAS, the proposal does not provide a loading berth which is required for community facility development in the R5 zoning district as per the Special Ocean Parkway District regulations; and

WHEREAS, the building will accommodate the following program: (1) the cellar level will be occupied by a dining room, two kitchens, offices, restrooms, a mikvah, and mechanical space; (2) the first floor will be occupied by a lobby, offices, a reception area, and a large multipurpose room; (3) the second floor will be occupied by five Head Start program classrooms, office space, and a teachers' lounge; (4) the third through sixth floors will be occupied by seven classrooms per floor, restrooms, and offices; and (5) an elevator will provide access to all floors; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Yeshiva; and



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# MINUTES

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WHEREAS, the applicant states that the following are the programmatic needs of the Yeshiva, which necessitate the requested variance: (1) the Yeshiva has outgrown its current facility and requires significantly more space to accommodate increased enrollment, (2) the Yeshiva seeks to accommodate all grades in one centralized location for the religious sect within walking distance of most students' homes, and (3) the Yeshiva requires uniform floor plates to allow for efficient use of all space; and

WHEREAS, the applicant represents that the Yeshiva has outgrown its existing three-story building, which is located several blocks from the subject site and does not adequately serve an existing student body of 150 nor does it allow for any increase in enrollment; and

WHEREAS, further, the applicant represents that the existing school only accommodates kindergarten through third grade; and

WHEREAS, the proposed building will allow the Yeshiva to extend the enrollment to pre-school through ninth grade in its first year and, eventually, to twelfth grade and permits a projected student body of approximately 700; and

WHEREAS, the applicant represents that the proposed floor area and building design are required to accommodate the space needs associated with the projected student body; and

WHEREAS, at hearing, the Board asked the applicant to justify the purported need for the requested floor area and to document the space needs on a floor by floor basis; and

WHEREAS, the applicant responded by providing a chart which identified a schedule and the associated use of each room; and

WHEREAS, as to the requests for additional floor area and building height, the applicant represents that a complying design would result in inefficient floor plates and only eight classrooms, which is less than one quarter of what the Yeshiva requires in order to accommodate all grades at one site, and would be even less than what can be accommodated at the existing facility; and

WHEREAS, the applicant represents that a six-story building is required to accommodate the 33 required classrooms as well as auxiliary uses such as dining and assembly space, stairwells, restrooms, and office space; and

WHEREAS, the applicant represents that the classrooms devoted to Head Start programs, as well as certain other school facilities, will conform with program requirements and allow the school to receive funding in accordance with this program; in order to receive federal grants pursuant to the Head Start program, grades pre-school through first grade must maintain 35 sq. ft. of space per student; and

WHEREAS, the applicant proposes to accommodate 104 students within the Head Start program on the second floor and approximately 600 students on floors three through six; and

WHEREAS, the Board notes that the current proposal for 33 classrooms provides for five Head Start classrooms and two for each grade from pre-school to twelfth grade; and

WHEREAS, at hearing, the Board asked the applicant if

certain of the larger spaces could be used for both dining and assembly and athletic purposes; and

WHEREAS, in response, the applicant represents that separate space is needed for dining and the large multipurpose room because both spaces will be used at the same time as there will be staggered lunchtimes and it would be difficult to move tables whenever the dining hall is needed; and

WHEREAS, additionally, the multipurpose room will be used for athletic activities and assemblies, as well as prayer services; and

WHEREAS, as to the yard waivers, the applicant represents that they are required to provide efficient floor plates since larger, uniform floor plates allow for efficient use of the space, including shared stairways, elevator, and plumbing for restrooms communicating between floors; and

WHEREAS, additionally, uniform floor plates allow for the centralization of students by need and age group; and

WHEREAS, as to the insufficient side yard on the eastern lot line, the Board asked the applicant to explain why a required yard with a width of eight feet could not be provided adjacent to the single-family home; and

WHEREAS, in response, the applicant stated that a further increase in the side yard from five feet to eight feet would result in the loss of necessary classroom space; and

WHEREAS, the applicant represents that the addition of a fully complying side yard and the redesign of those floors from what is currently proposed would prevent the Yeshiva from being able to meet its programmatic needs with regard to number and size of classrooms; and

WHEREAS, the applicant represents that a similar reduction of space would result if a front yard with a depth of ten feet were provided; and

WHEREAS, as to the front yard, the Board notes that the front yard would only be required on the portion of the site within the R5 zoning district and that there is not a strong context for front yards in the vicinity since a number of buildings are within the M1-1 zoning district, which does not require front yards; and

WHEREAS, the Board acknowledges that the Yeshiva, 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 Yeshiva's current 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

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# MINUTES

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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, as to use, the applicant states that the proposed use is permitted as of right within the R5 zoning district and by special permit in the M1-1 zoning district; and

WHEREAS, the applicant notes that the sites in the immediate vicinity are occupied by a mix of residential, community facility, commercial, and light industrial uses; and

WHEREAS, nearby uses include a four-story school building on the corner of Parkville Avenue and Seton Place and at least seven residential buildings nearby to the site which are of comparable height or are taller than the proposed Yeshiva; and

WHEREAS, the Board notes that the applicant now proposes to provide a side yard with a width of five feet at the side lot line adjacent to the single-family home; and

WHEREAS, further, the Board notes that the addition of the side yard reduced the FAR waiver, while still permitting the Yeshiva to provide a sufficient amount of classroom space for the projected student body (the applicant initially proposed 37 classrooms and now proposes 33); and

WHEREAS, additionally, the Board notes that a rear yard is only required at the first floor for a small portion of the site and that there is a 30-ft. setback from the rear lot line above the first floor; and

WHEREAS, as to the loading and drop-off area, the Board directed the applicant to seek an evaluation from the Department of Transportation (DOT) as to the safest place to locate bus loading and unloading; and

WHEREAS, in response, the applicant provided a letter from DOT's School Safety Engineering Office, which states that given the needs and design of the Yeshiva and the surrounding area, the student loading and unloading zone is best located on the south side of Lawrence Avenue in front of the Yeshiva, rather than on McDonald Avenue as initially proposed and recommended by the Community Board; and

WHEREAS, in addition to improved safety concerns, DOT notes that the proposed 40-ft. long school buses would potentially have more impact on traffic on McDonald Avenue as they would be required to maneuver to enter the traffic lane between the structural columns of the elevated subway and the eastside curb; and

WHEREAS, further, DOT stated that there would be no adverse impacts on Lawrence Avenue; and

WHEREAS, the Board notes that the applicant had initially agreed with the Community Board's request that the

loading area be located on McDonald Avenue but defers to DOT's recommendation as to which location is safer and would have less impact on traffic; and

WHEREAS, the applicant represents that most transportation will be by walking or by bus and that few individual cars will drop students off at the site; and

WHEREAS, as to the Community Board's other condition, the applicant agrees that a Use Group 9 catering use will not be permitted at the Yeshiva; and

WHEREAS, the Board agrees that the proposed six-story building is compatible with the surrounding 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 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 Board notes that the applicant reduced the amount of requested floor area by approximately 2,412 sq. ft., by providing a side yard with a width of five feet along the length of the eastern lot line where initially none was proposed; 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. 07BSA046K, 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, 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

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# MINUTES

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the March 29, 2007 and January 15, 2007 Air Quality 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 September 20, 2007 and submitted for proof of recording on October 11, 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, on a site, partially within an R5 zoning district and partially within an M1-1 zoning district within the Special Ocean Parkway District, the construction of a six-story yeshiva building which does not comply with regulations for use, FAR, lot coverage, open space, street wall height, setback, total height, sky exposure plane, front yard, side yard, rear yard and loading berth, contrary to ZR §§ 23-141, 23-45, 23-461, 23-47, 23-631(d), 42-00, 113-11, and 113-22, *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 September 26, 2007"- six (6) sheets and "Received January 22, 2008"- 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 proposed Yeshiva shall have a total floor area of 40,788 sq. ft. (4.08 FAR) in the M1-1 zoning district, a street wall and total height not to exceed 60 feet, a lot coverage not to exceed 90 percent, and one side yard with a minimum width of five feet;

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) 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 5, 2008.

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## 65-07-BZ

### CEQR #07-BSA-067Q

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 147<sup>th</sup> 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** – Application denied.

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Deputy Borough Commissioner dated February 6, 2007, acting on Department of Buildings Application No. 402506677, reads:

"A-1 The proposed commercial structure for Use Group #6 is not permitted in an R3-2 zoning district as per ZR 22-00"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R3-2 zoning district, a one-story (UG 6) retail building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on September 25, 2007 after due publication in *The City Record*, with continued hearings on October 30, 2007, December 4, 2007 and January 15, 2008, and then to decision on February 5, 2008; and

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

WHEREAS, Community Board, 13, Queens and the

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# MINUTES

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Queens Borough President recommended disapproval of this application citing concerns with the presumed use and hours of the proposed commercial building and with its potential impacts on the adjacent home to its east; and

WHEREAS, the site is an irregularly-shaped lot with approximately 10,750 sq. ft. of lot area, and is located on the northeast corner of 147<sup>th</sup> Avenue and Guy R. Brewer Boulevard; and

WHEREAS, the lot is approximately 93 ft. in depth and varies in length from approximately 102 ft. to 131 ft. and is occupied with an unused one-story 1,300 sq. ft. concrete shell; and

WHEREAS, this site has been subject to Board jurisdiction since 1951 when, under BSA Cal. No. 209-51-BZ, the Board granted an application for a use variance within a residence district, allowing a gasoline service station with auto washing and repair services for a 15-year term; and

WHEREAS, this grant was extended by the Board at various times and the most recent extension of term was granted on October 27, 1987 for a term of ten years; and

WHEREAS, this grant expired on February 1, 1997; and

WHEREAS, the site is no longer used for automotive services; and

WHEREAS, the owner of the site now proposes a new retail development and has submitted a new application pursuant to ZR § 72-21; and

WHEREAS, the applicant proposes to demolish the existing structure and replace it with a one-story retail building (Use Group 6) with 6,000 sq. ft. of floor area and 12 accessory parking spaces; and

WHEREAS, the applicant alleges that the following are unique physical conditions that lead to practical difficulties in developing the subject site in strict compliance with underlying district regulations: (1) the location of the site at the intersection of two heavily trafficked thoroughfares; (2) the history of commercial uses at the site; and (3) the former location of underground storage tanks on the site; and

WHEREAS, for reasons set forth below, the Board does not agree that these alleged unique physical conditions create any practical difficulties or unnecessary hardship in developing the site with a fully complying development; and

WHEREAS, as to the first alleged unique physical condition, the applicant states that the site is located at the intersection of Guy R. Brewer Boulevard and 147<sup>th</sup> Avenue and that these are both heavily trafficked commercial thoroughfares; and

WHEREAS, the Board notes that it has rejected the argument that the location of the site on an allegedly busy intersection, in and of itself, constitutes a unique physical condition; and

WHEREAS, the Board further notes that the applicant has failed to prove that this intersection is significantly more active than numerous others within the area, and that expanding the definition of uniqueness to include the location

of a lot at a busy intersection in a city with innumerable busy intersections is contrary to the definition of what is unique; and

WHEREAS, the Board rejects the applicant's argument as to the impact of the proximity of the subject site to the intersection for the same reasons; and

WHEREAS, in support of the argument that a location on a busy thoroughfare supports a uniqueness finding, the applicant cites to the New York Court of Appeals decision in Douglaston Civic Ass'n v. Klein, 51 N.Y.2d 963 (1980); and

WHEREAS, the Board has reviewed the Douglaston decision, and finds that the applicant has misinterpreted the Court's holding; and

WHEREAS, in that case, the Court of Appeals instead found that the swampy condition of the property in question, not its location on a heavily trafficked street, was the unique physical condition that created a practical difficulty in complying with the zoning (51 N.Y.2d at 965); and

WHEREAS, the applicant states that the history of commercial uses of the four corners of the intersection in which the site is located supports a finding of site uniqueness; and

WHEREAS, the applicant further states that the subject site is the only corner property within a three-block radius with an R3-2 zoning classification that adjoins a commercial use; and

WHEREAS, the Board observes that this statement is not accurate and that a land use map submitted by the applicant indicates that another corner property within a three-block radius within the R3-2 zoning district adjoins a commercial site at 146<sup>th</sup> Road and Guy R. Brewer Boulevard; and

WHEREAS, the Board further observes that the subject site adjoins a solidly residential area and the lot is substantially-sized, such that it does not impose any site planning constraints that inhibit construction of a conforming development; and

WHEREAS, the land use map submitted by the applicant indicates that more than 90 percent of the sites located three blocks to the west and east of the subject site on the northern side of 147<sup>th</sup> Avenue are occupied with residential uses; and

WHEREAS, photographs submitted by the applicant furthermore indicate that the adjoining property on 147<sup>th</sup> Avenue is occupied by a single-family home; and

WHEREAS, the Board also notes that the property directly adjoining the subject site to its north has residential uses on its upper floors, and that a substantial number of additional sites north of the subject site along Guy R. Brewer Boulevard are characterized by residential uses; and

WHEREAS, the applicant also represents that the location of the site on the border of a manufacturing district at 147<sup>th</sup> Avenue constitutes a unique physical condition; and

WHEREAS, however, the Board observes that residential districts border manufacturing zones throughout New York City and a site within such a residential district

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# MINUTES

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would therefore not be unique, and

WHEREAS, as noted above, the preponderance of neighboring homes fronting the manufacturing zone on 147<sup>th</sup> Avenue further demonstrates that a residentially-zoned site located across from a manufacturing zone is not unique; and

WHEREAS, the Board therefore, is not persuaded that the site's location on an intersection of two thoroughfares, opposite commercial uses and across from a manufacturing zone constitutes a unique physical condition that creates a practical difficulty or unnecessary hardship conforming with the zoning requirements; and

WHEREAS, as to a second cited basis of uniqueness, the applicant states that the history of commercial use at the site and the nature of that use as a gasoline service station gives the site an "undeniable commercial flavor;" and

WHEREAS, the Board observes that the previous use of a site is not an actual unique physical condition that, in and of itself, causes hardship; and

WHEREAS, the Board still requires proof of actual unique physical features present at the site which cause practical difficulties or unnecessary hardship; and

WHEREAS, the applicant cites to variances granted by the Board under BSA Cal. Nos. 354-03-BZ, 261-03-BZ and 209-03-BZ in support of the argument that the Board has accepted a site's prior commercial history as a unique physical condition that leads to practical difficulty or unnecessary hardship; and

WHEREAS, however, a careful reading of these resolutions reveals that the applicant's reliance on these particular grants is misplaced, as each decision identifies specific unique physical conditions that were the basis for the hardship finding; and

WHEREAS, with respect to BSA Cal. No. 354-03-BZ, which involved the grant of a variance to permit a proposed physical culture establishment ("PCE") use in the cellar of a mixed use building located partially within an R8B zoning district and partially within a C6-6 overlay, the Board specifically found that the hardship requirement set forth at ZR § 72-21(a) was met by the lot's division by a zoning district boundary and limitations caused by the size and configuration of the cellar; and

WHEREAS, similarly, with respect to the resolution under BSA Cal. No. 209-03-BZ which also sought a variance to permit a PCE use in the lower floors of a residential building, the Board cited to the specific unique physical conditions of the awkward layout of the building's lower level due to its previous configuration for hotel use, and the lack of a sufficient street presence for a conforming commercial use; and

WHEREAS, with respect to BSA Cal. No. 261-03-BZ, a case involving the grant of a variance to legalize a one-story building as an auto repair shop in a residential zone, the Board cited to the significant slope conditions and unique shape of the lot as the bases for the hardship finding; and

WHEREAS, the Board thus finds that in no BSA decision cited by the applicant was the commercial history

of a site the basis for uniqueness; and

WHEREAS, accordingly, in alignment with its past decisions, the Board finds that the previous history of a use of a site is, in and of itself, insufficient to sustain the uniqueness finding; and

WHEREAS, for this reason, the Board also rejects the applicant's third alleged basis of uniqueness, namely, that the site suffers a hardship because underground storage tanks were formerly located on its premises; and

WHEREAS, the Board notes that the applicant states that the storage tanks have been removed from the site; and

WHEREAS, further, the applicant has failed to adduce any outstanding remediation costs in connection to the former storage tanks; and

WHEREAS, thus, the applicant has failed to establish that the former underground storage tanks compromise complying development; and

WHEREAS, in the absence of documented remediation costs, the Board observes therefore that the only apparent site preparation expense consists of the cost of removal of the abandoned shell of the site, which has not been averred to constitute a hardship; and

WHEREAS, the applicant also contends that as the site was granted a variance prior to 1961, it is eligible for a reinstatement of its previous variance under ZR § 11-411 and to seek the replacement of a Use Group 16 use with a less intensive Use Group 6 retail use; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the extension of a term of an expired variance granted prior to 1961 requires a finding of continuous use; and

WHEREAS, the evidence in the record indicates that the use of the site as a gasoline service station has been discontinued; and

WHEREAS, the Board notes that, based on the discontinued use, the applicant is not eligible for reinstatement under ZR § 11-411; and

WHEREAS, the Board therefore believes that this argument is irrelevant and unpersuasive; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, at the final hearing, the applicant requested additional time to provide a final submission to reinforce the case for a variance; and

WHEREAS, despite the grant of additional time, the applicant submitted no additional support for its application; and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a), the application also fails to meet the finding set forth at ZR § 72-21(b); and

WHEREAS, even assuming *arguendo* that the site's location and history of use should be considered unique such that the finding set forth at ZR § 72-21(a) is met, the applicant has failed to submit credible financial data –

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# MINUTES

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specifically, the proffered site valuation – in support of its claim that conforming residential development on the site will not realize a reasonable return; and

WHEREAS, the Board notes that an accurate site valuation that may be properly relied upon is essential in order for the finding set forth at ZR § 72-21(b) to be met; and

WHEREAS, the applicant has indicated that a complying development of three two-family homes could be accommodated on the site, and

WHEREAS, the Board observes that the applicant valued each of the three two-family homes at a price which does not generate a reasonable rate of return; and

WHEREAS, given its reservations with the applicant's claim of alleged hardship at the site, the Board asked the applicant to analyze a conforming residential scenario as if no unique physical hardships and resulting costs existed in order to assess the viability of conforming development on the site; and

WHEREAS, such an analysis would allow the Board to ascertain how much of the applicant's claimed insufficient return for conforming development is due to generally applicable poor market conditions; and

WHEREAS, in response to a request by the Board, the applicant provided a financial analysis indicating that, if there were no hardship on the site, the selling price for each conforming two-family house would generate a reasonable rate of return; and

WHEREAS, at hearing, the Board asked to see the comparable selling prices on which the analysis was based; and

WHEREAS, the applicant failed to supply the comparable sales prices to the Board; and

WHEREAS, the applicant has failed to provide valuation information sufficient to establish the finding set forth at ZR § 72-21(b); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a) and (b), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a) and (b), which are threshold findings that must be met for a grant of a variance, the Board declines to address the other findings.

*Therefore it is Resolved* that the decision of the Queens Deputy Borough Commissioner, dated February 6, 2007, acting on Department of Buildings Application No. 402506677, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2008.

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## 122-07-BZ

### CEQR #07-BSA-087K

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 §32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15<sup>th</sup> Street, westerly side of East 15<sup>th</sup> Street, 50' north of Kings Highway, Block 6777, Lots 17 and 24, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 18, 2007, acting on Department of Buildings Application No. 301927280, reads in pertinent part:

“Proposed change in use on first floor from dance studio to physical culture establishment is not permitted as of right. A special permit by the Board of Standards and Appeals is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the operation of a physical culture establishment (PCE) on portions of the first and second floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 2, 2007, after due notice by publication in *The City Record*, with continued hearings on November 27, 2007 and January 15, 2008, and then to decision on February 5, 2008; and

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

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

WHEREAS, the subject site is a through-lot between East 14<sup>th</sup> Street and East 15<sup>th</sup> Street, 50 feet north of Kings Highway; and

WHEREAS, the site is located partially within a C4-4A zoning district and partially within an R5B zoning district; and

WHEREAS, the site occupies two zoning lots; and

WHEREAS, the PCE occupies a total floor area of 18,000 sq. ft. on portions of the first and second floors of the

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# MINUTES

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building; and

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

WHEREAS, the Board notes that the PCE has been in operation since August 2007; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time, between August 1, 2007 and the date of this grant, when the PCE operated without the special permit; and

WHEREAS, the applicant represents that the services at the PCE include cardiovascular fitness and strength training; and

WHEREAS, the hours of operation are: 6:00 a.m. to 9:00 p.m. Monday through Friday, and 8:00 a.m. to 7:00 p.m., Saturday and Sunday; and

WHEREAS, at hearing, the Board directed the applicant to clarify whether any portion of the PCE was located within the R5B zoning district; and

WHEREAS, in response, the applicant provided a site plan reflecting that only a 20 foot portion of the site extends into the R5B zoning district; and

WHEREAS, pursuant to ZR § 77-11, if a zoning lot is divided by a boundary line between districts in which different uses are permitted, the provisions applicable to the portion of the site which constitutes at least 50 percent of the zoning lot may apply to the entire zoning lot if the distance to the lot line in the zoning district which is less than 50 percent of the zoning lot is less than 25 feet; and

WHEREAS, the applicant represents that the zoning lot complies with ZR § 77-11; and

WHEREAS, based on the applicant's representations and the site plan submitted by the applicant, the Board agrees that the zoning lot complies with the requirements of ZR § 77-11; and

WHEREAS, additionally, the Board asked the applicant to confirm that the PCE would not be occupying space which had been allocated to parking on the site and did not trigger any new parking requirements; and

WHEREAS, in response, the applicant submitted the most recent Certificate of Occupancy showing that the PCE occupies space on the first and second floors formerly allocated to offices and a dance studio, while parking spaces are designated to the cellar and subcellar and that the parking requirement for the PCE is met by the parking allocated to the former uses; 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. 07BSA087K, dated January 2, 2008; 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 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 C4-4A zoning district and partially within an R5B zoning district, the legalization of a physical culture establishment on portions of the first and second floors of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 3, 2008"-(2) sheets and "February 4, 2008"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 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 above condition shall appear on the Certificate of Occupancy;

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

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# MINUTES

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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 5, 2008.

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## 152-07-BZ

### CEQR #07-BSA-097K

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 87<sup>th</sup> Street, Block 6050, Lot 8, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 18, 2007, acting on Department of Buildings Application No. 301137963, reads in pertinent part:

“Proposed change of use to a physical culture establishment in a C4-2 zoning district 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 C4-2A zoning district in the Special Bay Ridge District, the legalization of a physical culture establishment (PCE) on the second floor of a two-story commercial building, contrary to ZR § 32-10; 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 February 5, 2008; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Fourth Avenue and 87<sup>th</sup> Street; and

WHEREAS, the PCE occupies the second floor of a two-story commercial building; the PCE occupies 6,930 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 2003, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time, between January 1, 2003 and the date of this grant, when the PCE operated without the special permit; and

WHEREAS, the applicant represents that the services at the PCE include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; 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 the Fire Department’s letter stating that full sprinklering of the facility would be required; and

WHEREAS, in response, the applicant sought to modify the Fire Department’s requirement, but the Fire Department did not agree to modify it; and

WHEREAS, the Board has determined that, since the PCE has been in operation for five years without a special permit and without the appropriate fire safety measures, it must come into compliance with this grant, and specifically the Fire Department’s requirement for full sprinklering, within six months; 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



# MINUTES

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. 07BSA097K, dated April 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.

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 C4-2A zoning district in the Special Bay Ridge District, the legalization of a physical culture establishment on the second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 5, 2008"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 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 fire safety measures, including full sprinklering as per the Fire Department, shall be installed and/or maintained as shown on the BSA-approved plans;

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

THAT the PCE shall be brought into compliance with all conditions of this grant and the BSA-Approved plans within six months of this grant, by August 5, 2008;

THAT a new Certificate of Occupancy shall be

obtained within one year of the date of this grant, by February 5, 2009;

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

THAT the occupancy of the PCE shall be as reviewed and approved by DOB;

THAT DOB shall inspect and approve compliance with all conditions of this grant prior to the issuance of a 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);

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 5, 2008.

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## 176-07-BZ

### CEQR #07-BSA-105Q

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 §22-12 (use), §23-45(a) (front yard), and §23-461(a) (required 5' side yard). R4 district.

PREMISES AFFECTED – 50-34 69<sup>th</sup> Street, a/k/a 68-18 Garfield Avenue, southwest corner of the intersection of Garfield Avenue and 69<sup>th</sup> Street, Block 2425, Lot 33, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

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

**THE VOTE TO GRANT** –

Affirmative: .....0

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

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated June 20, 2007, acting on Department of Buildings Application No. 402594849, reads in pertinent part:

“Proposed office use (UG 6) in a residence is contrary to Section 22-10 ZR.”; and

WHEREAS, a public hearing was held on this application on October 2, 2007 after due publication in *The City Record*, with continued hearings on November 20, 2007 and January 8, 2008, and then to decision on February 5,

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# MINUTES

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2008; and

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

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R4 zoning district, the alteration and enlargement of an existing building for commercial use, contrary to ZR § 22-10; and

WHEREAS, Community Board 2, Queens, recommended disapproval of this application; and

WHEREAS, the site is located at the southwest corner of Garfield Avenue and 69<sup>th</sup> Street; and

WHEREAS, the site has 32.66 feet of frontage on Garfield Avenue, 122.84 feet of frontage on 69<sup>th</sup> Street, and a total lot area of 3,503 sq. ft.; and

WHEREAS, due to the angle of Garfield Avenue, the site has a wider angled frontage on Garfield Avenue but otherwise is rectangular with a uniform width of approximately 30 feet across the site; and

WHEREAS, the site is currently occupied by a one-story single-family home with 1,178 sq. ft. of floor area, built in approximately 1937 as a single-family home; and

WHEREAS, the applicant represents that in recent years, the building has been used for commercial purposes contrary to the existing Certificate of Occupancy; the commercial use was discontinued in 2006; and

WHEREAS, the applicant proposes to enlarge the existing residential building to convert it into a two-story commercial building (Use Group 6) with 2,990 sq. ft. of floor area, which would maintain the existing non-complying front yard and side yard; and

WHEREAS, because the proposed Use Group 6 use is not permitted as-of-right in the subject zoning district a use variance is requested; and

WHEREAS, the applicant asserts that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in using the existing home or otherwise developing the lot in strict conformance with underlying district regulations: (1) the lot is on a corner and is irregularly-shaped; (2) the existing single-family home is obsolete due to structural cracks and basement flooding and cannot be feasibly enlarged because of the costs associated with renovation and the unmarketable location; (3) the single-family home is a unique use in the subject R4 zoning district; (4) the site fronts on a commercial thoroughfare with two lanes of traffic, two parking lanes, and a bus stop in front of the site; (5) the site is surrounded by commercial uses and is across the street from an M1-1 zoning district; and

WHEREAS, as to location on the corner and the lot's shape, the Board notes that many of the lots within the 400-ft. radius of the site have angled frontage and the subject site's angled frontage does not have significant impact on its use nor does it preclude the development of a building to be occupied by a conforming use; and

WHEREAS, as to size, the applicant states that, as a

result of the lot width, the existing home has a width of 20 feet and is not marketable; and

WHEREAS, the Board disagrees and notes that (1) the site's width is not unique as there are many lots within a 400-ft. radius of the site which are comparable in width and lot area and (2) within a 400-ft. radius of the site, there are more than 25 buildings that have widths within the range of 18 to 22 feet and are occupied by residential use; and

WHEREAS, further, no evidence has been submitted into the record to support the argument that a building with a width of 20 feet is uninhabitable; and

WHEREAS, as to the purported obsolescence of the building, the Board notes that obsolescence is based on the inability to effectively use the building for its intended purpose; and

WHEREAS, the Board notes that the building was built for residential use and there is no evidence in the record to show that it is unable to continue residential occupancy; and

WHEREAS, further, the conditions that purportedly contribute to obsolescence – cracks and basement flooding – relate to the insufficient maintenance and repair of the home rather than the building's incongruity with residential use; and

WHEREAS, as to the uniqueness of the single-family use, the Board notes that there is no evidence in the record to support this claim and, further, the applicant is not limited to single-family use and may build a two- or three-family building as of right, subject to R4 zoning district parameters; and

WHEREAS, the Board notes that the applicant submitted an alternate proposal for a three-story three-family home that would be feasible; and

WHEREAS, as to the surrounding streets, the Board notes that 69<sup>th</sup> Street and Garfield Avenue both have widths of 80 feet, while major commercial corridors have widths of 100 feet or greater; and

WHEREAS, the Board also notes that two lanes of traffic and two parking lanes are common conditions in New York City as a whole and the subject area; and

WHEREAS, as to nearby uses, the Board notes that immediately adjacent to the site along 69<sup>th</sup> Street, both sides of the street are occupied by residential uses including ten, two- and three-story buildings, which are similar to potential as-of-right development of the site; and

WHEREAS, the Board agrees that there is an exception to the noted prevalence in residential use at the corner sites in the adjacent M1-1 zoning district, but notes that the subject residential zoning district and the adjacent C1-2 (R4) zoning district are occupied by a majority of residential uses or mixed-use residential/commercial uses, even on the corner sites; and

WHEREAS, the Board notes that the applicant submitted a photographic survey reflecting that there is commercial use on the ground floor of buildings along 69<sup>th</sup> Street, yet the majority of these examples were in the adjacent M1-1 or C1-2 (R4) zoning districts; and

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# MINUTES

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WHEREAS, further, the Board notes that, at best, these examples reflect that the area has a mixed character and is not conclusive that either the site itself is unique or that it cannot accommodate residential use; and

WHEREAS, further the Board notes that the mere existence of certain physical conditions on, or related to, a site is insufficient to support the uniqueness finding set forth at ZR § 72-21(a); and

WHEREAS, ZR § 72-21(a) provides that the physical conditions, once proven to be unique, must also result in practical difficulties or unnecessary hardship in strictly conforming to applicable zoning provisions; and

WHEREAS, the Board notes that the relevant inquiry in evaluating variance requests for a single-family dwelling such as the subject home is whether the dwelling is habitable without the requested waivers, or at all; and

WHEREAS, the Board observes that the home is capable of being used as a single-family residence in conformance with the applicable use regulations in an R4 zoning district; and

WHEREAS, the claimed unique features set forth above do not affect this determination: small houses with non-complying yards situated on busy streets can be both habitable and marketable, and the applicant has not provided any compelling evidence that the subject home can not be occupied residentially because of its size, non-complying yards, or location; and

WHEREAS, the Board also notes that the mere fact that commercial use of the home may be more profitable or desirable (in part based on the experience of the former illegal commercial occupancy) does not support a finding that use of the home for residential purposes imposes unnecessary hardship or practical difficulties; and

WHEREAS, the Board observes that the applicant has not provided an explanation of why the floor plate of the home is deficient for residential use or why the floor plates of any conforming use at the site are not feasible; and

WHEREAS, in fact, the Board finds that the floor plate of the home is sufficient for conforming residential use; and

WHEREAS, the Board notes that the applicant has other alternatives to develop the site with a conforming use and may use available floor area if it finds that the existing home does not provide a sufficient return; and

WHEREAS, in sum, based upon its review of the record, the Board finds that the applicant has not provided any evidence that the alleged unique physical conditions, when considered in the aggregate, compromise the habitability of the home for residential purposes to the degree where it could be said that practical difficulties or unnecessary hardship arise; and

WHEREAS, accordingly, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a); and

WHEREAS, because the Board finds that the application fails to meet the finding set forth at ZR § 72-21(a), which is a threshold finding for any variance grant, the Board declines to address the remaining findings.

*Therefore it is Resolved* that the decision of the Borough Commissioner, dated June 20, 2007, acting on Department of Buildings Application No. 402594849, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 5, 2008.

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**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 28<sup>th</sup> Street, east side, 215’ north of Avenue S between Avenue R and S, Block 6834, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 1, 2007, acting on Department of Buildings Application No. 310044886, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R3-2 zoning district:

Increases the degree of non-compliance with respect to one side yard and is contrary to Sections 23-461 and 54-31 of the Zoning Resolution”; 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 side yard, contrary to ZR §§ 23-461 and 54-31; and

WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by publication in *The City Record*, and then to decision on February 5, 2008; and

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

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

WHEREAS, the subject site is located on the east side of East 28<sup>th</sup> Street, between Avenue R and Avenue S; 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

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# MINUTES

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floor area of approximately 1,433 sq. ft. (0.47 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 1,433 sq. ft. (0.47 FAR), to 2,151 sq. ft. (0.72 FAR); the maximum floor area permitted is 1,800 sq. ft. (0.60 FAR); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 2'-10" (a minimum width of 5'-0" is required); and

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

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yard, contrary to ZR §§ 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 January 11, 2008"-(10) 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 2,151 sq. ft. (0.72 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, February 5, 2008.

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## **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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Marvin Mitzner, Robert Pauls and Felix E. Ferrer.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for continued hearing.

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## **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 – 102-10 159<sup>th</sup> Road, south side of 159<sup>th</sup> Road near the intersection of 192<sup>nd</sup> Street and 159<sup>th</sup> Road, Block 14182, Lot 88, Borough of Queens.

### **COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

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## **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.

# MINUTES

## COMMUNITY BOARD # 11Q

### APPEARANCES –

For Applicant: Jordan Most and Robert Pauls.  
For Opposition: Council Member Tony Avella, Marc Bresky, Elliott Socci, Stuart Hersh, Marie Marsina, Suzanne Campese, Irene Solland, Bruce Stuart, Margaret Nihan, Arthur Kelley, Marva Kalish, Joseph Hellmann, W.B. Sievers and Julia Soctorer.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

## 160-06-BZ

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under §72-21 to permit the proposed one-story and cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to §22-00. R3-1 district.

PREMISES AFFECTED – 2199 (a/k/a 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Adam W. Rothkrug and Frank Tioglio.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

## 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

### APPEARANCE –

For Applicant: Daniel Braff and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.

## 51-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§ 72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§ 22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Jordan Most and Sandy Anagnostou.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

## 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 188<sup>th</sup> Street and Grand Central Parkway, Block 9969, Lot 12, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Raymond J. Irrera.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for decision, hearing closed.

## 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 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

## COMMUNITY BOARD #8BX

### APPEARANCES –

For Applicant: Jacqueline Cigliano.

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for continued hearing.

## 237-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Foundation for Sephardic Studies, Inc., owner.

SUBJECT – Application October 22, 2007 – Variance (§72-21) to permit the construction of a two-story community facility building to serve as an annex to the Main Building, two lots east of the subject premises. The proposal is contrary to §23-631 (maximum perimeter wall height and required setback) and §25-31 (minimum parking requirement). R5 zoning district in the Ocean Parkway Special Zoning District.

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# MINUTES

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PREMISES AFFECTED – 718 Avenue S, south side of Avenue S, midblock between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, Block 7089, Lot 7, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for decision, hearing closed.

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**263-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Aliza Goldbrenner and Isaac Golfbrenner, owners.

SUBJECT – Application November 14, 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 (§23-461(a)); and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1169 East 21<sup>st</sup> Street, East 21<sup>st</sup> Street between Avenue J and Avenue K, Block 7603, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 7

February 21, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                  |    |
|----------------------------------|----|
| DOCKET .....                     | 93 |
| <b>CALENDAR</b> of March 4, 2008 |    |
| Morning .....                    | 94 |
| Afternoon .....                  | 95 |

# CONTENT

**MINUTES of Regular Meetings,  
Tuesday, February 12, 2008**

Morning Calendar .....96

**Affecting Calendar Numbers:**

|               |  |
|---------------|--|
| 673-81-BZ     | 2075 Richmond Avenue, Staten Island                      |
| 83-97-BZ      | 214-18 24 <sup>th</sup> Street, Queens                   |
| 277-99-BZ     | 45-05 Bell Boulevard, Queens                             |
| 710-55-BZ     | 246-02 South Conduit Avenue, Queens                      |
| 824-61-BZ     | 200-266 East 66 <sup>th</sup> Street, Manhattan          |
| 742-70-BZ     | 830 Bay Street, Staten Island                            |
| 1199-88-BZ    | 29 Nelson Avenue, Staten Island                          |
| 50-92-BZ      | 1282 Shakespeare Avenue, Bronx                           |
| 120-01-BZ     | 134-02 Cross Bay Boulevard, Queens                       |
| 219-06-A thru |  |
| 225-06-A      | 241-10/16/22/28/15/21/25 128 <sup>th</sup> Drive, Queens |
| 64-07-A       | 1704 Avenue N, Brooklyn                                  |
| 162-06-A      | 2852 Faber Terrace, Queens                               |
| 261-07-A      | 135 North 9 <sup>th</sup> Street, Brooklyn               |

Afternoon Calendar .....104

**Affecting Calendar Numbers:**

|           |  |
|-----------|--|
| 121-07-BZ | 400 Victory Boulevard, Staten Island         |
| 124-07-BZ | 521 Broome Street, Manhattan                 |
| 233-07-BZ | 203 East 86 <sup>th</sup> Street, Manhattan  |
| 236-07-BZ | 53-65 Hope Street, Brooklyn                  |
| 48-06-BZ  | 420 Morris Park, Bronx                       |
| 74-07-BZ  | 6-10 West 70 <sup>th</sup> Street, Manhattan |
| 78-07-BZ  | 2515 McDonald Avenue, Brooklyn               |
| 730-72-BZ | 2515 McDonald Avenue, Brooklyn               |
| 158-07-BZ | 184-20 Union Turnpike, Queens                |
| 173-07-BZ | 1061 East 21 <sup>st</sup> Street, Brooklyn  |
| 193-07-BZ | 3591 Bedford Avenue, Brooklyn                |
| 217-07-BZ | 25 Beaumont Street, Brooklyn                 |
| 218-07-BZ | 110-11 Astoria Boulevard, Queens             |
| 221-07-BZ | 165 Lenox Avenue, Manhattan                  |
| 281-07-BZ | 1960 East 4 <sup>th</sup> Street, Brooklyn   |
| 286-07-BZ | 129-01 Merrick Boulevard, Queens             |

CORRECTION .....116

**Affecting Calendar Number:**

|           |                                   |
|-----------|-----------------------------------|
| 205-04-BZ | 375 Tennyson Drive, Staten Island |
|-----------|-----------------------------------|



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# DOCKET

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New Case Filed Up to February 12, 2008  
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**26-08-A**

35 Bedford Avenue, North side 475.70' west of 12th Avenue., Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14**. Construction not fronting on a legally mapped street, contrary to General City Law Section 36.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**MARCH 4, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 4, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **751-60-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 105 New Dorp Equities, Incorporated, owner.

SUBJECT – Application November 7, 2007 – Extension of Term of a previously granted Variance (72-21) for the operation of a gasoline service station, in C2-1 in R3-1and R3X zoning district, which expired on March 23, 2006; an amendment for an additional pump island and waiver of the rules of procedure.

PREMISES AFFECTED – 105 New Dorp Lane, northern corner of New Dorp Lane and New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### **66-90-BZII**

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H. G. Realty Corporation, owner

SUBJECT – Application January 31, 2008 – Extension of Time to obtain a Certificate of Occupancy, which expired on November 14, 2002, for an Automotive Service Station (Mobil) in an R5 zoning district and a waiver of the rules. PREMISES AFFECTED – 43-07 Astoria Boulevard, northeast corner of 43<sup>rd</sup> Street, Block 780, Lot 18, Borough of Queens.

**COMMUNITY BOARD #1Q**

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### **370-02-BZII**

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-14 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 40, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### **373-02-BZII**

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-44 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 55, Borough of Queens.

**COMMUNITY BOARD #7Q**

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## **APPEALS CALENDAR**

### **228-07-A & 234-07-A**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Donald Bischoff, owner.

SUBJECT – Application October 9, 2007 – Proposed construction of two- two family dwellings located within the bed of a mapped street (property street) contrary to Section 35 of the General City Law. R3-2 Zoning District.

PREMISES AFFECTED – 29 Colon Avenue, 20 Lindenwood Road, between Colon Avenue and Lindenwood, south of Baltimore Street, Block 5433, Lots 75 & 98, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **279-07-A**

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Tom McLaren, lessee.

SUBJECT – Application December 6, 2007 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 34 Reid Avenue, south west of Reid Avenue, north west of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #4Q**

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### **292-07-A**

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Doreen A. Dolan, lessee.

SUBJECT – Application December 28, 2007 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 41 Queens Walk, east side of Queens, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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**MARCH 4, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 4, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **278-07-BZ**

APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NY Presbyterian Hospital/Trustees of Columbia University, owner.

SUBJECT – Application December 4, 2007 – Variance (§72-21) to permit the erection of three 30 foot high "pylon" signs that would be located at major entrances to a medical center campus. The proposal is contrary to section 22-342. R8 district.

PREMISES AFFECTED – 630 West 168<sup>th</sup> Street, bounded by Broadway, West 165<sup>th</sup> and 168<sup>th</sup> Streets, Riverside Drive, and Fort Washington Avenue, Block 2138, 2139, Lots 1, 15, 80, 85, 30, 40, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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### **285-07-BZ**

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

SUBJECT – Application December 17, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a seven-story commercial building. The proposal is contrary to section 32-10. C5-2 district.

PREMISES AFFECTED – 312 Fifth Avenue, northwest side of Fifth Avenue between West 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 833, Lot 44, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **11-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Audrey Grazi and Ezra Grazi, owners.

SUBJECT – Application January 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (23-141); side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3573 Bedford Avenue, Bedford Avenue between Avenue N and Avenue O, Block 7679, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

-----

### **16-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Isaiah Florence, owner.

SUBJECT – Application January 15, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (23-141(a)); side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 2614 Avenue L, between East 26<sup>th</sup> and East 27<sup>th</sup> Streets, Block 7644, Lot 46, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 12, 2008  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**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 #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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver, a re-opening, and an extension of term that expired on January 5, 1997; and

WHEREAS, a public hearing was held on this application on December 11, 2007, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2008, and then to decision on February 12, 2008; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Chair Srinivasan; 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, approximately 462 feet from Rockland Avenue; and

WHEREAS, on January 5, 1982, under the subject calendar number, the Board granted a variance application pursuant to ZR § 72-21, to permit, within an R3-2 zoning district, the construction of a one-story commercial building with accessory parking for a term of 15 years; and

WHEREAS, at hearing, the Board asked the applicant if

all signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant provided a revised zoning analysis, which reflects that the exterior sign does not comply with C1 zoning district regulations; and

WHEREAS, however, the applicant represents that the subject sign, with a total surface area of 97 sq. ft. (50 sq. ft. is the maximum permitted) has existed for the history of the development of the site; and

WHEREAS, the applicant agreed to remove the non-complying signage in the windows; and

WHEREAS, a site visit by the Board confirmed that the window signage had been removed; and

WHEREAS, based on the above, the Board finds that a 15-year 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 January 5, 1982, so that as amended this portion of the resolution shall read: “to grant an extension of the term of the variance for a term of 15 years; *on condition* that any and all work shall substantially conform to drawings filed with this application marked ‘Received October 30, 2007’-(3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of 15 years from February 12, 2008, expiring February 12, 2023;

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 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. 500867494)

Adopted by the Board of Standards and Appeals, February 12, 2008.

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**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 –

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# MINUTES

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For Applicant: Elizabeth Safian.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and amendment to eliminate the term for a previously granted special permit pursuant to ZR § 73-125 to permit a health care facility (Use Group 4) in an R1-2 zoning district, which expired on October 21, 2007, and to reconfigure the configuration of onsite accessory parking; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, with continued hearings on January 8, 2008 and January 29, 2008, and then to decision on February 12, 2008; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application with the conditions that: (1) a large tree in the front yard be retained; and (2) that the term of the special permit be limited to ten years; and

WHEREAS, City Council Member Tony Avella has submitted a letter recommending approval of this application with the conditions ratified by Community Board 11; and

WHEREAS, the subject site is located on the south side of 24<sup>th</sup> Avenue, 121 feet east of Bell Boulevard; and

WHEREAS, the site has a lot area of 8,000 sq. ft., is occupied by a one-story and cellar one-family building located within an R1-2 zoning district, and five accessory on-site parking spaces; and

WHEREAS, the building is occupied by a medical office use; and

WHEREAS, on September 23, 1986, under BSA Cal. No. 985-85-BZ, and BSA Cal. No. 410-86-A, respectively, the Board granted a special permit pursuant to ZR § 73-125 and a companion appeal to permit a medical office (Use Group 4) in a one-story and cellar, one-family dwelling; and

WHEREAS, the special permit was limited to a term of five years, expiring on September 23, 1991; and

WHEREAS, because the special permit was not renewed, it lapsed, although the medical office use has continued, and

WHEREAS, on October 21, 1997, under the subject calendar number, the Board granted a new special permit to legalize the medical office for a term of ten years, to expire on October 21, 2007; and

WHEREAS, the instant application seeks to amend the special permit to eliminate the term; and

WHEREAS, pursuant to its continuing jurisdiction over the special permit, the Board is required to find that the

amount of open area and its distribution conforms to standards appropriate to the character of the neighborhood; and

WHEREAS, the applicant states that the existing medical office occupies less than 25 percent of the lot area, with the remainder allotted to five required accessory off-street parking spaces and to landscaping; and

WHEREAS, the applicant also seeks to pave a portion of its property and to reconfigure the layout of its accessory parking spaces; and

WHEREAS, the applicant initially sought Board approval for a redesign of its parking area to add an additional space which would have required removal of a large tree; and

WHEREAS, echoing the conditions of Community Board 11, the Board directed the applicant to retain the tree and to revert to the five parking spaces approved originally; and

WHEREAS, at hearing, the Board raised concerns about the availability of patient parking and the navigability of the proposed accessory parking plan; and

WHEREAS, the applicant subsequently provided a revised layout for five spaces that more efficiently allowed parking for employees as well as three spaces that would be available to both employees and visitors; and

WHEREAS, the Board notes that no changes are proposed to the building envelope; and

WHEREAS, the Board considered the elimination of the term and noted that the special permit under ZR § 73-125 did not require a term; and

WHEREAS, also, the Board notes that any expansion of the use would require approval by the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested elimination 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 October 21, 1997, so that as amended this portion of the resolution shall read: “to grant approval of 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 October 3, 2007’ –(5) sheets and ‘January 22, 2008’-(1) sheet; and *on condition*:

THAT there shall be no change in use of the site, or modification to the building, parking or landscaping without prior approval from the Board;

THAT the term of the grant shall be eliminated;

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, February 12, 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

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# MINUTES

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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. 410002526)

Adopted by the Board of Standards and Appeals, February 12, 2008.

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## **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 45<sup>th</sup> Road, Block 7333, Lot 201, Borough of Queens.

## **COMMUNITY BOARD #11Q**

**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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver, a reopening, an amendment to the approved plans, and extensions of time to complete construction and obtain a certificate of occupancy for a gasoline service station; and

WHEREAS, a public hearing was held on this application on November 27, 2007, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2008, and then to decision on February 12, 2008; and

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

WHEREAS, Community Board 11, Queens, waived its hearing on the application; and

WHEREAS, City Council Member Tony Avella recommends disapproval of this application until the following conditions are cured: (1) the planter encroachment into the sidewalk, (2) the presence of an outdoor lift, (3) the poor condition of the wall, including missing bricks, and a bent fence, and (4) the buckling sidewalk; and

WHEREAS, the site is located on the east side of Bell Boulevard, between Northern Boulevard and 45<sup>th</sup> Road; and

WHEREAS, the site is within a C2-2 (R6B) zoning district and is occupied with a gasoline service station; and

WHEREAS, on May 3, 1960, under BSA Cal. No. 477-

31-BZ, the Board granted a variance to permit the construction of a gasoline service station, partially within a business district and partially within a residential district; and

WHEREAS, on December 6, 1988, under BSA Cal. No. 477-31-BZ, the Board approved an amendment which provided for certain minor site modifications; and

WHEREAS, on September 19, 2000, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the redesign of the site including the construction of a new accessory convenience store building; and

WHEREAS, the term of the special permit was limited to ten years, to expire on September 19, 2010; and

WHEREAS, a condition of the grant was that substantial construction be completed in accordance with ZR § 73-70, which provides for four years from the date of the grant; and

WHEREAS, accordingly, the period to complete substantial construction lapsed on September 19, 2004; and

WHEREAS, the applicant initially sought to extend the time to complete construction and to obtain a new certificate of occupancy, under the special permit; and

WHEREAS, however, the Board noted that the applicant intended to revert to the existing conditions on the site instead of constructing the new building, pursuant to the approved plans associated with the special permit; and

WHEREAS, the Board determined that, the grant made under BSA Cal. No. 477-31-BZ was superseded by the subject special permit; and

WHEREAS, however, the applicant could amend the prior plans to reflect the existing/proposed conditions as long as the findings of the special permit are met; and

WHEREAS, at hearing, the Board asked the applicant to confirm that the current and proposed use and operation of the site meets the findings of ZR § 73-211; and

WHEREAS, the applicant represents that it will meet all of the findings once the noted modifications are made; and

WHEREAS, during the hearing process, the applicant amended the application to amend the site plan and to request additional time to complete construction and obtain a certificate of occupancy, pursuant to the revised plans; and

WHEREAS, at hearing, the Board directed the applicant to provide additional screening along the eastern lot line; and

WHEREAS, in response, the applicant revised the plans to reflect shrubs with a height of six feet along the eastern and southern lot lines; and

WHEREAS, additionally, the Board requested that the applicant eliminate two of the curb cuts on Bell Boulevard, to improve traffic flow; and

WHEREAS, in response, the applicant revised the site plan to reflect two, rather than four, curb cuts on Bell Boulevard and two curb cuts on Northern Boulevard; there are not any curb cuts on 45<sup>th</sup> Road; and

WHEREAS, at the Board’s request, the applicant provided photographs to reflect that the planter at the corner of Northern Boulevard and Bell Boulevard was within the property line; and

WHEREAS, the applicant represents that all of the other

# MINUTES

concerns raised by City Council Member Avella have been resolved or are in the process of being resolved; and

WHEREAS, further, the Board directed the applicant to ensure that all signage complies with C2 zoning district regulations; and

WHEREAS, the Board may permit an extension of time to obtain a certificate of occupancy under a prior grant; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the plans and extensions of time to complete construction and 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 September 19, 2000, so that as amended this portion of the resolution shall read: "to permit the noted amendment to the plans and to extend the time to complete construction and obtain a certificate of occupancy for one year from the date of this grant, until February 12, 2009, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received December 21, 2007"- (4) sheets and "January 25, 2008"- (1) sheet; and *on further condition*:

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

THAT the underlying special permit shall expire on September 19, 2010;

THAT the site be maintained free of debris and graffiti;

THAT all landscaping be planted and maintained per the BSA-approved plans;

THAT all signage shall comply with C2 zoning district regulations;

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

THAT the site shall be brought into compliance with the BSA-approved plans and a certificate of occupancy shall be obtained by February 12, 2009;

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. 402586554)

Adopted by the Board of Standards and Appeals, February 12, 2008.

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## 710-55-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Tserpes Realty LLC, owner.

SUBJECT – Application October 19, 2007 – Extension of Term for a gasoline service station (Emporium) which expired on January 10, 2008 in an R3-2 zoning district.

PREMISES AFFECTED – 246-02 South Conduit Avenue,

intersection of South Conduit Avenue & 139<sup>th</sup> Street, Block 13622, Lot 5, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Steven Simich.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for continued hearing.

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## 824-61-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Thomas E. Quinn, owner.

SUBJECT – Application November 16, 2007 – Extension of Term allowing the use of surplus parking spaces for transient parking within a multiple dwelling presently located in a C1-9 /R8B zoning district granted by the Board pursuant to Section 60 (1d) of the Multiple Dwelling Law.

PREMISES AFFECTED – 200-266 East 66<sup>th</sup> Street, block bounded by East 66<sup>th</sup>, East 65<sup>th</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Avenues, Block 1420, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Steven Simich.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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## 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: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2008, at 10 A.M., for decision, hearing closed.

# MINUTES

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**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 and 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.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 10 A.M., for decision, hearing closed.

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**50-92-BZ II**

APPLICANT – Walter T. Gorman, P.E. for Higinio Caballero, owner.

SUBJECT – Application December 5, 2007 – Extension of Term (§72-01 and §72-22) to reopen the variance for a (UG8) public parking lot for a period of five years.

PREMISES AFFECTED – 1282 Shakespeare Avenue, Bronx, south east corner of west 169<sup>th</sup> Street, Block 2506, Lot 111, Borough of the Bronx

**COMMUNITY BOARD #4BX**

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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**120-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Anthony Ariola, owner.

SUBJECT – Application January 23, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the commercial use (UG6) in an existing two-story building, which expired on May 14, 2006, located in an R4 zoning district and a Waiver of the rules.

PREMISES AFFECTED – 134-02 Cross Bay Boulevard,

western side of Cross Bay Boulevard, between Gold and Silver Roads, Block 11374, Lot 134, Borough of Queens.

**COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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**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 – 241-10/16/22/28/15/21/25 128<sup>th</sup> 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** – Appeal granted.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 7, 2006, acting on Department of Buildings Application Nos. 401824692, 401824709, 401824727, 401824530, 401824521, 401824718, and 401824736, reads in pertinent part:

“Proposed building in a mapped street is contrary to Section 35 of the General City Law, Article 3 and must be referred to the BSA; and  
Fire Department approval should be obtained because buildings do not front a public street. This issue affects both Groups and is contrary to GCL 36 which requires street frontage as a precondition for a Certificate of Occupancy. Furthermore, the proposed houses are contrary to Section 27-291 of the Administrative Code requires 8% minimum building perimeter fronting on legally mapped streets.”; and

WHEREAS, this application requests permission to build seven two-story, single-family homes located within the bed of a mapped street, 128<sup>th</sup> Drive, and not fronting on a



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# MINUTES

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legally mapped street; 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 June 12, 2007, July 10, 2007, August 7, 2007, September 11, 2007, October 2, 2007, and November 27, 2007, then to decision on February 12, 2008; and

WHEREAS, by letter dated September 21, 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) 42S (15), 42SW (7) & 41SD (41) which calls for a future 12-in. diameter combined sewer in 128<sup>th</sup> Drive between Brookville Boulevard and Hook Creek 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 128<sup>th</sup> Drive between Brookville Boulevard and Hook Creek Boulevard; and stated that it requires a minimum 31-ft. corridor in the bed of 128<sup>th</sup> Drive between Brookville Boulevard and Hook Creek Boulevard for the future drainage plan 12-in. diameter combined sewer; and

WHEREAS, in response to DEP's request, the applicant has provided a revised plan, which reflects that a total of 31 feet will be available for the installation, maintenance, and/or reconstruction of the future 12-in. diameter combined sewer with a permanent 23-ft. wide sewer corridor in the bed of 128<sup>th</sup> Drive and an 8-ft. wide portion of the 128<sup>th</sup> Drive to the north of said corridor may be used for common internal storm and sanitary sewer connections; and

WHEREAS, by letter dated February 20, 2007, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated March 6, 2007, the Department of Transportation (DOT) states that it has reviewed the above application and advises the Board that the proposed construction plan does not reflect any provisions for a cul de sac/turnaround, at the dead end of 128<sup>th</sup> Drive, west of Hook Creek Boulevard which should be developed in accordance with all applicable standards; 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, in response to DOT's letter, the applicant states that to provide a turnaround as requested would result in the elimination of two of the seven houses, and that 128<sup>th</sup> Drive in its current state has existed for several years without problem to the current homes in the area; and

WHEREAS, by letter dated June 14, 2007, the Fire Department (FDNY) states that it reviewed the above application and advises the Board that the site plan did not provide the requisite frontage space required by the Building Code for several of the homes and lacks the necessary information with regard to existing and proposed water mains

and hydrants; FDNY recommends that 128<sup>th</sup> Drive should be built as a through street connecting Brookville Boulevard to Hook Creek Boulevard in order to provide adequate access from both directions; and

WHEREAS, in response to FDNY's letter, the applicant has proposed two 40-ft. cul de sacs, to be connected by a paved area with a width of 20 feet that will be available for emergency purposes only and no parking signs will be posted within the common driveway; and

WHEREAS, by letter dated August 14, 2007, the FDNY states that it has reviewed the applicant's proposal and advises the Board that the proposed cul de sacs with 40-ft. diameter are inadequate as the FDNY requires a diameter of 70 feet when a dead end is greater than 130 feet in length; and

WHEREAS, further the FDNY notes that, with the exception of two houses, the buildings still lack the requisite frontage mandated by the Building Code and the proposed two "common driveways" that have widths of 20 feet would still lack adequate access should a car be illegally parked on the 20-ft. wide street; and

WHEREAS, by letter dated September 25, 2007, DOT has concurred with the FDNY that the proposed design is insufficient to accommodate the proper access to emergency vehicles; DOT will require the cul de sac to be designed pursuant to all applicable standards; and

WHEREAS, in response to the FDNY and discussions at hearing the applicant has submitted a revised site plan providing the following conditions: a portion of the road noted to be reserved for emergency use only, with a paved minimum width of 20 feet with most of the non-emergency portion including 5-ft. paved walkways on both sides; no parking signs to be posted within the common driveway; two-car parking for each dwelling; and the HOA will include a specific prohibition against parking in the common driveway; and

WHEREAS, by letter dated January 8, 2008, the FDNY states that it has reviewed the proposed site plan for the above project and offers no further objections; and

WHEREAS, by letter dated January 25, 2008, DOT states that it has reviewed the revised site plan and the FDNY Letter of No Objection and will defer to the FDNY's decision; and

WHEREAS, based upon its review of the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 7, 2006, acting on Department of Buildings Application Nos. 401824692, 401824709, 401824727, 401824530, 401824521, 401824718, and 401824736, is modified by the power vested in the Board by Sections 35 and 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 5, 2008" – one (1) sheet and "January 15, 2008" – one(1) sheet and that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules,

# MINUTES

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 a Sewer Corridor Easement with a minimum width of 31 feet is to be provided in the bed of 128<sup>th</sup> Drive between Brookville Boulevard and Hook Creek Boulevard, with 23-ft. southern portion reserved for use by DEP and the 8-ft. northern portion be available for common private utilities and sewers, which shall be permitted to transverse the DEP corridor as needed;

THAT the lot subdivision is to be approved by the Department of Buildings;

THAT No Parking signs shall be posted within the common driveways;

THAT the Homeowner's Association shall prohibit parking within the common driveways; and

THAT the Department of Buildings must 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 12, 2008.

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## 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 17<sup>th</sup> Street, southeast corner lot at intersection of East 17<sup>th</sup> Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Jay Goldstein.

For Opposition: Edward McCabe and Ellen Messing.

### ACTION OF THE BOARD – Appeal granted.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a single-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on

November 20, 2007, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2008, and then to decision on February 12, 2008; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, certain neighbors submitted written and oral testimony in opposition to the appeal (“the Opposition”); and

WHEREAS, the applicant states that the subject site consists of a 4,000 sq. ft. lot on the southeast corner of the intersection of Avenue N and East 17<sup>th</sup> Street in Brooklyn; and

WHEREAS, the applicant proposes to add 856 sq. ft. of floor area to the side of an existing two-story single-family home with 2,946 sq. ft. of residential floor area; and

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

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

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

WHEREAS, the home does not comply with the R4-1 district parameters as to the maximum permitted 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 Opposition contests the validity of the permit contending that the proposed enlargement does not comply with the side yard requirements of the prior zoning; 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, DOB has confirmed that New Building Permit No. 302067867 (hereinafter, the “Alteration Permit”) was lawfully issued to the owner by DOB on January 24, 2006, prior to the Rezoning Date; and

WHEREAS, thus, the Board finds 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, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) for the proposition that 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]

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# MINUTES

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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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 had completed site preparation, excavation, and poured the foundations; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: concrete pour tickets, cancelled checks, and accounting summaries; and

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

WHEREAS, the Board also notes that the site preparation, excavation and foundation work at the site indisputably occurred prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Rezoning Date, and that said work 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 \$55,096, out of approximately \$301,000 budgeted for the entire enlargement; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks, and accounting reports; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost, the Board concludes that the actual construction costs for the proposed enlargement, both soft and hard, approximate \$301,000; and

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

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights

under a prior zoning regime; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$55,096 associated with pre-Rezoning Date project costs that would result if this appeal were denied is significant; and

WHEREAS, the inability to construct the proposed enlargement would require the owner to re-design the home; and

WHEREAS, the applicant represents that a complying home would have a maximum floor area of 3,000 sq. ft., due to the R4-1 zoning district's floor area limitation; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying construction, and the \$55,096 of actual expenditures and outstanding fees 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, at hearing, the Opposition has argued that the subject application should be denied because work was performed by the owner in violation of an outstanding stop work order issued on September 20, 2006 by the Department of Buildings; and

WHEREAS, the Board observes that it can only consider representations of work performed and expenditures or irrevocable commitments made before the Rezoning Date in a determination as to whether the owner has a common law vested right to complete construction under the Prior Zoning; and

WHEREAS, work performed or expenditures made after the Rezoning Date in contravention of a stop work order were therefore not considered; and

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

WHEREAS, the Opposition has argued that work was performed that failed to conform to the plans for the proposed building; and

WHEREAS, a Notice of Violation issued by the Department of Buildings on July 7, 2006 found that the attic level of the subject building had increased by ten feet over the height approved by the Alteration Permit; and

WHEREAS, a reinspection by the Department of Buildings on January 9, 2008 confirmed the continued non-conformity of the attic height with the approved plans; and

WHEREAS, under ZR § 11-31(b), the right to vest a building permit issued before the date of a rezoning does not apply to modifications made after the Rezoning Date which create a new non-compliance or increase the degree of non-compliance with the new zoning; and

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement

# MINUTES

of DOB Permit No. 302067867, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy in conformance with DOB Permit No. 302067867, is granted for 18 months from the date of this grant, *on condition that*: DOB must confirm that the as built conditions conform to the requirements of ZR § 11-31.

Adopted by the Board of Standards and Appeals, February 12, 2008.

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## 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 –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for an adjourned hearing.

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## 261-07-A

APPLICANT – Krygztzf Rostek for Belvedere III LLC, owner.

SUBJECT – Application November 9, 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 (M1-2) zoning district. R6B Zoning District.

PREMISES AFFECTED – 135 North 9<sup>th</sup> Street, north side 125' from east corner of Berry Street, Block 2304, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Krygztzf Rostek.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 12, 2008 1:30 P.M.

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

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## ZONING CALENDAR

### 121-07-BZ

#### CEQR #07-BSA-086R

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 §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** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 12, 2007, acting on Department of Buildings Application No. 500903533, reads in pertinent part:

“Proposed use of second and third floors of existing non-complying building use group 16 for a Physical Culture or Health Establishments . . . within a R3-2 (HS) zoning district is not permitted as-of-right and therefore referred to Board of Standards and Appeals for approval.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district within the Special Hillside Preservation District (HS) the legalization of a physical culture establishment (PCE) in a former warehouse building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in the *City Record*, with continued hearings on December 4, 2007 and January 15, 2008, and then to decision on February 12, 2008; and

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

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# MINUTES

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Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of the application; and

WHEREAS, City Council Member Michael E. McMahon recommends disapproval of the application, citing concerns that the PCE has operated illegally at the site since January 2007; and

WHEREAS, the site is located on the east side of Victory Boulevard, between Cebra Avenue and Austin Place, with 138 feet of frontage on Victory Boulevard and 77 feet of frontage on Austin Place; and

WHEREAS, the subject site has a total lot area of approximately 12,356 sq. ft.; and

WHEREAS, the site is occupied by a two-story and basement building designed as a factory building, with 14,790 sq. ft. of floor area; and

WHEREAS, the PCE occupies 9,860 sq. ft. of floor area on the second and third floors and is operated as Dolphin Fitness; and

WHEREAS, the PCE has been in operation at the site since January 2007; and

WHEREAS, the applicant represents that the warehouse building was built in approximately 1910, and served as a furniture warehouse until Fall 2005; and

WHEREAS, the building is occupied with several commercial uses (Use Group 6) on the lower level and by the subject PCE on the second and third floors; and

WHEREAS, at hearing, the Board asked the applicant to clarify the legal status of the commercial use on the lower level; and

WHEREAS, the applicant responded that there has been no discontinuance of the non-conforming use on the lower level and that these uses are legal; and

WHEREAS, in support of this, the applicant submitted permits issued by DOB; and

WHEREAS, accordingly, only the proposed legalization of the PCE use on the second and third floors is the subject of the application; and

WHEREAS, the applicant now seeks a variance to legalize the operation of the PCE because the special permit for a PCE is not available in the subject zoning district; and

WHEREAS, the building will not be enlarged or otherwise altered as a part of this 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 existing building is obsolete; (2) the history of use at the site; and (3) the presence of an electrical substation adjacent to the site; and

WHEREAS, as to the obsolescence of the building, the applicant states that the building was constructed in 1910 and designed to accommodate a furniture warehouse; and

WHEREAS, specifically, the characteristics of the building that the applicant asserts are not compatible with conforming residential use include: (1) the existing spacing of the structural columns every several feet; (2) insufficient

fenestration; and (3) a low ceiling height; and

WHEREAS, as to the presence of the structural columns, the applicant states that the arrangement of the columns inhibits the efficient use of the floor plates for residential use because they break up the space in a way that is not compatible with a standard multiple dwelling layout; and

WHEREAS, in support of this assertion, the applicant submitted floor plans for residential use, which reflected that, due to the columns and fenestration, apartment layout would be inefficient and there would be a considerable amount of unusable space; and

WHEREAS, specifically, the applicant represents that the existing conditions would result in fewer apartments of larger size which would not provide as favorable a return as more smaller apartments; and

WHEREAS, as to the insufficient fenestration, the applicant states that, because the building was not built for residential use, it does not have the amount of windows that would be required or desired for residential occupancy; and

WHEREAS, further, the applicant provided estimated costs for the installation of new windows, which reflect that it would be cost prohibitive and would potentially compromise the building's structure; and

WHEREAS, as to the low ceiling height, the applicant represents that after the installation of necessary duct work, the ceiling height would be reduced to approximately eight feet; and

WHEREAS, as to the history of use at the site, the applicant represents that there has been a continuation of non-conforming use at the site and that another non-conforming use, such as a Use Group 6 use would be permitted as of right; and

WHEREAS, as to the electrical substation, the applicant represents that the presence of an electrical substation, and certain associated environmental conditions, on an adjacent lot compromises the marketability of the site for a conforming use; and

WHEREAS, the Board notes that the substation is not incompatible with all residential development; and

WHEREAS, the applicant represents that the owner has engaged in a number of unsuccessful marketing efforts to rent the space, but that it has been unable to fully lease the space since the departure of the furniture warehouse business; and

WHEREAS, accordingly, 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 compliance 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 the applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant initially submitted a feasibility study analyzing (1) an industrial use and (2) a residential rental use; and

WHEREAS, the applicant concluded that neither

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# MINUTES

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scenario resulted in a reasonable rate of return due to the inability to market the space for either of these uses and the inability to compensate for the costs of converting the building to conforming use; and

WHEREAS, at hearing, the Board directed the applicant to eliminate any analysis of an industrial use since that use is no longer present at the site and it is not realistic that such use would 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 use 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 there will not be any change to the exterior of the building, which has existed at the site since 1910; and

WHEREAS, the applicant represents that the surrounding area is characterized by one- and two-family homes; within 400-ft. of the site is a seven-story residential building on Austin Place and there is townhouse development on Clark Lane; and

WHEREAS, the applicant represents that several of the residential buildings on Cebra Avenue are occupied by ground floor retail use; and

WHEREAS, at hearing, the Board asked the applicant to analyze the parking demand and to clarify whether the 12 parking spaces onsite would be sufficient; and

WHEREAS, in response, the applicant stated that the peak evening hour occupancy of the PCE would be approximately 30 people and that ten of those would come by car; and

WHEREAS, the applicant concluded that if any visitors arriving by car could not be accommodated by the 12 parking spaces in the onsite lot, they would be able to find parking on the street nearby; and

WHEREAS, the applicant provided an analysis of the available parking and a list of the addresses of all members, which reflects that a considerable number live within walking distance of the site; and

WHEREAS, additionally, the Board directed the applicant to eliminate any signage that is not in compliance with C1 zoning district regulations; and

WHEREAS, in response, the applicant provided a revised sign analysis and photographs that reflect that the signage complies; 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 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 Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Board notes that the PCE has been in operation since January 1, 2007, without Board approval; and

WHEREAS, accordingly, the Board has determined that the term of this grant shall be reduced for the period of time, between January 1, 2007 and the date of this grant, when the PCE operated illegally; 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. 07BSA086R, and dated April 2, 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

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 R3-2 zoning district within the Special Hillside Preservation District the legalization of a Physical

# MINUTES

Culture Establishment, 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 November 29, 2007”- (1) sheet and “Received February 8, 2008”- (3) sheets; and *on further condition*:

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 term of this grant shall be limited to ten years from the date it began operation, and shall expire on January 1, 2017, subject to further renewal;

THAT, the hours of the physical culture establishment shall be limited to 5:00 a.m. until 12:00 a.m., daily;

THAT all signage at the site shall comply with C1 zoning district regulations;

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

THAT a new certificate of occupancy be obtained within six months from the date of this grant, on August 12, 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) 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 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 12, 2008.

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## 124-07-BZ

### CEQR #07-BSA-088M

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** – Application granted on condition.

## THE VOTE TO GRANT –

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

## THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 17, 2007 acting on Department of Buildings Application No. 104671954, reads in pertinent part:

“Proposed commercial use (use group 6) below the level of the second story in an M1-5B zoning district is not permitted pursuant to ZR 42-14(d)(2)(b) of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district, the conversion of the first floor and cellar of an existing seven-story building to a Use Group 6 (eating and drinking establishment) use, contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in the *City Record*, with continued hearings on December 4, 2007 and January 15, 2008, and then to decision on February 12, 2008; and

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

WHEREAS, Community Board 2, Manhattan, does not oppose approval of the application; and

WHEREAS, Council Member Christine Quinn has recommended approval of the application; and

WHEREAS, the subject premises is an irregularly-shaped through lot fronting on Broome Street and Watts Street located mid-block between Thompson Street and the intersection of Sixth Avenue and Sullivan Street; and

WHEREAS, the site has a lot area of approximately 2,400 sq. ft.; and

WHEREAS, the lot has a depth of approximately 60 feet, with a width of 40 feet on Broome Street and approximately 38 feet on Watts Street; and

WHEREAS, the site is currently occupied with a seven-story mixed-use building; and

WHEREAS, the applicant proposes to use the first floor for restaurant use and a portion of the cellar for accessory restaurant use; and

WHEREAS, six upper floors are occupied by Joint Living Work Quarters for Artists (JLWQA) (UG 17D) and one market rate residential unit; the first floor is vacant; and the cellar is occupied by storage (UG 17) accessory to the JLWQA use; and

WHEREAS, the uses on the six upper floors will not change and are not included in the proposal; and

WHEREAS, the site is the subject of two prior Board actions, under BSA Cal. Nos. 590-91-ALC and 461-88-ALC allowing the exclusion of 14,400 sq. ft. on the second through seventh floors from the payment of the conversion

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# MINUTES

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contribution required by provisions of the Relocation Incentive Program; and

WHEREAS, the Board notes that a Department of City Planning special permit is available for the requested use change and, at hearing, asked the applicant to explain why this special permit had not been sought; and

WHEREAS, the applicant states that the filing of a Department of City Planning special permit application was rejected because of the financial hardship that would be imposed by the six-month marketing effort required for its eligibility, when coupled with the losses already incurred due to the site's vacancy since December 2006; and

WHEREAS, because the proposed UG 6 use is not permitted below the second floor in the subject M1-5B zoning district, the requested waivers are necessary; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the lot's shallow depth and narrow building frontages; (2) the obsolescence of the existing building for manufacturing use; and (3) parking regulations and traffic conditions that impede loading and unloading; and

WHEREAS, as to the depth of the lot, the applicant represents that the lot's shallow depth coupled with its modest frontages results in a usable floor plate of approximately 1,900 sq. ft. that is inefficient for conforming uses, such as warehouses and wholesale distributors; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that the site is among the smallest lots within a 400 ft. radius of the site, as evidenced by a submitted radius diagram; and

WHEREAS, at hearing, the Board questioned whether the size of the lot is unique, as the applicant had identified 29 small sites within the radius; and

WHEREAS, a response by the applicant indicated that of 85 lots within the radius, only eight were found to be smaller than the subject site, and none of these contained a conforming manufacturing use; and

WHEREAS, at hearing, the Board asked the applicant to clarify which as-of-right uses could occupy the ground floor of the subject site; and

WHEREAS, additionally, the applicant provided a survey of all ground floor uses within a 400-foot radius which showed that only four sites were occupied by conforming ground floor uses; and

WHEREAS, however, the Board observes that each of these four sites have lot areas significantly exceeding that of the subject site, averaging 8,188 sq. ft. and

WHEREAS, the Board agrees that while other conforming uses may exist within the radius, these uses are small in number and are not found on lots with dimensions comparable to the subject site; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) the size of the elevator; (2) the limits on access to the building; and (3) the absence of a loading dock and of

space to install one; and

WHEREAS, the applicant states that the small size of the existing elevator in the building would make the transfers of product required for manufacturing uses impracticable between the cellar and ground floors; and

WHEREAS, the applicant further states that street access to the building is limited to two pedestrian-sized doors on each street frontage, making it difficult to move goods into and out of the premises; and

WHEREAS, as to the lack of a loading dock, the applicant represents that there is currently none and that installing a loading dock on either Broome Street or Watts Street would cause trucks to block the sidewalk area in front of the building, as the building is built to the lot lines; and

WHEREAS, the applicant represents that the small elevator, limited building access and lack of a loading dock combine to make it difficult to receive and transfer bulk shipments and to provide adequate access to the building for a conforming use based on these inefficiencies; and

WHEREAS, the applicant notes that although the obsolescence affects the entire building, the second through sixth floors will be maintained as JLWQA and the applicant is only seeking relief for the cellar level and ground floor; 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 conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios, all of which include the existing JLWQA tenants on the second through sixth floors and a market rate unit on the seventh floor: (1) an as of right warehouse/storage use on the ground floor, (2) an as of right business service establishment on the ground floor, and (3) the proposed ground floor and cellar use; and

WHEREAS, the applicant asserts that the two as of right scenarios would result in a negative rate of return and that the proposed use is the minimum necessary to achieve a reasonable return; and

WHEREAS, the Board asked the applicant whether other conforming uses would be economically feasible on the subject site; and

WHEREAS, the applicant stated that among conforming uses, even business services (Use Groups 7-9), use could not generate a reasonable return at the subject site; and

WHEREAS, the applicant further stated that there were no business service uses located within the 400-foot radius on lots with lot area of less than 2,500 sq. ft., and further that there are a statistically insignificant number of such businesses located on similarly sized lots within New York City; and

WHEREAS, the Board agrees that business services would not be feasible on the site given its small size; 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 compliance with applicable zoning requirements will provide a reasonable



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# MINUTES

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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 that many of the buildings in the immediate vicinity are used for Use Group 6 retail purposes on the first floor with residential or loft space above; and

WHEREAS, specifically, the applicant represents that more than half the ground floor uses of the 85 buildings within 400 ft. of the subject site are Use Group 6 retail establishments, despite being within the M1-5A or M1-5B zoning district, while 34 lots have residential uses on the ground floor; and

WHEREAS, the applicant further represents that the majority of ground floor uses on the same block as the subject site are commercial, and that the proposed use for a restaurant will not alter the essential character of the neighborhood; 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 represents that the proposed represents 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, the applicant cites Board decisions BSA Cal. No. 58-06-BZ, BSA Cal. No. 294-00-BZ, BSA Cal. No. 185-03-BZ and BSA Cal. No. 258-03-BZ which are said to provide "similar circumstances to the instant application;" and

WHEREAS, the Board declines to accept that the arguments and rationales in these cases support a claim of hardship in the instant case, because the facts are distinguishable from those before the Board in this case; and

WHEREAS, further, while cases with similar facts can be expected to have similar outcomes, New York court decisions make clear that the Board is free to deviate from past decisions in which the facts dictate a different outcome (see Matter of Field Delivery Serv., 66 N.Y.2d 516, 518-19 (1985); 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 617.2 of 6NYCRR.

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. 07BSA088M, dated August 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, 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 within an M1-5B zoning district, the conversion of the first floor and cellar of an existing seven-story building to a Use Group 6 (restaurant) use, contrary to ZR § 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 August 23, 2007"—three (3) sheets; and *on further condition*:

THAT the internal floor layouts on each floor 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, February 12, 2008.

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## **233-07-BZ CEQR #08-BSA-026M**

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 86<sup>th</sup> Street, northeast corner of the intersection of 86<sup>th</sup> Street and Third Avenue, Block 1532, Lot 1, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

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# MINUTES

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## 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 8, 2008, acting on Department of Buildings Application No. 104887650, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in C2-8A zoning district. This use is contrary to Section 32-10 of the Zoning Resolution and requires a special permit from the Board of Standards and Appeals under Section 73-36 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-8A zoning district, the establishment of a physical culture establishment (PCE) on portions of the first floor, cellar, sub-cellar one, and sub-cellar two of an existing 35-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 29, 2008, after due notice by publication in *The City Record*, and then to decision on February 12, 2008; and

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

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

WHEREAS, the subject site is located on the northeast corner of Third Avenue and East 86<sup>th</sup> Street; and

WHEREAS, the site is occupied by a 35-story mixed-use commercial/residential building; and

WHEREAS, the PCE will occupy a total of approximately 872 sq. ft. of floor area on the first floor and 21,283 sq. ft. of floor space on the cellar levels; and

WHEREAS, the PCE will be operated as a Pure yoga studio; and

WHEREAS, the applicant represents that the services at the PCE will provide facilities for physical exercise, with a focus on yoga; and

WHEREAS, the hours of operation will be: 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 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. 08BSA026M, dated November 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 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 C2-8A zoning district, the establishment of a physical culture establishment on portions of the first floor, cellar, sub-cellar one, and sub-cellar two of an existing 35-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 October 11, 2007 2008”- (1) sheet and “Received February 8, 2008”- (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 12, 2018;

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

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

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# MINUTES

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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, February 12, 2008.

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## 236-07-BZ

### CEQR #08-BSA-027K

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

APPEARANCES –

For Applicant: Melaney McMornny.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 7, 2007, acting on Department of Buildings Application No. 302307457, reads in pertinent part:

“Per ZR 25-23, provide 46 parking spaces in conjunction with proposed residential conversion”; and

WHEREAS, this is an application under ZR §§ 73-46 and 73-03, to permit on a site within an M1-2/R6A (MX-8) zoning district, a reduction in the required number of accessory parking spaces for a proposed residential conversion of an existing building from 46 to 11, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by publication in *The City Record*, and then to decision on February 12, 2008; and

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

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application because the residential conversion does not include affordable housing units; and

WHEREAS, the subject site is located on the south side of Hope Street, between Havemeyer Street and Marcy Avenue, and has a lot area of 26,228 sq. ft.; and

WHEREAS, the subject site is located within an M1-2/R6A (MX-8) zoning district; and

WHEREAS, the site comprises three lots; Lot 40 is currently occupied by a 102,691 sq. ft. six-story commercial building and Lots 38 and 47 are two vacant lots that adjoin Lot 40; and

WHEREAS, the applicant proposes to convert the existing building to 92 dwelling units; and

WHEREAS, the applicant proposes to provide 11 parking spaces onsite, to be located on 5,889 sq. ft. of lot area on Lots 38 and 47; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed parking, conforms with all zoning district regulations; and

WHEREAS, accordingly, the Board’s review was limited to the request for a parking reduction from 46 to 11 spaces, pursuant to the special permit; and

WHEREAS, the Board notes that the conversion of the building must be approved by DOB for compliance with all zoning district regulations; and

WHEREAS, pursuant to ZR § 73-46, the Board may, in the subject zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required for the dwelling units created by a residential conversion under the applicable ZR provision; and

WHEREAS, the total number of required parking spaces at the site for the proposed use is 46; and

WHEREAS, the applicant represents that only 11 parking spaces can be accommodated onsite; and

WHEREAS, the special permit allows for a waiver of all or part of the required parking, provided the Board makes the required findings; and

WHEREAS, ZR § 73-46(a) requires the Board to find that there is no practical possibility of providing the required number of parking spaces on the same zoning lot because of insufficient open space and the prohibitive cost of structural changes necessary to provide the required spaces within the building; and

WHEREAS, the applicant represents that 46 unattended parking spaces would require a minimum of 13,800 sq. ft., and that there is only 5,889 sq. ft of open

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# MINUTES

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space on Lots 38 and 47; and

WHEREAS, the applicant notes that the building was constructed in 1907 and that a 1928 addition resulted in short deck spans and in cellar columns which are spaced at 16'-8" intervals; and

WHEREAS, due to the insufficiency of open space to accommodate parking, the applicant analyzed two schemes for providing the required spaces within the building; and

WHEREAS, the first scheme provides for all of the parking in the cellar; and

WHEREAS, the applicant submitted drawings which reflect that the configuration of the existing columns in the cellar cannot accommodate more than one parking space between columns and creates narrow drive lanes which would further restrict the number of spaces that can be accommodated; and

WHEREAS, the applicant represents that under this first scheme, the costs associated with a structural reconfiguration that would provide the required spaces within the cellar of the building would exceed \$9.7 million; and

WHEREAS, the applicant represents that the removal of 24 columns and the shifting of column loads to new reinforced ceiling beams below the level of the first floor would be necessary to redesign the cellar to accommodate all of the required parking there; and

WHEREAS, the applicant represents that this scheme would require significant excavation and hydraulics to accommodate the new structural supports, as well as additional cribbing and scaffolding to avoid building collapse; and

WHEREAS, further, the applicant states that accommodating the parking spaces in the cellar level would also require the relocation of mechanical spaces to other areas of the building, thereby reducing the building's marketable floor area and would require the installation of multi-hour separations for floor, ceiling and wall assemblies, which would not otherwise be necessary; and

WHEREAS, the second scheme provides for all of the required parking on the cellar and first floors, to be accessed through ramps within the structure; and

WHEREAS, the applicant represents that the alternate scheme is highly inefficient due to the noted tight column spacing of the building and the need to install two parking ramps within the structure; and

WHEREAS, while this scheme aims to avoid the costs associated with column removal and replacement, the applicant represents that the expense of the structural requirements would exceed \$1.2 million and the consequential space needs would also result in the loss of 12 dwelling units; and

WHEREAS, the applicant represents that this scheme would provide no more than 28 spaces out of the 40 spaces which would be required for the 80 remaining dwelling units; and

WHEREAS, ZR § 73-46(b) requires the Board to determine that there is no practical possibility of providing

the required number of parking spaces on a site located within 1,200 feet of the nearest boundary of the zoning lot; and

WHEREAS, according to the standard calculation set forth in the Zoning Resolution, at least 10,500 sq. ft. of lot area would be required to accommodate the 35 parking spaces that cannot be provided on-site; and

WHEREAS, the applicant submitted a survey of 17 vacant parcels within 1,200 feet of the site which have a lot area greater than 3,500 sq. ft.; and

WHEREAS, the applicant states that 14 of these sites were found to be unsuitable because they were either occupied by ongoing businesses, used for accessory parking by schools or churches, are recently developed or are under development, or are inaccessible; and

WHEREAS, the survey identified three vacant sites that appeared to be available for off-site parking: (1) a 8,305 sq. ft. existing parking lot for 21 cars at 87-91 Havemeyer; (2) a 15,455 sq. ft. lot located at 402 Metropolitan Avenue; and (3) a 28,691 sq. ft. lot at the corner of Keap Street and Henry Street; and

WHEREAS, the applicant represents that inquiries to the owners of these properties revealed that 402 Metropolitan Avenue was under development, while the owners of the other properties are marketing them for residential development; and

WHEREAS, however, while ZR § 73-46 permits the Board to reduce the required accessory parking, the Board must analyze the impact that such a reduction might have on the surrounding community; and

WHEREAS, the applicant asserts that the conversion of the building will not generate significant parking demand; and

WHEREAS, the applicant states that the 11 onsite spaces will be adequate to meet that demand as the prospective residents are projected to be predominately single persons and young couples who depend on public transportation to travel to work and who will be able to shop in the neighborhood due to the recent growth in local services; and

WHEREAS, further, the applicant represents that the site is served by: (1) the Bedford Avenue and Lorimer Street stations of the L subway line; (2) the Metropolitan Avenue station of the G subway line; and (3) the Marcy Avenue Station of the J, M and Z subway lines; and

WHEREAS, the Board requested the applicant to explain whether there was sufficient off-site space to accommodate parking overflow; and

WHEREAS, the applicant submitted a survey conducted between 6:30 and 8:30 p.m. on a weekday evening which reflected that 105 parking spaces were available within an 800-foot radius of the site, including 59 on-street parking spaces; and

WHEREAS, the applicant also submitted photographs depicting substantial available parking; and

WHEREAS, plans submitted by the applicant indicate that a decorative fence will screen the parking from Hope

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# MINUTES

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Street, and a concrete masonry wall will provide screening along the eastern and western property lines; and

WHEREAS, the applicant points out that the Landmarks Preservation Commission has noted that the building may be eligible for listing on the State and National Register of Historic Places, and is therefore considered an historic resource; and

WHEREAS, the applicant represents that allowing parking to be limited to the open areas of the lot would allow the owner to restore the building without significantly altering the exterior façade; and

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

WHEREAS, the special permit will not interfere with any public improvement projects; 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 §§ 73-46 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA027K, dated October 22, 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. §§ 73-46 and 73-03, to permit on a site within an M1-2/R6A (MX-8) zoning district, a reduction in the required number of accessory parking spaces for a proposed residential conversion of an existing

building from 46 to 11, contrary to ZR § 25-23; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received December 14, 2007” - ten (10) sheets and “Received January 25, 2008” – three (3) sheets; and *on further condition:*

THAT a minimum of 11 parking spaces shall be provided onsite;

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

THAT the layout and design of the onsite accessory parking lots 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, February 12, 2008.

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## **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.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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## **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

# MINUTES

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 70<sup>th</sup> Street, south side of West 70<sup>th</sup> Street, west of the corner formed by the intersection of Central Park West and West 70<sup>th</sup> Street, Block 1122, Lots 36 & 37, Borough of Manhattan.

## COMMUNITY BOARD #7M

### APPEARANCES –

For Applicant: Shelly Friedman, Charles Platt and Jack Freeman.

For Opposition: Page Cowley, Co-Chair Land Use CB7; Norman Marcus, Alan Sugarman, Martin B. Levine, Craig Morrisoin, Jared Chauson, Charles Disanto, George Litton, T. Prince, David Rosenberg, Naomi Usher, Bruce Simon, Jay Greer, Kate Wood, Howard Lepow, Katherine Davis.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, 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 CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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## 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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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## 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 March 4, 2008, at 1:30 P.M., for continued hearing.

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## 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 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.

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## 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 –

# MINUTES

For Applicant: Richard Lobel.

## THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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## 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

APPEARANCES –

For Applicant: Eric Palatnik.

## THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 4, 2008, at 10 A.M., for decision, hearing closed.

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## 218-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Matthew Foglia, owner.

SUBJECT – Application September 24, 2007 – Variance (§72-21) to allow the conversion and enlargement of an existing building to office use; contrary to use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 110-11 Astoria Boulevard, located at the intersection of Astoria Boulevard and Ditmars Boulevard, Block 1679, Lot 34, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Richard Lobel, Hiram Monserrate, Jack Freeman and R. Foglia.

For Opposition: Sherryll A. Harris.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for continued hearing.

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## 221-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP c/o Elise Wagner, Esq., for Kipper Productions, Inc., owner.

SUBJECT – Application September 27, 2007 – Variance (§72-21) to permit a music rehearsal studio on the first and second floors in a two-story vacant building. The proposal is

contrary to 32-10. C1-4/R7-2 zoning districts.

PREMISES AFFECTED – 165 Lenox Avenue, west side of Lenox Avenue between West 118<sup>th</sup> and West 119<sup>th</sup> Streets, Block 1903, Lot 32, Borough of Manhattan.

## COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Elise Wagner and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.

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## 281-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Falah and Victor Falah, owners.

SUBJECT – Application December 12, 2007 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R2X (OP) zoning district.

PREMISES AFFECTED – 1960 East 4<sup>th</sup> Street, west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S, Block 6681, Lot 263, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman and Marc Sutton.

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 1:30 P.M., for continued hearing.

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## 286-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Shauwana Dill-Darby, owner.

SUBJECT – Application December 20, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment in a one-story building. The proposal is contrary to §32-10. C8-1 district.

PREMISES AFFECTED – 129-01 Merrick Boulevard, north side of Merrick Boulevard between Zoller and Eveleth Roads, Block 12490, Lot 11, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

## THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 11, 2008, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:40 P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on October 19, 2004, under Calendar No. 205-04-BZ and printed in Volume 89, Bulletin Nos. 42-43, is hereby corrected to read as follows:

### 205-04-BZ

#### CEQR #04-BSA-204R

APPLICANT - Philip L. Rampulla, for Dominick Casale, owner.

SUBJECT - Application May 18, 2004 - under Z.R. §72-21 to permit the proposed construction of a one-family dwelling located both in an R3-1 zoning district and the Special South Richmond Development District ("SRD"), which does not comply with the zoning requirements for front yard and floor area, contrary to Z.R. §§107-461 and 23-14.

PREMISES AFFECTED - 375 Tennyson Drive, southwest corner of Groton Street, Block 5317, Lot 48, Borough of Staten Island.

#### COMMUNITY BOARD #3SI

APPEARANCES - None.

For Applicant: Philip Rampulla.

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

#### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

#### THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated May 11, 2004, acting on Department of Buildings Application No. 500690665, reads, in pertinent part:

"1. ZR 107-461 The proposed single family detached dwelling located within an R3-1 Special South Richmond District does not provide the required front yard of 18' and 10' and is contrary to Section 107-461 ZR.

2. ZR 23-14 The proposed single family detached residence exceeds the Bulk requirements of Section 23-14 ZR, Floor Area Ratio."; and

WHEREAS a public hearing was held on this application on September 28, 2004, after due notice by publication in The City Record, and then to decision on October 19, 2004; 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 Babbar; and

WHEREAS, Community Board No. 3, Staten Island, recommended approval of this application; and

WHEREAS, this is an application under Z.R. §72-21, to permit the proposed construction of a one-family dwelling located both in an R3-1 zoning district and the Special South Richmond Development District ("SRD"), which does not

comply with the zoning requirements for front yard and floor area, contrary to Z.R. §§ 107-461 and 23-14; and

WHEREAS, the record indicates that the subject site is a corner lot located at the intersection of Tennyson Drive, Groton Street and an unnamed alley, which the applicant states was created by a filed map when this area was a bungalow community; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties in developing the subject lot in compliance with underlying district regulations: the site is irregularly shaped, shallow in size, and small; and

WHEREAS, the subject zoning lot has four sides but a triangular appearance, with a width of 40 feet at its widest point, and frontages of approximately 75 feet along Tennyson Drive and 76 feet along the unnamed alley; and

WHEREAS, the R3-1(SRD) regulations mandate the provision of an 18 foot front yard along Tennyson Drive, a 10 foot front yard along the unnamed alley, and one 5 foot side yard, which the applicant states would result in a single family dwelling with a total lot coverage of only 152.12 sq. ft. and a total floor area of 456 sq. ft.; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create practical difficulties in developing the site in strict compliance with the applicable zoning provisions; and

WHEREAS, no financial feasibility study is required for this single-family dwelling development proposal; and

WHEREAS, however, the Board finds that without the requested waivers, the hardship inherent to the lot would result in a residential development that would not be habitable; and

WHEREAS, the record indicates that the bulk of the subject proposal is consistent with the surrounding residential buildings; 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; and

WHEREAS, 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 Z.R. §72-21.

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 617.13 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 Z.R. § 72-21, to permit the proposed construction of a one-family dwelling located both in an R3-1 zoning district and the Special South Richmond Development District ("SRD"), which does not comply with



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# MINUTES

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the zoning requirements for front yard and floor area, contrary to Z.R. §§107-461 and 23-14; 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 24, 2004"-(4) 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;

THAT the Department of Buildings must 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, October 19, 2004.

**\*The resolution has been corrected in the part of the Approved Plans, which read: "July 24, 2004..." now reads: "July 20, 2004...". Corrected in Bulletin No. 7 Vol. 92, dated February 21, 2008.**

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# BULLETIN

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

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Volume 93, Nos. 8-9

March 7, 2008

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### CONTENTS

|                                   |         |
|-----------------------------------|---------|
| DOCKET .....                      | 120-121 |
| <b>CALENDAR</b> of March 11, 2008 |         |
| Morning .....                     | 122     |
| Afternoon .....                   | 122-123 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, February 26, 2008**

Morning Calendar .....124

**Affecting Calendar Numbers:**

|                            |   |
|----------------------------|---|
| 742-70-BZ                  | 830 Bay Street, Staten Island                   |
| 531-86-BZ                  | 787 Seventh Avenue, Manhattan                   |
| 190-03-BZ                  | 87-48 215 <sup>th</sup> Place, Queens           |
| 102-07-BZ                  | 1268 Forest Avenue, Staten Island               |
| 16-36-BZ, Vol. II          | 1885 Westchester Avenue, Bronx                  |
| 16-92-BZ                   | 115 King Street, Brooklyn                       |
| 57-95-A thru 59-95-A       | 473, 474, 475, 476 Central Park West, Manhattan |
| 119-01-BZ                  | 8818 Fourth Avenue, Brooklyn                    |
| 211-03-BZ                  | 529-535 48 <sup>th</sup> Avenue, Queens         |
| 42-06-B, Vol. II           | 56-45 Main Street, Queens                       |
| 67-06-BZ                   | 2270 Clove Road, Staten Island                  |
| 39-07-A thru 40-07-A       | 3248, 3250 Givan Avenue, Bronx                  |
| 208-07-BZY                 | 74 Grand Avenue, Brooklyn                       |
| 231-07-BZY &<br>232-07-BZY | 87-85 & 87-87 144 <sup>th</sup> Street, Queens  |
| 264-07-A                   | 76 Romer Road, Staten Island                    |
| 287-07-A                   | 697 West 247 <sup>th</sup> Street, Bronx        |

Afternoon Calendar .....129

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 233-06-BZ | 813/815 Broadway, Manhattan                 |
| 280-06-BZ | 181-08 Horace Harding Expressway, Queens    |
| 53-07-BZ  | 1901 Eighth Avenue, Brooklyn                |
| 79-07-BZ  | 114-05 Farmers Boulevard, Queens            |
| 235-07-BZ | 1148 East 27 <sup>th</sup> Street, Brooklyn |
| 273-07-BZ | 1435 East 22 <sup>nd</sup> Street, Brooklyn |
| 39-06-BZ  | 245 Varet Street, Brooklyn                  |
| 109-07-BZ | 33-57 59 <sup>th</sup> Street, Queens       |
| 111-07-BZ | 155 Norfolk Street, Brooklyn                |
| 114-07-BZ | 7-05 152 <sup>nd</sup> Street, Queens       |
| 145-07-BZ | 1005 46 <sup>th</sup> Street, Brooklyn      |
| 200-07-BZ | 3333 Hylan Boulevard, Staten Island         |
| 201-07-BZ | 2317 Ralph Avenue, Brooklyn                 |
| 241-07-BZ | 2525 Victory Boulevard, Staten Island       |
| 10-08-BZ  | 66-68 Bradhurst Avenue, Manhattan           |

**MINUTES of Special Hearings,  
Wednesday, February 27, 2008**

Morning Calendar .....139

**Affecting Calendar Numbers:**

|          |                              |
|----------|------------------------------|
| 247-07-A | 246 Spring Street, Manhattan |
|----------|------------------------------|

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# DOCKET

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New Case Filed Up to February 26, 2008

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**27-08-BZ**

4845 Hylan Boulevard, Northwest corner of Barclay Avenue., Block 6401, Lot(s) 1, Borough of **Staten Island, Community Board: 3**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower.

-----

**28-08-A**

11 Devon Walk, East side of Devon Walk 44.84' north of Breezy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction not fronting on a legally mapped street, contrary to Article 3, General City Law Section 36.

-----

**29-08-BZ**

422 Clarke Avenue, South side of Clarke Avenue between Saint Patrick's Place and Tysen Court., Block 4467, Lot(s) 23, Borough of **Staten Island, Community Board: 3**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower.

-----

**30-08-BZ**

4360 Hylan Boulevard, Between Oceanic Avenue and Richmond Avenue., Block 5322, Lot(s) 1, Borough of **Staten Island, Community Board: 3**. Special Permit (73-30) to allow a non-accessory radio tower.

-----

**31-08-BZ**

2043 Richmond Avenue, Between Ashworth Avenue and Rockland Avenue., Block 2015, Lot(s) 42, Borough of **Staten Island, Community Board: 2**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower.

-----

**32-08-BZ**

1126 Richmond Avenue, Intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street., Block 1668, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower.

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**33-08-A**

67 Brighton 1st Lane, Premises is situated on the north side of Brighton 1st Lane 63.19' west of Brighton 1st Street., Block 8670, Lot(s) 80, Borough of **Brooklyn, Community Board: 13**. Construction not fronting on a legally mapped street, contrary to General City law Section 36.

-----

**34-08-A**

144 North 8th Street, South side of North 8th Street, 100 feet east of Berry Street., Block 2319, Lot(s) 11, Borough of **Brooklyn, Community Board: 1**. Appeal seeking to revoke permits and approvals

-----

**35-08-BZ**

1856 East 24 Street, West side of 24 Street between Avenue R & Avenue S., Block 6829, Lot(s) 29, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for enlargement of a single family home.

-----

**36-08-BZ**

1177 East 23 Street, East side of East 23 Street 130 feet north of Avenue L., Block 7623, Lot(s) 12, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.

-----

**37-08-BZ**

100 Merrill Avenue, Between Arlene Street and Richmond Avenue, Block 2236, Lot(s) 1, Borough of **Staten Island, Community Board: 2**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower.

-----

**38-08-BZ**

40 Broad Street, A through lot on Broad Street and New Street, south of Exchange Place , north of Beaver Street., Block 24, Lot(s) 32, Borough of **Manhattan, Community Board: 1**. Special Permit (73-36) to allow the operation of a physical culture establishment.

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# DOCKET

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**39-08-BZ**

77 Richmond Hill Road, Middle of the Ken-Bar Plaza shopping center on Richmond Hill Road, Block 2380, Lot(s) 500, Borough of **Staten Island, Community Board: 2.** Special Permit (73-36) to legalize the operation of a physical culture establishment.

-----

**40-08-BZ**

3957 Laconia Avenue, Northwest corner of east 224th Street., Block 4871, Lot(s) 1, Borough of **Bronx, Community Board: 12.** Extension of Term (11-411 & 11-412) to re-instate and extend the term, to amend the previous approval to legalize the elimination of the of the gasoline services

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

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# CALENDAR

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**MARCH 11, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 11, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**739-76-BZ IX**

**APPLICANT** – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessees.

**SUBJECT** – Application January 8, 2008 – Extension of Term of a Special Permit (§73-03) to permit the continued operation of a (UG16) amusement arcade (Peter Pan Games) in a C4-1 zoning district for a term of one year which expired on April 10, 2007 and a waiver of the rules.

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

-----  
**265-98-BZ II**

**APPLICANT** – Sheldon Lobel, P.C., for Milford Tile, Incorporated, owner.

**SUBJECT** – Application November 19, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the operation of an existing contractor's yard for storage, sales and display of tiles with accessory parking (UG17) in an R5 zoning district which expired on November 29, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 22, 2000 and a waiver of rules.

**PREMISES AFFECTED** – 950 Glenmore Avenue, southwest corner of the intersection of Glenmore Avenue and Crystal Avenue, Block 4210, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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**APPEALS CALENDAR**

**267-07-A**

**APPLICANT** – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Deirdre Radtke, lessee.

**SUBJECT** – Application November 26, 2007 – Reconstruction and enlargement of existing single family dwelling lying in the bed of a mapped street is contrary to General City Law Section 35. The upgrade of an existing private disposal system partially in the bed of a mapped street is contrary to General City Law Section 35 and Buildings Department Policy. R4 Zoning District.

**PREMISES AFFECTED** – 49 W. Market Street, south side W. Market Street at intersection of mapped Bayside Drive,

Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**290-07-A**

**APPLICANT** – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Mary Jean Farrell-Halliday, lessee.

**SUBJECT** – Application December 27, 2007 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to Section 35 GCL, not fronting on a legally mapped street, contrary to Section 36 GCL and the proposed upgrade of an existing private disposal system located within the bed of a mapped street contrary to Buildings Department Policy. R4 Zoning district.

**PREMISES AFFECTED** – 10 Clinton Walk, east of Clinton Walk, north of Rockaway Point Boulevard, Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**MARCH 11, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 11, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**227-07-BZ**

**APPLICANT** – Snyder & Snyder, LLP/Omnipoint Communications Inc., for Mikhail Arabov, owner.

**SUBJECT** – Application October 1, 2007 – Special Permit (§73-30) to permit approval for a proposed 52 foot non-accessory radio tower and related equipment at grade.

**PREMISES AFFECTED** – 1595 Canarsie Road, Block 8277, Lot 9, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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**9-08-BZ**

**APPLICANT** – Rampulla Associates Architects, for Joseph Vitacco, owner.

**SUBJECT** – Application January 3, 2008 – Variance (§72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§107-42); to vary side yards (§23-462) and front yards (§23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

**PREMISES AFFECTED** – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block

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# CALENDAR

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6892, Lot 8, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**13-08-BZ**

APPLICANT – Bryan Cave LLP/Robert Davis, for Little Red School House, Inc., owner.

SUBJECT – Application January 8, 2008 – Variance (§72-21) to permit an addition at the rear of the existing high school and adjacent buildings to meet the school's programmatic needs. The proposal is contrary to §§ 24-11 (lot coverage) and 24-36 (rear yard). R6/M1-6 districts.

PREMISES AFFECTED – 34-42 Charlton Street (a/k/a 34 Charlton, 40 Charlton, 40-42 Charlton Street) bounded by Varick and Charlton Streets, Avenue of the Americas and Vandam Street, Block 506, Lots 11 & 12, Borough of Manhattan.

**COMMUNITY BOARD # 2M**

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**14-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 26, 2008  
10:00 A.M.**

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

**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: Adam Rothkrug.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver, a reopening, an amendment to the approved plans, and an extension of term, which expired on May 18, 2001; and

WHEREAS, a public hearing was held on this application on November 27, 2007, after due notice by publication in *The City Record*, with continued hearings on January 8, 2008 and February 12, 2008, and then to decision on February 26, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommended approval of the proposal with the following conditions: (1) that a landscaped buffer be planted along the southern lot line and (2) that there not be any illegal vehicle parking; and

WHEREAS, the site is located on the southwest corner of Bay Street and Vanderbilt Avenue; and

WHEREAS, the site is within a C1-1 (R3-2) zoning district and is occupied with an automotive repair/gasoline service station with accessory uses; and

WHEREAS, on May 18, 1971, the Board granted a variance to permit the continued use of an automotive service station at the site; and

WHEREAS, on April 9, 1991, the grant was amended to permit certain site changes including the installation of self-service gasoline pumps; and

WHEREAS, on December 2, 1992, the grant was amended to permit the installation of a new metal canopy and to allow the alteration of the existing attendant’s booth; and

WHEREAS, the applicant now seeks to extend the term of the variance, which expired on May 18, 2001; and

WHEREAS, the applicant represents that a timely renewal was not sought due to administrative issues involving the merger of two corporate entities associated with the site; and

WHEREAS, the Board notes that any extension of term would date back to the period of the prior expiration; and

WHEREAS, the applicant initially sought to amend the site plan to legalize two storage trailers; and

WHEREAS, at hearing, the Board asked about the need for the trailers; and

WHEREAS, in response, the applicant stated that the trailers were required to store materials such as tires and parts, all of which are dry, non-leaking materials; and

WHEREAS, the applicant revised the plans to propose the maintenance of a single storage trailer adjacent to the repair building, which will be bordered by a landscape buffer at the southern property line; and

WHEREAS, the applicant submitted a photograph of the site reflecting the maintenance of a single trailer; and

WHEREAS, the revised plans also reflect the landscaping requested by the Community Board, along the southern lot line; and

WHEREAS, as to the use of the site, the applicant represents that the site is currently occupied only by automotive repairs, but that the gasoline station operations would resume shortly; and

WHEREAS, the applicant agrees not to permit any illegal parking of vehicles at the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the plans 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, as adopted May 18, 1971, so that as amended this portion of the resolution shall read: “to permit the noted amendment to the plans and to extend the term for ten years from the expiration of the prior grant, to expire on May 18, 2011, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received December 27, 2007”- (2) sheets; and *on further condition*:



# MINUTES

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

THAT the term shall expire on May 18, 2011;

THAT the site be maintained free of debris and graffiti;

THAT all landscaping be planted and maintained per the BSA-approved plans;

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

THAT the site shall be brought into compliance with the BSA-approved plans and a certificate of occupancy shall be obtained by February 26, 2009;

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. 500901688)

Adopted by the Board of Standards and Appeals, February 26, 2008.

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## 531-86-BZ

APPLICANT – Spencer Groff, P.E., for Vincent Fantauzzi (agent for owner); Athletic Club at the Equitable Center, lessee.

SUBJECT – Application December 14, 2007 – Extension of Term/Waiver for a Physical Culture Establishment in a portion of the concourse, mezzanine and sub-cellar levels of a fifty-one (51) story office building in a C6-6/C6-6.5 MID zoning district which expired on December 16, 2006.

PREMISES AFFECTED – 787 Seventh Avenue, Seventh Avenue, West 51<sup>st</sup> Street and 52<sup>nd</sup> Street, Block 1004, Lot 20, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on December 16, 2006; and

WHEREAS, a public hearing was held on this application on January 29, 2008 after due notice by publication in *The City Record*, and then to decision on February 26, 2008; 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, 5, Manhattan, waived comment on this application; and

WHEREAS, the subject premises is located on the east side of Seventh Avenue, between West 51<sup>st</sup> Street and West 52<sup>nd</sup> Street; and

WHEREAS, the site is occupied by a 51-story commercial building and is located in the C6-6/C6.5 Special Midtown Zoning District; and

WHEREAS, the PCE currently occupies a total of 28,350 sq. ft. on portions of the concourse level, parking mezzanine and sub-cellar levels of the subject building; and

WHEREAS, on December 16, 1986, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years to expire on December 15, 1996; and

WHEREAS, on April 29, 1997, the Board reopened and amended the resolution to remove the condition restricting the hours of operation, to reflect the change of ownership/control, and to grant a ten year extension of term, to expire on December 16, 2006; and

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

WHEREAS, additionally, the applicant seeks an extension of time to secure a certificate of occupancy; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 16, 1986, so that as amended this portion of the resolution shall read: “to permit 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; 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 December 16, 2006, expiring December 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 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

# MINUTES

configuration(s) not related to the relief granted.”  
(DOB Application No. 104625032)

Adopted by the Board of Standards and Appeals,  
February 26, 2008.

## 190-03-BZ

APPLICANT – Sheldon Lobel, P.C, for Satya Sanatan Dharma Sabha Incorporated, owner.

SUBJECT – Application December 19, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the enlargement and legalization of a portion of a two-story building to a temple and conversion of the remainder of the building to a temple in an R2 zoning district which expired on January 13, 2008.

PREMISES AFFECTED – 87-48 215<sup>th</sup> Place, Hillside Avenue and 215<sup>th</sup> Place, Block 10682, Lot 45, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction and obtain a certificate of occupancy for a temple, which expired on January 13, 2008; and

WHEREAS, a public hearing was held on this application on January 29, 2008 after due notice by publication in *The City Record*, and then to decision on February 26, 2008; and

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

WHEREAS, the subject premises is located on the corner of 215<sup>th</sup> Place and Hillside Avenue within an R2 zoning district; and

WHEREAS, the application is brought on behalf of Satya Sanatan Dharma Sabha, Inc. New York, a temple; and

WHEREAS, on January 13, 2004, under the subject calendar number, the Board granted a variance to permit the legalization of a portion of a two-story building, the conversion of the remainder of the building to a temple and to permit an enlargement of the 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, on December 13, 2006, the Board approved by letter certain modifications to the previously approved plans, which diminished the waivers and were in

substantial compliance with the prior approval; these include: (1) removal of the second floor; (2) an increase in the first floor height; and (3) modifications to the street wall height; and

WHEREAS, on May 31, 2007 DOB issued a permit based on the approved plans as modified; and

WHEREAS, the applicant represents that additional time is necessary to complete the project; and

WHEREAS, thus, the applicant now requests 18 months 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 January 13, 2004, 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 18 months; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT a certificate of occupancy shall be obtained by August 26, 2009;

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. 401641201)

Adopted by the Board of Standards and Appeals,  
February 26, 2008.

## 102-07-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER – Kap West Corporation.

SUBJECT – Application April 27, 2007 – To consider dismissal for lack of prosecution – to legalize the operation of the existing PCE. The proposal is contrary to section 32-00. C2-1/R3-2 district.

PREMISES AFFECTED – 1268 Forest Avenue, southeast corner of Forest Avenue and Ordell Avenue, Block 388, Lot 48, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins,

# MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0

Adopted by the Board of Standards and Appeals,  
February 26, 2008.

## 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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March  
18, 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 and §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: Sheldon Lobel.

For Opposition: Molly Rouzie.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1,

2008, at 10 A.M., for continued hearing.

## 57-95-A thru 59-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest  
Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of  
Term of a previously granted Variance (§72-21) to permit  
the cellar occupancy in a multiple dwelling, located in an  
R7-2 zoning district, which expired on November 14, 2005;  
Extension of Time to obtain a Certificate of Occupancy  
which expired on November 21, 1996; an Amendment to the  
resolution to eliminate the condition of term limits and a  
waiver of the rules.

PREMISES AFFECTED – 473, 474, 475, 476 Central Park  
West, Central Park West, 64'11" north of 107th Street,  
Block 1843, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March  
18, 2008, at 10 A.M., for decision, hearing closed.

## 119-01-BZ

APPLICANT – Edward H. Odesser, Esq., for Lawrence J.  
Mass, owner.

SUBJECT – Application January 11, 2008 – Extension of  
Time to Obtain a Certificate of Occupancy for a previously  
granted variance to permit automotive repairs (light type)  
which expired on June 12, 2002 in a C4-2A (SBRD) zoning  
district.

PREMISES AFFECTED – 8818 Fourth Avenue, West side  
of Fourth Avenue, 120' north of 89<sup>th</sup> Street, Block 6062, Lot  
40, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Edward H. Odesser.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March  
18, 2008, at 10 A.M., for decision, hearing closed.

## 211-03-BZ

APPLICANT – Eric Palatnik P.C., for 5-33 48th Avenue  
Corporation, owner.

SUBJECT – Application December 27, 2007 – Extension of  
Time to Complete Construction of a previously granted

# MINUTES

Variance (§72-21) to permit the proposed expansion and the conversion of an existing warehouse to residential use, which expires on June 8, 2008, in an M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 529-535 48<sup>th</sup> Avenue, north side of 48<sup>th</sup> Avenue between Fifth Street and Vernon Boulevard, Block 30, Lot 9, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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## 42-06-BZ, Vol. II

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for New York Hospital Queens, owner.

SUBJECT – Application January 17, 2008 – Amendment to zoning variance (§72-21) to allow a two-story addition to previously approved five (5) story hospital building located on the campus of New York Hospital – Queens; contrary to regulations for height & setback (§24-522) and rear yard equivalent (§24-382). R6 district.

PREMISES AFFECTED – 56-45 Main Street, West side of Main Street between 56 and Booth Memorial Avenues, Block 5165, Lot 1, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Sinacori.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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## 67-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Rodriguez Clove, LLC, owner.

SUBJECT – Application November 9, 2007 – SOC Amendment to reduce the required 48 parking spaces from the prior variance granted on March 20, 2007 to 42 cars. This will allow the compliance with the recent DCP Text Amendment requiring landscaping for parking areas. C2-1/R2 zoning districts.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149 & 168, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 39-07-A 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 April 15, 2008, at 10 A.M., for continued hearing.

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### 208-07-BZY

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – 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.

PREMISES AFFECTED – 74 Grand Avenue (a/k/a 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Council Member David Yassky, Lyra Altman, Ani Fishoff and Matthew Barnett.

For Opposition: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for continued hearing.

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### 231-07-BZY & 232-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari & Farhad Nobari, owners.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R6 zoning district.

# MINUTES

PREMISES AFFECTED – 87-85 & 87-87 144<sup>th</sup> Street, eastside between Hillside Avenue and 88<sup>th</sup> Avenue, Block 9689, Lots 6 & 7, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for continued hearing.

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## 264-07-A

APPLICANT – Ramulla Associates Architects, for Benjamin Rusi, owner.

SUBJECT – Application November 15, 2007 – Proposed legalization of an existing single family home not fronting a mapped street contrary to General City Law §36. R1-1(SNAD) (SGMD) Zoning district.

PREMISES AFFECTED – 76 Romer Road, east side of Romer Road, 449.51’ north of Four Corners Road, Block 870, Lot 111, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

For Opposition: Anthony Scaduto, FDNY.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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## 287-07-A

APPLICANT – Greenberg Traurig by Jay A. Segal, Esq., for Jack Bendheim, owner.

SUBJECT – Application December 21, 2007 – Proposed construction of an accessory tennis court located partially within the bed of a mapped street (West 248<sup>th</sup> Street) contrary to General City Law Section 35. R1-1 SNAD.

PREMISES AFFECTED – 697 West 247<sup>th</sup> Street, north side of West 247<sup>th</sup> Street between Palisade Avenue and Independence Avenue, Block 5937, Lot 300, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Margo Flug.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 26, 2008 1:30 P.M.

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

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## ZONING CALENDAR

### 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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES – None.

**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, February 26, 2008.

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### 280-06-BZ

#### CEQR #07-BSA-030Q

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

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

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# MINUTES

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Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated October 22, 2007, acting on Department of Buildings Application No. 410014283, reads in pertinent part:

“The proposal to continue to occupy the premises as an Automotive service station with accessory use beyond December 20, 2002, and to alter the existing signage and to retrofit the existing accessory convenience store building in a C2-2 within R3-2 zoning district . . . is contrary to Section 32-15 ZR and inconsistent with the terms and conditions of the special permit previously granted by the Board of Standards and Appeals under Cal. No. 743-72-BZ and is hereby denied”; and

WHEREAS, this is an application under ZR § 73-211, to permit the retention of an existing automobile service station with an accessory convenience store in a C2-2 (R3-2) zoning district; the site is the subject of a prior special permit; and

WHEREAS, a public hearing was held on this application on January 29, 2008, after due notice by publication in the *City Record*, and then to decision on February 26, 2008; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application with the following conditions: that the sale of alcoholic beverages be prohibited at the site; that efforts be made to reduce refuse, odors and noise; and that the term be limited to five years; and

WHEREAS, the premises is located on the southeast corner of Horace Harding Expressway and Utopia Parkway; and

WHEREAS, the subject site has a total lot area of 21,889 sq. ft.; and

WHEREAS, the site is currently occupied by an automotive service station with an accessory convenience store; and

WHEREAS, on May 15, 1973, under BSA Cal. No. 743-72-BZ, the Board granted a special permit to permit, in a C2-2 district, the construction of an automotive service station on this site for a term of ten years; and

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

WHEREAS, on June 15, 1993, the grant was extended for a ten year term expiring December 20, 2002; and

WHEREAS, most recently, on March 11, 1997, the Board granted an amendment to permit certain site modifications including the construction of a convenience store; and

WHEREAS, because the term lapsed in 2002, the

applicant now seeks a new special permit, with a ten-year term; and

WHEREAS, the applicant also seeks approval to modify the fascia and interior of the convenience store building and to replace existing signage; and

WHEREAS, the required findings for the special permit for automotive service stations in certain districts, pursuant to ZR § 73-211, include the following: (1) that the site has a minimum lot area of 7,500 sq. ft., (2) that any facilities for auto repair and washing be located within an enclosed building, (3) that five reservoir parking spaces be provided, (4) that means of ingress and egress are designed so as to cause minimum obstruction, (5) that screening be provided along lot lines adjoining residential districts, and (6) that signage comply with applicable district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the automotive service station, as currently operating, complies with these requirements for the special permit; and

WHEREAS, second, the Board asked the applicant to confirm that the replacement signage would comply with the C2-2 district signage parameters; and

WHEREAS, the applicant responded that all signage at the site would comply with C2-2 district signage requirements; and

WHEREAS, in response to the concerns of the Community Board, the applicant has submitted plans indicating that refuse will be stored within an enclosure on the southerly side of the property and has represented that it will be held in covered metal containers and removed in such a manner as to minimize noise and interference with adjoining neighbors; and

WHEREAS, the Board notes that the Community Board’s request that no alcoholic beverages be sold at the site is beyond the scope of the Board’s authority; and

WHEREAS, accordingly, the applicant has submitted sufficient evidence that the findings set forth at ZR § 73-211 have been met; and

WHEREAS, the Board notes that the retention and renovation of the existing station 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 §§ 73-211 and 73-03; 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 and makes the required findings under ZR §§ 73-211 and 73-03, to permit in a C2-2 (R3-2) zoning district the retention of an existing automotive service

# MINUTES

station with an accessory convenience store, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 7, 2007"- (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from February 26, 2018;

THAT signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

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

THAT the site shall be maintained clean and free of debris and graffiti;

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 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 26, 2008.

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## 53-07-BZ

### CEQR #07-BSA-064K

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 19<sup>th</sup> Street, Block 888, Lot 7, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Paul Proulx.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 24, 2007, acting on Department of Buildings Application No. 302284837, reads in pertinent part:

“OBJECTION: Use group 2 is not accepted in M1-1 zoning district (Section ZR 42-00)”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the residential conversion of an existing three-story factory/warehouse building to residential use, which is contrary to ZR § 42-00; 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 September 11, 2007, and then to decision on February 26, 2008; and

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

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

WHEREAS, the site is located on the southeast corner of Eighth Avenue and 19th Street, within an M1-1 zoning district; and

WHEREAS, the site has a lot area of 22,508 sq. ft.; and

WHEREAS, the site is currently occupied by a factory/warehouse building, which was most recently used by a mattress re-conditioning business that has relocated; and

WHEREAS, the existing building is overbuilt with a floor area of 49,714 sq. ft. (2.21 FAR) and has 100 percent lot coverage; an FAR of 1.0 and a lot coverage of 55 percent are the maximum permitted in the zoning district; and

WHEREAS, the existing building comprises three one-story sections and one large three-story section; and

WHEREAS, the applicant proposes to demolish the one-story sections and part of the three-story section, to square off a one-story portion at the third floor, and to convert the building to residential use; and

WHEREAS, specifically, the applicant proposes to provide a total floor area of 37,614 sq. ft. (1.67 FAR), 31 dwelling units, and a minimum of 20 accessory 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: the existing historic building is overbuilt and obsolete for a conforming use due to (1) the absence of a loading dock, (2) narrow column spacing, (3) low load-bearing capabilities, and (4) a low ceiling height; and

WHEREAS, as to the loading area, the applicant notes that it is at the same grade as the first floor, which results in inefficient loading and unloading and unsafe working conditions; and

WHEREAS, additionally, the applicant represents that there is no space at the site to accommodate a proper loading dock; and

WHEREAS, specifically, the applicant represents that the 24'-0" delivery trucks required for prior mattress conditioning business, could not fit inside the loading area, straddled the sidewalk and jugged out into the street when loading and unloading; larger trucks could not be accommodated at all; and

WHEREAS, as to the load-bearing column spacing, the

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# MINUTES

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applicant states that the columns are situated in multiple rows on each floor, running the length of the building at 10'-0" intervals from each other; and

WHEREAS, the applicant represents that this creates many narrow bays within each floor, which results in inefficient floor plates and inhibits the movement of goods; and

WHEREAS, the applicant represents that this condition constrains the building for use as a warehouse; and

WHEREAS, as to the load-bearing capacity of the floors, the applicant represents that the building cannot accommodate a storage warehouse because the second and third floors are approved for 100 pounds per square foot of live load; the Building Code requires 140 pounds per square foot for warehouse use; and

WHEREAS, the applicant represents that modern machinery has damaged the building and it cannot be accommodated due to the load limits; and

WHEREAS, as to ceiling height, the applicant notes that the first floor has a height of approximately 14'-0" and the second and third floors have heights of approximately 11'-0"; and

WHEREAS, the applicant represents that standard distribution centers require a 20'-0" ceiling height in order to accommodate stacking and efficient storage and maneuvering of bulk goods; and

WHEREAS, additionally, the applicant represents that the building has structural deficiencies, must be shored up, and requires new mechanical systems to be installed in order to make the building viable for any use; 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) the existing conforming scenario and (2) an as of right community facility; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the unique conditions of the site; and

WHEREAS, at hearing, the Board asked the applicant to revise the financial analysis to reflect that the existing conforming scenario is that of a vacant building since the prior use, the mattress reconditioning and storage was unable to viably use the building and has relocated; 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 use 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 subject block is one of two in the vicinity which is within an M1-1 zoning district; and

WHEREAS, the applicant represents that the uses on 19<sup>th</sup> Street and 20<sup>th</sup> Street, and Seventh Avenue and Eighth Avenue are predominantly residential; and

WHEREAS, the applicant represents that south of the site, on both sides of Eighth Avenue are several one and two-family and multi-family residences; and

WHEREAS, the Board agrees that there is a context for residential use in the area, and finds that the introduction of 31 dwelling units will not impact any nearby conforming uses; and

WHEREAS, the applicant notes that nearby homes date from the 1920s and 1930s, which is the same era as the subject building; and

WHEREAS, the applicant proposes to restore the façade and the windows which have been bricked over; and

WHEREAS, the Board notes that the applicant proposes to demolish portions of the building in order to improve access to light and air; and

WHEREAS, specifically, the elimination of the one-story portions of the building will provide more open space, including a 77'-8" side yard on 19<sup>th</sup> Street and a 30'-0" rear yard and the new lot coverage of 52.42 percent complies with the adjacent R5B zoning district regulations; and

WHEREAS, further, the Board notes that the partial demolition reduces the floor area of the overbuilt building by approximately 12,100 sq. ft.; and

WHEREAS, the applicant represents that the proposed bulk is consistent with the bulk parameters of the nearby R5B and R6B zoning districts, which permit a maximum of 1.35 and 2.0 FAR, respectively; and

WHEREAS, the applicant proposes to provide 20 parking spaces and to eliminate two existing curb cuts which will improve the traffic flow and increase 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; and

WHEREAS, the Board observes that the proposed building with 31 dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Board notes that the proposed reduction in floor area and FAR reduces the degree of non-compliance while still permitting the applicant 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



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# MINUTES

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WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2 (ak); 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. 07BSA064K, dated May 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, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: May 2007 Environmental Assessment Statement Form, Phase I Environmental Site Assessment Report, and air quality and noise submissions dated November 27, 2007, November 15, 2007, October 1, 2007, and August 8, 2007; and

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

WHEREAS, a Restrictive Declaration was executed on September 4, 2007 and recorded on September 6, 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 M1-1 zoning district, the residential conversion of an existing three-story factory/warehouse 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 October 11, 2007" – nine (9) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: three stories; a total floor area of 37,614 sq. ft. (1.67 FAR); 31 dwelling units; and a minimum of 20 parking spaces;

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;

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, February 26, 2008.

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## **79-07-BZ CEQR #07-BSA-074Q**

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 114<sup>th</sup> Road, Block 11007, Lot 5, Borough of Queens.

### **COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Elizabeth Bennett.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 3, 2007 acting on Department of Buildings Application No. 402509530, reads in pertinent part:

“Continued use of the automotive station with accessory uses at the premises is not permitted as-of-right in a C2-2/R3-2 zoning district as per section 32-10 of the Zoning Resolution and is contrary to the prior BSA grant under calendar number 711-53-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 October 2, 2007 after due notice by publication

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# MINUTES

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in *The City Record*, with continued hearings on October 30, 2007, January 8, 2008 and January 29, 2008, and then to decision on February 26, 2008; and

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

WHEREAS, Community Board 12, Queens, recommended approval of the application; and

WHEREAS, the site is located on the east side of Farmers Boulevard between Murdock Avenue and 114<sup>th</sup> Road; and

WHEREAS, the site is located in a C2-2 (R3-2) 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 24, 1956 when, under Cal. No. 711-53-BZ, the Board granted a variance permitting 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 May 18, 1993, the grant was amended to extend the term for ten years from the expiration of the prior grant on July 24, 1991; and

WHEREAS, the applicant now seeks to reinstate the original variance, granted under BSA Cal. No. 711-53-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 not been an enlargement to the zoning lot; and

WHEREAS, at hearing, the Board questioned the presence of unregistered vehicles parked on site, based on observations from site visits, since the sale of cars is not a permitted use; and

WHEREAS, the applicant represented that the unregistered vehicles were only at the site temporarily as they are repaired for offsite sales dealers; and

WHEREAS, in support of this representation, the applicant submitted an affidavit from the owner as to the use at the site; and

WHEREAS, at hearing, the Board raised concerns about the maintenance of the site; and

WHEREAS, the applicant agreed to remove clothing drop-off boxes, unused tires and un-registered vehicles from the site; and

WHEREAS, the Board also raised concerns about the condition of the perimeter fence and screening fence around a fuel tank on site, and the lack of bollards surrounding the signpost; and

WHEREAS, the applicant agreed to replace the perimeter fence and to install a new screening fence around the fuel oil tank and new bollards around the signpost; and

WHEREAS, the Board directed the applicant to revise the existing/proposed site plan to include notes depicting the replacement of the existing perimeter fence and to provide the Board with photographs of the site to confirm that it is being

adequately maintained; and

WHEREAS, the applicant submitted revised plans indicating the fencing to be replaced and photographs showing that the remainder of the site is adequately maintained; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR § 11-411 and a reinstatement is appropriate with certain conditions as set forth below.

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-074Q, dated April 12, 2007; and

WHEREAS, the EAS documents show that the continued operation of the automotive service station 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 service station 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 § 11-411, 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 April 12, 2007"-(2) sheets and "February 22, 2008"-(1) sheet; and *on further condition*:

THAT this grant shall be for a term of ten years to expire on February 26, 2018;

THAT signage be installed indicating that 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 August 26, 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

# MINUTES

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, February 26, 2008.

## 235-07-BZ

### CEQR #

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 27<sup>th</sup> Street, East 27<sup>th</sup> Street between Avenue K and Avenue L, Block 7626, Lot 65, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

#### 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 17, 2007, acting on Department of Buildings Application No. 310006249, 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 23-461(a).
  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, open space and side and rear yards, contrary to ZR §§ 23-141, 23-461(a), and 23-47; and

WHEREAS, a public hearing was held on this application on January 8, 2008, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2008, and then to decision on February 26, 2008; and

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

Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 27<sup>th</sup> 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 single-family home with a floor area of approximately 2,210.88 sq. ft. (0.55 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 2,210.88 sq. ft. (0.55 FAR), to 4,001.5 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed open space ratio is 58.71 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 3’-6” (a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 24’-0” (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 revise the plans to reflect that more of the existing building would be retained; and

WHEREAS, in response, the applicant provided revised drawings, which reflect which portions of the foundation walls and floor joists would be retained; and

WHEREAS, the applicant also revised the plans to clearly indicate which portions of the attic have a height in excess of 8’-0” and are included in the floor area calculations; 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

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# MINUTES

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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 and side and rear yards, contrary to ZR §§ 23-141, 23-461(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 December 12, 2007”–(7) sheets, “January 18, 2008”–(2) sheets and “February 12, 2008”–(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 772.28 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 4,001.5 sq. ft. (1.00 FAR), a minimum open space ratio of 58.71 percent, side yards with minimum widths of 8’-6” and 3’-6”, and a rear yard with a minimum depth of 24’-0”, as illustrated on the BSA-approved plans;

THAT all porches shall be as approved by DOB;

THAT DOB shall confirm that the portions of the existing building proposed to be retained on plan sheets, “A-5 and A-8-1 dated December 12, 2007”, “A-3 dated January 18, 2008” and “A-4 and A-8 dated February 12, 2008”, shall be retained;

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, February 26, 2008.

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## 273-07-BZ

APPLICANT – Moshe M. Friedman, for Abraham Greenstein, owner.

SUBJECT – Application November 29, 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(a)); side yards (§23-461) and rear yard (§23-45) in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 22<sup>nd</sup> Street, 140’ north from the intersection of East 22<sup>nd</sup> Street and Avenue N, Block 7658, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosef S. Gottdiener.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 15, 2007, acting on Department of Buildings Application No. 310047605, reads in pertinent part:

“Proposed extension of an existing dwelling is contrary to:

ZR Sec 23-141(a) Floor Area Ratio

ZR Sec 23-141(a) Open Space Ratio

ZR Sec 23-461 Minimum Side Yards

ZR Sec 23-541 Rear Yards”;

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 and rear yards, contrary to ZR §§ 23-141(a), 23-461, and 23-541; and

WHEREAS, a public hearing was held on this application on January 29, 2008, after due notice by publication in *The City Record*, and then to decision on February 26, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 22<sup>nd</sup> 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 single-family home with a floor area of approximately 2,279.46 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 2,279.46 sq. ft. (0.83 FAR), to 3,705.88 sq.

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# MINUTES

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ft. (0.926 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed open space ratio is 68.33 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 2'-9" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of 23'-5 1/2" (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 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 and rear yards, contrary to ZR §§ 23-141(a), 23-461, and 23-541; *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 29, 2007"-(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area in the attic/third floor shall be limited to 962.26 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 3,705.88 sq. ft. (0.926 FAR), a minimum open space ratio of 68.33 percent, side yards with minimum widths of 2'-9" and 10'-11", and a rear yard with a minimum depth of 23'-5 1/2", as illustrated on the BSA-approved plans;

THAT 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, February 26, 2008.

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**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: Yosef S. Gottdiemer.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for deferred decision.

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**109-07-BZ**

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

**COMMUNITY BOARD # 2Q**

APPEARANCES –

For Applicant: Jeffrey A. Chester.

For Opposition: Howard Nathan, Mary Walsh, Tom Ryan and Man-Tak Sandy Wong.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for continued hearing.

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# MINUTES

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## 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, Andrei Bublikou and Frank Sellitto.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for continued hearing.

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## 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 – 7-05 152<sup>nd</sup> Street, 152<sup>nd</sup> Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: None.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P. M., for adjourned hearing.

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## 145-07-BZ

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for Maimonides Research & Development, owner.

SUBJECT – Application June 4, 2007 – Variance (§72-21) to allow the enlargement of an existing building to violate lot coverage requirements (§24-11) for a proposed community facility (medical facility). R6 district.

PREMISES AFFECTED – 1005 46<sup>th</sup> Street, Northeast corner of 46<sup>th</sup> Street and 10<sup>th</sup> Avenue Block 5614, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD # 12BK

APPEARANCES –

For Applicant: Howard Zipser and Calvin Wong.

For Opposition: Shilry Lerner, Esther Friedman, P. Blumenthore, M. Rory, Judith Handler, S. Blunertha, Malkie Einhorn, Elise Leitner, Vrolip Schnosz, Rebecca Friedman.

THE VOTE TO CLOSE HEARING –

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

Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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 James Heineuran.

For Opposition: James G. Shawgig, Rosemarie Trotta, Carole Timko, Linda Nigio, William Koman, Edwin Converg, Nevkul Laverie and John Lafemina.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for continued hearing.

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## 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 §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.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for adjourned hearing.

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## 241-07-BZ

APPLICANT – Eric Palatnik, P.C., for Exxon Mobil Oil Corporation, owner.

SUBJECT – Application October 26, 2007 – Special Permit filed pursuant to §73-211 to allow an automotive service station with an accessory convenience store (use group 16) in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Victory Boulevard and Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.  
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**10-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for NYC Partnership Housing Development Fund Company, Inc., owner; TSI West 145<sup>th</sup> LLC, dba New York Sports Club, lessee.

SUBJECT – Application January 4, 2008 – Special Permit (§73-36) to allow the legalization of the existing Physical Culture Establishment on a portion of the cellar level and first floor in a nine-story mixed-use building. The proposal is contrary to section 32-10. C4-4D.

PREMISES AFFECTED – 66-68 Bradhurst Avenue, easterly side of Bradhurst Avenue, easterly of West 145<sup>th</sup> Street, Block 2045, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #10M**

APPEARANCES –

For Applicant: Fredrick Becker.

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**SPECIAL HEARING**  
**WEDNESDAY MORNING, FEBRUARY 27, 2008**  
**10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.  
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**247-07-A**

APPLICANT – Soho Alliance Community Group, for Bayrock/Sapir Organization, LLC, owner.

SUBJECT – Application October 30, 2007 – Appeal seeking to revoke permits and approvals to construct a residential condominium hotel in an M1-6 zoning district. Applicant argues that the residential use of the premises violates the underlying M1-6 zoning district prohibitions.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, Block 491, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Stuart A. Klein, Council Member Tony Avella, Matthew Schnew, Carole DeSarm, Andy Neale, Leah Archibald, Phaedra Thomas, Cassandra Smith, Tobi Berman, Doris Duitter, Andrew Berman, Sezu Sweeney, Kathleen Treat, Magda Aoulfadi, Gary Tomei, Bill Borocer, Jennifer Barrett, Melissa Baldock, Gregg Levine, Katie Kendall, Zaen Winestne, Elizabeth Adam, Lora Tenenbaum, Lorraine Bourie.

For Opposition: Paul Selver.

For Administration: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for decision, hearing closed.  
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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 10

March 13, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|                        |  |
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| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                   |         |
|-----------------------------------|---------|
| DOCKET .....                      | 142     |
| <b>CALENDAR</b> of March 18, 2008 |         |
| Morning .....                     | 143     |
| Afternoon .....                   | 143-144 |



---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, March 4, 2008**

Morning Calendar .....145

**Affecting Calendar Numbers:**

|             |                                     |
|-------------|-------------------------------------|
| 1199-88-BZ  | 29 Nelson Avenue, Staten Island     |
| 6-04-BZ     | 7118-7124 Third Avenue, Brooklyn    |
| 751-60-BZ   | 105 New Dorp Lane, Staten Island    |
| 66-90-BZII  | 43-07 Astoria Boulevard, Queens     |
| 370-02-BZII | 56-14 Main Street, Queens           |
| 373-02-BZII | 56-44 Main Street, Queens           |
| 204-07-BZY  | 163-167 Washington Avenue, Brooklyn |
| 270-07-A    | 163-167 Washington Avenue, Brooklyn |
| 279-07-A    | 34 Reid Avenue, Queens              |
| 292-07-A    | 41 Queens Walk, Queens              |
| 228-07-A &  |                                     |
| 234-07-A    | 29 Colon Avenue, Staten Island      |

Afternoon Calendar .....155

**Affecting Calendar Numbers:**

|                |  |
|----------------|--|
| 293-06-BZ      | 54-07 254 <sup>th</sup> Street, Queens       |
| 209-07-BZ      | 187-30 Grand Parkway, Queens                 |
| 217-07-BZ      | 25 Beaumont Street, Brooklyn                 |
| 237-07-BZ      | 718 Avenue S, Brooklyn                       |
| 263-07-BZ      | 1169 East 21 <sup>st</sup> Street, Brooklyn  |
| 31-06-BZ       | 102-10 159 <sup>th</sup> Road, Queens        |
| 160-06-BZ      | 2199 aka 2175 Richmond Avenue, Staten Island |
| 311-06-BZ thru |  |
| 313-06-BZ      | 300/302/304 Columbia Street, Brooklyn        |
| 68-07-BZ       | 102-48 65 <sup>th</sup> Road, Queens         |
| 158-07-BZ      | 184-20 Union Turnpike, Queens                |
| 169-07-BZ      | 626 West 254 <sup>th</sup> Street, Bronx     |
| 278-07-BZ      | 630 West 168 <sup>th</sup> Street, Manhattan |
| 285-07-BZ      | 312 Fifth Avenue, Manhattan                  |
| 11-08-BZ       | 3573 Bedford Avenue, Brooklyn                |
| 16-08-BZ       | 2614 Avenue L, Brooklyn                      |

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# DOCKET

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New Case Filed Up to March 4, 2008  
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**41-08-BZ**

64-35 223rd Place, Property is bound by 223rd Place to the west, 224th Street to the east and 65th Avenue to the south, 64th Avenue intersects 223rd Place and 224th Street., Block 7658, Lot(s) 2, Borough of **Queens, Community Board: 11**. Special Permit (73-30) to allow a non-accessory radio tower.  
-----

**42-08-BZ**

182 Girard Street, Located on Girard Street at the corner of Girard Street and Oriental Boulevard., Block 8749, Lot(s) 275, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a existing two family home to be converted to a single family home.  
-----

**43-08-A**

145-03 Bayside Avenue, 219.31 ft. from northeast corner of Bayside Avenue & Parsons Boulevard, Block 4786, Lot(s) 41, Borough of **Queens, Community Board: 25**. Appeal requesting for construction of a place of worship on map street.  
-----

**46-08-BZ**

491 Bedford Avenue, Southeast corner of Bedford Avenue and Clymer Street., Block 2173, Lot(s) 6, Borough of **Brooklyn, Community Board: 1**. Variance to permit construction of a yeshiva, contrary to bulk regulations.  
-----

**44-08-BZ**

1015 East 23rd Street, East 23rd Street between Avenue J and Avenue K., Block 7605, Lot(s) 38, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.  
-----

**45-08-BZ**

55 Androvette Street, North side of Androvette Street at the corner of Manley Street., Block 7407, Lot(s) 1,80,82, Borough of **Staten Island, Community Board: 3**. Variance to permit the construction of a new four-story, 108 unit age-restricted residential facility, contrary to bulk regulations  
-----

**47-08-A**

7228 Thursby Avenue, North side of Thursby Avenue, 247.50 feet west of intersection with Beach 72nd Street., Block 16066, Lot(s) 46, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Section 35 of the General City Law.  
-----

**48-08-A**

126 Oceanside Avenue, North side of Oceanside Avenue 220.59 east of Beach 207th Street., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting on a legally mapped street contrary to Article 3, Section 36 and partially in the bed of mapped street contrary to Section 35 of the General City Law.  
-----

**49-08-A**

305 Hillside Avenue, East side of Newport Walk, 110.19 south of Oceanside Avenue., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Construction not fronting on a legally mapped street, contrary to Article 3 and General City Law Section 36.  
-----

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

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# CALENDAR

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**MARCH 18, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 4, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**617-80-BZIV**

APPLICANT – Eric Palatnik, P.C., for J & S Simcha, Incorporated, owner.  
SUBJECT – Application February 12, 2008 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for an existing non-complying catering establishment (UG9) in an M1-1 zoning district which expired on March 14, 2008.  
PREMISES AFFECTED – 770/780 McDonald Avenue, west side of McDonald Avenue, 20’ south of Ditmas Avenue, Block 5394, Lots 1 & 11, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

-----  
**141-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for Lloyd Coy, owner.  
SUBJECT – Application July 19, 2007 – Extension of term/Amendment/Waiver-permitting the operation of a motor vehicle repair shop (use group 16) in an R5/C2-2 zoning district and amend the previously approved variance allowing minor changes to the layout and legalization of existing non-complying signage. The Term of the variance expired May 20, 2007.  
PREMISES AFFECTED – 638-40 Utica Avenue, located on the west side of Utica Avenue between Winthrop Street and Clarkson Avenue, Block 4617, Lot 15, Borough of Brooklyn.  
**COMMUNITY BOARD #9BK**

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**APPEALS CALENDAR**

**163-07-A**

APPLICANT – Rothkrug, Rothkrug and Spector, for Sea Cliff Towers Owners Corp., owner.  
SUBJECT – Application June 14, 2007 – Proposed construction of an accessory parking lot located within a portion of the bed of a mapped street (Cliff Street) contrary to General City Law Section 35 . R3-2 Zoning District.  
PREMISES AFFECTED – 11 Cliff Street, northeast corner of Cliff Street and Cliff Court, Block 2833, tent. Lot 65, Borough of Staten Island  
**COMMUNITY BOARD #1SI**

**192-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,  
SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211th street) contrary to Section 35 of the General City Law. R7-1 Zoning District.  
PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.  
**COMMUNITY BOARD #7BX**

-----  
**246-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Stacey Farrelly, owner; Dominick Desimone, lessee.  
SUBJECT – Application October 30, 2007 – 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.  
PREMISES AFFECTED – 97 Victory Boulevard (aka no number Corson Avenue), west side of Victory Boulevard, 180’ south of Corson Avenue, Block 23, Lot 55, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**

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**MARCH 18, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 4, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**100-07-BZ**

APPLICANT – David L. Businelli, for Ekram Tadros, owner.  
SUBJECT – Application April 26, 2007 – Variance (§ 72-21) to allow a one-story and cellar community facility building (medical offices - UG4) to violate front yard (§ 24-34) and side yard (§ 107-464) requirements. R3X district (SRD).  
PREMISES AFFECTED – 642 Barclay Avenue, west side Barclay Avenue, south of Hylan Boulevard, Block 6398, Lot 9, Borough of Staten Island.  
**COMMUNITY BOARD #3SI**

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**219-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Eternal Sino Int. Dev. Condo., LLC, owner; Shunai (Kathy) Jin, lessee.  
SUBJECT – Application September 24, 2001 – Special

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# CALENDAR

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Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the second floor of an existing building. Proposal contrary to section 42-13. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36<sup>th</sup> Street, located on the north side of West 36<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 838, Lot 35, Borough of Manhattan.

**COMMUNITY BOARD #5M**

-----

**248-07-BZ**

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.  
SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

**COMMUNITY BOARD #1Q**

-----

**250-07-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cornerstone Residence, LLC, owner.

SUBJECT – Application November 2, 2007 – Variance (§ 72-21) to allow a two-story, two-family dwelling; contrary to front yard (§ 23-45) and side yard (§ 23-461(a)) requirements. R5 district.

PREMISES AFFECTED – 837 Belmont Avenue, northeast corner of the intersection of Atkins Avenue and Belmont Avenue, Block 4023, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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**258-07-BZ**

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

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

**COMMUNITY BOARD #4Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 4, 2008 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 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 and 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: Eric Palatnik.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment of a previously granted variance to permit, within a C1-1 (R3-1) zoning district within the Special South Richmond District (SRD), the enlargement of a Use Group 9 banquet hall and a change in use from Use Group 6 offices to Use Group 6 retail stores; 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 hearings on December 4, 2007, January 8, 2008 and February 12, 2008, and then to decision on March 4, 2008; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of this application with the condition that the capacity of the banquet hall not be increased; and

WHEREAS, the subject premises is located on the northeast corner of Nelson Avenue and Locust Place, within a C1-1 (R3-1) (SRD) zoning district; and

WHEREAS, this site has been under the jurisdiction of

the BSA since 1972 when the Board granted a variance under BSA Cal. No. 639-69-BZ to permit the construction of a one-story enlargement of an existing cabaret (Use Group 12) and an extension of the cabaret into an adjoining structure previously used as a conforming restaurant; and

WHEREAS, the variance was subsequently amended to permit the construction of an additional one-story enlargement, to eliminate the cabaret use, to modify the interior layout, and to redesign the parking lot; and

WHEREAS, on September 26, 1989, under the subject calendar number, the Board approved a new variance permitting a banquet hall, office and a restaurant on the premises; and

WHEREAS, the site is occupied by a one-story and mezzanine commercial building with a banquet hall, a restaurant, Use Group 6 offices, and an accessory parking lot for 17 cars; and

WHEREAS, the banquet hall is operated as the Grand Plaza; and

WHEREAS, the applicant seeks to enlarge the banquet hall use horizontally into an adjacent vacant space formerly used for offices; and

WHEREAS, the applicant states that the new banquet hall space will have a floor area of approximately 2,366 sq. ft. and will be used as a pre-reception cocktail area for events hosted in the existing main dining room; and

WHEREAS, the existing banquet hall has a floor area of 5,439 sq. ft.; the total floor area proposed is 7,805 sq. ft.; and

WHEREAS, the applicant represents that the existing facility lacks an adequate cocktail area and that such an area is necessary to permit the continued operation of the facility; and

WHEREAS, in responding to the concern of the Community Board, the applicant represents that the cocktail area will be operated non-simultaneously with the main dining room and that conversion of office space into a cocktail area will therefore not increase the overall occupancy of the banquet hall; and

WHEREAS, the applicant further represents that the additional cocktail area space is intended primarily to broaden the range of services and to better accommodate the current needs; and

WHEREAS, the applicant states that the proposed hours of operation for the banquet hall and the restaurant at the premises will be unchanged; the restaurant is open from 4:00 p.m. to 10:00 p.m. daily and the banquet hall is open evenings and weekends; and

WHEREAS, the Board has determined that these hours of operation are appropriate; and

WHEREAS, at hearing the Board raised concerns about the adequacy of the 17 attended parking spaces at the site to accommodate peak demand; and

WHEREAS, the applicant testified that sufficient additional parking during the banquet hall's peak periods was provided by two adjacent lots and by other lots in the vicinity through longstanding informal agreements with the owners; and

WHEREAS, the applicant also provided the Board with

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# MINUTES

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aerial views demonstrating the proximity of large parking lots to the subject site with many available spaces, as well as with a parking utilization survey of six recent events held at the banquet hall that demonstrated that the cars of virtually all patrons had been parked in the lots in the adjacent lots identified by the applicant; and

WHEREAS, in further support, the applicant submitted an analysis of parking in the area which indicated a total of 489 unrestricted parking spaces, and an accumulation study which demonstrated that 248 spaces were open during a peak weekend period while 388 spaces were available during a peak daytime period, and

WHEREAS, the applicant also proposes to convert approximately 3,292 sq. ft. of former office space to four retail stores; and

WHEREAS, the applicant represents that such a change would ordinarily be permitted as of right since both uses are allowed by the underlying district; and

WHEREAS, the applicant also notes that the proposed change from office use to retail will not increase parking demand as the hours of operation of the stores will not overlap those of the banquet hall; and

WHEREAS, at hearing, the Board questioned whether the signage complied with C1-1 zoning district signage restrictions which limit signage to 150 ft. per side; and

WHEREAS, in response, the applicant provided a signage analysis certified by a registered architect confirming that the signage complied with C1-1 zoning district signage requirements; and

WHEREAS, based upon its review of the record, the Board finds that the enlargement of the banquet hall and the conversion of office space to retail stores 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 September 26, 1989, so that as amended this portion of the resolution shall read: "to permit the enlargement of a Use Group 9 banquet hall and the change in use of Use Group 6 offices to Use Group 6 retail, *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received May 11, 2007"-(1) sheet, and "Received August 21, 2007"-(4) sheets; and *on further condition*:

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. 500907548)

Adopted by the Board of Standards and Appeals,

March 4, 2008.

-----  
**6-04-BZ, Vol. II**

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 §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 72<sup>nd</sup> Street, Block 5890, Lot 43, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on April 12, 2007; and

WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2008, and then to decision on March 4, 2008; and

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

WHEREAS, Community Board, 10, Brooklyn, recommends approval of the application on condition that the applicant continue to refrain from parking cars in the alleyway and maintain the existing gate and fence; and

WHEREAS, the subject premises is located on the northwest corner of Third Avenue and 72<sup>nd</sup> Street; and

WHEREAS, the site is in a C1-3 (R6) zoning district and is occupied by a three-story commercial building; and

WHEREAS, the PCE currently occupies the second and third floors of the subject building; and

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

WHEREAS, on April 12, 2005, the Board granted a variance pursuant to ZR § 72-21, to permit the continued operation of the PCE for a term of two years to expire on April 12, 2007; and

WHEREAS, the Board granted a two-year term because the PCE had operated illegally for a number of years at the site prior to the grant of the variance; and

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

WHEREAS, as to the alleyway, the applicant represents

# MINUTES

that the PCE does not use it for parking and will maintain the fence and gate as requested; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and time to secure a certificate of occupancy 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 April 12, 2005, so that as amended this portion of the resolution shall read: "to permit an extension of the variance 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; and *on further condition*: that all work shall substantially conform to drawings filed with this application and marked "Received March 21, 2007"-(6) 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, to expire on April 12, 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); and

THAT the Department of Buildings must 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. 301499484)

Adopted by the Board of Standards and Appeals, March 4, 2008.

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## 751-60-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 105 New Dorp Equities, Incorporated, owner.

SUBJECT – Application November 7, 2007 – Extension of Term of a previously granted Variance (72-21) for the operation of a gasoline service station, in C2-1 in R3-1 and R3X zoning district, which expired on March 23, 2006; an amendment for an additional pump island and waiver of the rules of procedure.

PREMISES AFFECTED –105 New Dorp Lane, northern corner of New Dorp Lane and New Dorp Plaza, Block 3630, Lot 30, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10:00 A.M., for decision, hearing closed.

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## 66-90-BZII

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H. G. Realty Corporation, owner

SUBJECT – Application January 31, 2008 – Extension of Time to obtain a Certificate of Occupancy, which expired on November 14, 2002, for an Automotive Service Station (Mobil) in an R5 zoning district and a waiver of the rules.

PREMISES AFFECTED – 43-07 Astoria Boulevard, northeast corner of 43<sup>rd</sup> Street, Block 780, Lot 18, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10:00 A.M., for continued hearing.

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## 370-02-BZII

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-14 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 40, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10:00 A.M., for continued hearing.

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## 373-02-BZII

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-44 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 55, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10:00 A.M., for continued hearing.

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# MINUTES

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## APPEALS CALENDAR

### 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: Jordan Most.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a 16-story mixed-use residential/community facility building; and

WHEREAS, this application was accompanied by a companion application under BSA Cal. No. 270-07-A, filed at a later date, but decided the date hereof, which is a request 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 while separate applications were filed according to Board procedure, in the interest of convenience, the second case was heard with the first as of January 15, 2008, and the record is the same for both; and

WHEREAS, a public hearing was held on this application on October 30, 2007 after due notice by publication in *The City Record*, with continued hearings on December 11, 2007 and January 15, 2008, and then to decision on March 4, 2008; and

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

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

WHEREAS, City Council Member Letitia James provided testimony in opposition to this application citing concerns that the threshold for substantial completion of foundations had not been met, that work continued at the site after the permitted hours of operation, and that the proposed building is not compatible with the neighborhood character; and

WHEREAS, additionally, Building Too Tall, represented by counsel, opposed this application; this group of

neighbors was represented by the same counsel in BSA Cal. 270-07-A; and

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

WHEREAS, specifically, the Opposition raised the following concerns: (1) excavation was not complete, (2) substantial progress on the foundation was not complete, (3) some construction took place after hours, (4) the applicant is not credible, and (5) the construction at the site was dangerous and damaged nearby properties; and

WHEREAS, the site is a through lot, with 100 feet of frontage on the east side of Washington Avenue and 104 feet of frontage on the west side of Hall Street, 80 feet from the intersection with Myrtle Avenue; and

WHEREAS, the site comprises three lots – Lots 1, 4, and 82 - which are to be merged into a single lot, Lot 4, with a total of 18,422 sq. ft. of lot area; and

WHEREAS, the owner of the site seeks to construct a new 16-story mixed-use building with community facility use on the first floor and residential use in the remainder of the building (the “Building”); and

WHEREAS, the design of the Building includes a second-floor terrace which does not have significant load-bearing needs and requires 15 footings that are separate from the foundation for the building; and

WHEREAS, the terrace contributes to the open space required at the site and, without it, the Building could not achieve the proposed amount of floor area; and

WHEREAS, on May 2, 2007, DOB issued New Building Permit No. 302249715-01-NB (the “Permit”); and

WHEREAS, at the time the Permit was issued, the site was located partially within an R6 zoning district and partially within a C1-3 (R6) zoning district; and

WHEREAS, however, on July 25, 2007, (the “Enactment Date”), the City Council voted to adopt the Fort Greene-Clinton Hill Rezoning, which rezoned the site to C2-4 (R7A), R5B, and R6B; and

WHEREAS, the applicant represents that the Building complies with the former R6 and C1-3 (R6) zoning district parameters; specifically, the proposed 2.43 FAR and height of 16 stories, were permitted; and

WHEREAS, because the site is now partially within a C2-4 (R7A) zoning district, partially within an R5B zoning district, and partially within an R6B zoning district, the Building would not comply with the maximum FAR of 1.93 or maximum height of six stories; and

WHEREAS, because the Building violated these provisions of the C2-4 (R7A), R5B, and R6B zoning districts and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on July 25, 2007 for the Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: “If, before the effective date of an applicable amendment of this



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# MINUTES

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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 Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, the validity of the Permit has not been challenged; 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

WHEREAS, the applicant asserts that excavation was completed and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, as to excavation, the Opposition asserts that it was not complete since the holes for the 15 footings for the second floor terrace had not been cleared; and

WHEREAS, in response, the applicant stated that its construction plan reflects that the holes for the terrace footings would be excavated much later in the process because if the earth had been removed, then the bars and footings would have had to have been assembled and poured in order to keep the holes open and they would have stuck out above grade; and

WHEREAS, accordingly, the footings would inhibit circulation on the site for vehicles, workers, and staging areas during the construction process; and

WHEREAS, the applicant notes that the terrace footings require a total of 13 cubic yards of concrete out of a total amount of approximately 763 cubic yards for the entire foundation; and

WHEREAS, at hearing, the Board asked the applicant to describe the requirements for the construction site and to provide evidence to support the assertion that the excavation for the terrace footings was not practical given the balance of

the work to be performed at the site; and

WHEREAS, in response, the applicant provided testimony from the construction manager and plans of the construction site which reflect that this area was required for efficient operations of the construction site; and

WHEREAS, the Opposition states that because the terrace provides required open space for the Building and without it the Building would not comply with the prior zoning, it is an integral part of the foundation, which cannot be viewed separately; and

WHEREAS, the Board recognizes that the terrace is required in order for the Building to comply with the prior zoning, but it notes that it is a common practice to backfill portions of sites which have been excavated in order to accommodate maneuvering construction vehicles and/or to provide staging areas as construction continues on the remainder of the site; and

WHEREAS, accordingly, the Board has determined that the footing holes, if excavated, would essentially have to be backfilled to accommodate a staging area, similar to that described for other sites, and the excavation would not serve any purpose as it would need to be re-done after the area was no longer needed for staging; and

WHEREAS, notwithstanding the Opposition’s assertion that there were other possible ways of designing the construction site, which might have permitted the applicant to excavate and cover the footings for the terrace, the Board finds that the applicant’s decision to reserve that work for a later point in the construction process was reasonable so that the footings would not have to potentially be re-poured if damaged and to provide efficient and safe working condition at the site; and

WHEREAS, accordingly, the Board finds that the absence of excavated footings for the terrace, which is not part of the larger foundation, does not preclude a determination that excavation was complete; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation for the 16-story building is in the spirit of the ZR’s requirement that excavation be complete for vesting purposes under ZR § 11-331; and

WHEREAS, the Board notes that the Opposition does not contend that the remainder of the excavation for the 16-story building, excluding the second floor terrace, was not finished; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundation is approximately 74 percent complete; and

WHEREAS, specifically, the applicant represents that (1) 558 tons of crushed stone have been installed under the footings, (2) 100 linear feet of sheeting have been installed, (3) 44.5 tons of rebar have been installed, and (4) 547 cubic yards of concrete have been poured; and

WHEREAS, the applicant has carved out 24 cubic yards of concrete, which were poured after hours, so that the total amount of concrete that the Board has considered is 523 cubic yards, rather than the 547 cubic yards actually poured; and

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# MINUTES

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WHEREAS, at hearing, the Board asked the applicant to provide detailed information about the concrete pours including the time of dispatch from the concrete plant and the time of the pour; and

WHEREAS, in response, the applicant provided records reflecting truck numbers, dispatch time, and pour time, along with the pour tickets reflecting how much concrete had been poured; and

WHEREAS, the Opposition reviewed the applicant's submissions and found inconsistencies within the submissions as to the truck numbers and cylinder tests that do not match; and

WHEREAS, in response, the applicant stated that there may have been some oversight in the record-keeping of the pours, but that all core tests were performed as per the standards of the Building Code and the total amount of concrete poured is accurate; and

WHEREAS, the Opposition asserts that the discrepancies in the concrete pour records call the applicant's credibility into question; and

WHEREAS, the Board notes that the applicant modified the information related to the concrete pours throughout the hearing process as it compiled its records; and

WHEREAS, when the Board inquired into the reason for these changes, the applicant stated that, during the hearing process, as the concrete pours were analyzed, it located more records to help substantiate the assertions about the amount of work completed; and

WHEREAS, ultimately, the applicant submitted a survey of the site performed on July 30, 2007, affidavits from the site's construction managers, and comprehensive records of the concrete pours, which support its assertions; and

WHEREAS, the Board directed the applicant to subtract any concrete that was poured after hours and to subtract any work which might have been performed while a stop work order was in effect; and

WHEREAS, as to the Opposition's assertion that the applicant's representations about the amount of concrete poured lack credibility, the Board notes that the records submitted in support of the concrete pours are like those which have been accepted in other vested rights cases; and

WHEREAS, additionally, the Board notes, that based on a physical inspection of the site, substantial work, comparable to the amount performed in other vested rights cases, has been performed; and

WHEREAS, accordingly, the Board finds the combination of the physical work completed and the concrete pour records is compelling evidence that substantial work was completed on the foundation; and

WHEREAS, the Board understands that the concrete pour records may have initially caused some confusion, but that, in the absence of evidence that the amount of concrete purported to have been poured was not poured, the Board accepts the applicant's evidence, both physical and documentation, as proof that substantial work was completed; and

WHEREAS, the Board has only considered work

completed as of the Enactment Date and excluded all work performed after hours; and

WHEREAS, the Opposition also cites to DOB's assessment that only 40 percent of the foundation had been completed by the Enactment Date as evidence that substantial work had not been completed; and

WHEREAS, the Board notes that DOB's assessment was based on visual observation and did not consider the amount of concrete documented as poured; and

WHEREAS, the applicant's records reflect that 523 cubic yards (after subtracting the 24 cubic yards poured after hours) out of a total of 763 cubic yards required for the site (69 percent) of the concrete had been poured, in addition to the other foundation construction noted above; and

WHEREAS, finally, the Opposition contends that construction at the site resulted in hazardous site conditions and damage to adjacent properties; and

WHEREAS, the Board defers to DOB to ensure that construction is performed pursuant to the Permit and pursuant to all relevant Building Code requirements; and

WHEREAS, in the absence of additional stop work orders from DOB, the Board accepts that applicant's representations that construction was performed legally; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, while the Board was not swayed by many of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Fort Greene-Clinton Hill Rezoning and that the Building does not comply with the new 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 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

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. 302249715-01-NB 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 September 4, 2008.

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# MINUTES

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Adopted by the Board of Standards and Appeals, March 4, 2008.

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**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**

**APPEARANCES** –

For Applicant: Jordan Most.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was filed subsequent to the filing of a companion application brought under BSA Cal. No. 204-07-BZY (the “BZY Application”), 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 while separate applications were filed according to Board procedure, in the interest of convenience, after the filing of the subject application, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on January 15, 2008 after due notice by publication in *The City Record*, and then to decision on March 4, 2008; and

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

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

WHEREAS, City Council Member Letitia James provided testimony in opposition to this application citing concerns that the threshold for substantial completion of foundations had not been met, that work continued at the site after the permitted hours of operation, and that the proposed building is not compatible with the neighborhood character; and

WHEREAS, additionally, Building Too Tall, represented by counsel, opposed this application; this group of neighbors was represented by the same counsel in BSA Cal. 204-07-BZY; and

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

WHEREAS, specifically, the Opposition raised the following concerns about the common law vested rights application: (1) the subject common law vested rights application is not timely and (2) the applicant has failed to establish serious economic hardship if the vested rights application is denied; and

WHEREAS, the site is a through lot, with 100 feet of frontage on the east side of Washington Avenue and 104 feet of frontage on the west side of Hall Street, 80 feet from the intersection with Myrtle Avenue; and

WHEREAS, the site comprises three lots – Lots 1, 4, and 82 - which are to be merged into a single lot, Lot 4, with a total of 18,422 sq. ft. of lot area; and

WHEREAS, the owner of the site seeks to construct a new 16-story mixed-use building with community facility use on the first floor and residential use in the remainder of the building (the “Building”); and

WHEREAS, the design of the Building includes a second-floor terrace which does not have significant load-bearing needs and requires 15 footings that are separate from the foundation for the building; and

WHEREAS, the terrace contributes to the open space required at the site and, without it, the Building could not achieve the proposed amount of floor area; and

WHEREAS, on May 2, 2007, DOB issued New Building Permit No. 302249715-01-NB (the “Permit”); and

WHEREAS, at the time the Permit was issued, the site was located partially within an R6 zoning district and partially within a C1-3 (R6) zoning district; and

WHEREAS, however, on July 25, 2007, (hereinafter, the “Enactment Date”), the City Council voted to adopt the Fort Greene-Clinton Hill Rezoning, which rezoned the site to C2-4 (R7A), R5B, and R6B; and

WHEREAS, the applicant represents that the Building complies with the former R6 and C1-3 (R6) zoning district parameters; specifically, the proposed 2.43 FAR and height of 16 stories were permitted; and

WHEREAS, because the site is now partially within a C2-4 (R7A) zoning district, partially within an R5B zoning district, and partially within an R6B zoning district, the Building would not comply with the maximum FAR of 1.93 or maximum height of six stories; and

WHEREAS, because the Building violated these provisions of the C2-4 (R7A), R5B, and R6B zoning districts and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on July 25, 2007 for the Permit; and

WHEREAS, first, the Opposition claims that the application for the subject common law vested rights case

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# MINUTES

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was untimely because it was not filed within 30 days of a final determination from DOB; and

WHEREAS, the Opposition contends that a stop work order issued on July 25, 2007, is the pertinent DOB final determination which should be appealed; and

WHEREAS, the Board notes that the applicant filed the companion statutory vested rights case under BSA Cal. No. 204-07-BZY within 30 days of the Enactment Date as required by ZR § 11-331; and

WHEREAS, the relevant time period for the filing of the subject application was within 30 days of the November 11, 2007 DOB final determination associated with this case; and

WHEREAS, the Board notes that the applicant filed the subject application within the specified timeframe, cited in BSA Rules of Practice and Procedure § 1-07; and

WHEREAS, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) deals specifically with ZR § 11-30 et seq., and explicitly held that a common law remedy exists separate and apart from the statute; and

WHEREAS, the court stated: “New York City Zoning Resolution § 11-331 does not codify or abolish the common-law doctrine of vested rights. The common-law doctrine is a broader consideration than that posited in that section of the resolution, which confines itself to whether or not certain physical stages of construction relating to excavation and the foundation have been completed. While the general standard in determining vested rights is substantial construction and substantial expenditure made prior to the effective date of the zoning amendment . . . unlike New York City Zoning Resolution § 11-331, [t]here is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'”; and

WHEREAS, in sum, the Board rejects the Opposition’s arguments as to the timeliness argument; and

WHEREAS, the applicant states that construction proceeded as follows: (1) excavation commenced on May 7, 2007, (2) excavation was completed July 10, 2007, (3) footing installation commenced on July 11, 2007, and (4) 547 cubic yards of concrete were poured from July 19, 2007 to July 25, 2007; and

WHEREAS, the Board notes that the applicant has agreed to deduct 24 cubic yards of concrete, which were poured after hours, from the total so that the amount of concrete the Board has accepted is 523 cubic yards; and

WHEREAS, the applicant requests that the Board find that based upon the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, as well as the serious economic loss the owner would face if compelled to comply with the new zoning, the owner has a vested right to continue construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR § 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this

appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, the Board notes that the validity of the Permit has not been questioned; 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, as discussed by the court in Kadin “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 represents that after the issuance of the Permit on May 2, 2007, the following work was completed: (1) installation of 100 percent of the required stone below the footings, (2) installation of 100 percent of the sheeting work, (3) installation of 100 percent of the required underground plumbing, (4) pouring of 100 percent of the concrete for the footings, excluding those required for the second floor terrace, and (5) installation of 67 percent of the rebar; and

WHEREAS, in support of this statement, the applicant has submitted photographs, invoices for labor and material, work logs, concrete pour tickets, and affidavits from construction personnel; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board’s conclusion is 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; and

WHEREAS, specifically, the Board has reviewed 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, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, the Board notes that the appropriate

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# MINUTES

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comparison is between the amount of construction work here and that cited by other courts; and

WHEREAS, in light of such comparison, the Board can only conclude that the noted work is substantial; 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 the owner is obligated by contract to pay for work at the site in the amount of \$5.8 million; and

WHEREAS, further, the applicant represents that \$564,214 in hard costs and \$588,000 in soft costs have been expended; and

WHEREAS, the applicant projects that the total hard costs required for the completion of the Building are \$11.7 million and the total soft costs are \$3.3 million; and

WHEREAS, the Board considers the noted expenditure substantial in and of itself, and when compared to the total development costs; and

WHEREAS, the Board's consideration is again guided by cases considering how much expenditure is needed to vest rights under the prior zoning, as well as the expenditure percentages; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the floor area that would result if vesting was not permitted would be reduced from 49,568 sq. ft. to 39,336 sq. ft. (from an FAR of 2.43 to 1.93); and

WHEREAS, further, the applicant would be required to eliminate floors seven through 16; and

WHEREAS, the applicant states that this would lead to financial loss because: (1) further architectural and engineering costs would be required to reconfigure and redesign the building to account for this loss; and (2) approximately 21 percent of floor area, including the most valuable floor area on the upper floors, would be lost; and

WHEREAS, the Opposition raised concerns about the applicant's assertions of proposed economic loss; and

WHEREAS, specifically, the Opposition contends that there were errors and contradictions in the data submitted by the applicant; the areas of concern include: (1) floor area dimensions, (2) calculations of sellable floor area, (3) inflated sales prices, and (4) inaccurate reflection of hard and soft costs; and

WHEREAS, the Opposition asserts that if the Building and calculations were modified, the applicant would still be able to achieve a reasonable rate of return on the development; and

WHEREAS, the Board notes that a reasonable rate of return is not the standard for a vested rights claim, but rather, the applicant must show that there would be a significant loss associated with modifying the Building to comply with the new zoning; and

WHEREAS, in response to the Opposition, the applicant states that (1) building floor area was calculated on a gross square footage basis for the complying and non-complying scenarios, as is standard practice; (2) the community facility space is not valueless and should be included in sellable floor area since it is valuable space; (3) the sales figures are based on projections from brokers who have relied on a series of comparable; and (4) the soft and hard costs are accurate as documented; and

WHEREAS, the Board agrees with the applicant and finds that the applicant has provided thorough documentation and reasonable explanations of how it calculated its floor area and prices; and

WHEREAS, the Board notes that 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; and

WHEREAS, here, the Board agrees that the building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB could not be recouped; and

WHEREAS, additionally, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, here, the Board agrees that a significant reduction in floor area will result in a serious loss; and

WHEREAS, the Board notes that its conclusion that serious loss would occur includes consideration of the costs related to the need to revise the plans and redo some of the construction work; 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, while the Board was not swayed by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Fort Greene-Clinton Hill Rezoning and that the Building does not comply with the new 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 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

# MINUTES

of DOB Permit No. 302249715-01-NB, 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 4, 2008.

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## 279-07-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Tom McLaren, lessee.

SUBJECT – Application December 6, 2007 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 34 Reid Avenue, south west of Reid Avenue, north west of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Loretta Papa.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 7, 2007, acting on Department of Buildings Application No. 402565087, reads in pertinent part:

“A-1 – the street giving access to the existing dwelling 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 the total perimeter of the building fronting directly upon a legally mapped street or frontage space and is contrary to Section 27-291 of the Administrative Code”; and

WHEREAS, this application requests permission to build a new two-story, one-family dwelling, which does not front on a legally mapped street; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated February 8, 2008, the Fire Department 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 August 7, 2007, acting on

Department of Buildings Application No. 402565087, 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 December 6, 2007,” “BSA-1” – 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, March 4, 2008.

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## 292-07-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Doreen A. Dolan, lessee.

SUBJECT – Application December 28, 2007 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 41 Queens Walk, east side of Queens, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 26, 2007, acting on Department of Buildings Application No. 410013257 reads in pertinent part:

“A-1 – the street giving access to the existing dwelling 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 the total perimeter of the building fronting directly upon a legally mapped street of

# MINUTES

frontage space is contrary to Section 27-291 of the Administrative Code”; and

WHEREAS, this application requests permission to build a new two-story one-family dwelling not fronting a legally mapped street; and

WHEREAS, a public hearing was held on this application on March 4, 2008 after due notice by publication in the *City Record*, and then to decision on that same date; and

WHEREAS, by letter dated February 8, 2008, the Fire Department 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 26, 2007, acting on Department of Buildings Application No. 41001357, 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 December 28, 2007” “BSA-1” – 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, March 4, 2008.

## 228-07-A & 234-07-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Donald Bischoff, owner.

SUBJECT – Application October 9, 2007 – Proposed construction of two- two family dwellings located within the bed of a mapped street (property street) contrary to Section 35 of the General City Law. R3-2 Zoning District.

PREMISES AFFECTED – 29 Colon Avenue, 20 Lindenwood Road, between Colon Avenue and Lindenwood, south of Baltimore Street, Block 5433, Lots 75 & 98, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10:00 A.M., for continued hearing.

*Jeffrey Mulligan, Executive Director*

Adjourned: 11:30 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, MARCH 4, 2008 1:30 P.M.

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

## ZONING CALENDAR

### 293-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Veronica Nicasastro, 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 – 54-07 254<sup>th</sup> Street, east side of 254<sup>th</sup> Street, 189’ north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

### COMMUNITY BOARD #11Q

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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated December 18, 2007, acting on Department of Buildings Application No. 402393824, reads in pertinent part:

“Proposed enlargement of existing one family dwelling exceeds the permitted floor area and does not provide the required open space, as per Section 23-141 ZR and must be referred to the Board of Standards and Appeals”; and

WHEREAS, a public hearing was held on this application on January 8, 2008, after due notice by publication in *The City Record*, with a continued hearing on January 29, 2008, and then to decision on March 4, 2008; and

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

WHEREAS, the Board notes that the applicant initially

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# MINUTES

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sought a variance pursuant to ZR § 72-21 but, during the hearing process, modified the application to reflect a request for a special permit pursuant to ZR § 73-621; the proposed enlargement of the home is the same under both scenarios, with minor changes to the site plan; and

WHEREAS, Community Board 11, Queens, recommended approval of the application when proposed as a variance; and

WHEREAS, the Queens Borough President recommended approval of the variance application on the condition that the retaining wall be repaired; and

WHEREAS, the subject site is located on the east side of 254<sup>th</sup> Street, between Thornhill Avenue and the Horace Harding Expressway; and

WHEREAS, the subject site has a total lot area of 4,781 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,770 sq. ft. (0.37 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 1,770 sq. ft. (0.37 FAR), to 2,517 sq. ft. (0.53 FAR); the maximum floor area permitted is 2,390 sq. ft. (0.50 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by 5.3 percent; and

WHEREAS, the applicant proposes to provide 3,417 sq. ft. of open space, with an open space ratio of 136 percent (3,954.5 sq. ft. and an open space ratio of 150 percent is the minimum required); and

WHEREAS, the applicant represents that the proposed open space ratio of 136 percent constitutes 91 percent of the required open space ratio; and

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

WHEREAS, as to the open space ratio, the Board notes that the proposed 136 percent reflects 91 percent of the required 150 percent open space ratio, and exceeds the 90 percent threshold; and

WHEREAS, as to lot coverage, the Board notes that there are no lot coverage limits in the subject R1-2 zoning district; and

WHEREAS, as to floor area ratio, the Board notes that the proposed 0.53 FAR reflects 106 percent of the maximum permitted FAR of 0.50, which is less than 110 percent of the maximum permitted under the special permit; and

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

WHEREAS, during the hearing process, the Board directed the applicant to revise the building plans to clearly indicate which portions of the building would be retained in

order to reflect that the proposed construction qualifies as an enlargement of the existing home; and

WHEREAS, in response, the applicant revised the plans to reflect the portions of the foundation, walls, and joists, which would be retained; and

WHEREAS, as to the Borough President's request that the retaining wall be repaired, the applicant represents that the retaining wall will be repaired as a part of the proposed construction; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R1-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and open space, contrary to ZR § 23-141; *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 19, 2008"-(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 2,517 sq. ft. (0.53 FAR) and a minimum open space ratio of 136 percent, as illustrated on the BSA-approved plans;

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



# MINUTES

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
March 4, 2008.

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**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 188<sup>th</sup> Street and Grand Central Parkway, Block 9969, Lot 12, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Deputy Borough Commissioner, dated November 14, 2007, acting on Department of Buildings Application No. 402562008, reads in pertinent part:

- “1. Proposed floor area is in excess of the permitted allowable floor area for the R1-2 zone as per Section 24-11 ZR . . . ;
2. Proposed elimination of existing on-site parking in the area to be occupied by the proposed enlargement is contrary to Section 25-31 ZR;
3. The proposed front yard is contrary to Section 24-34 ZR”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R1-2 zoning district, the enlargement of a two-story and cellar educational facility (Use Group 3), which is contrary to ZR §§ 24-11, 25-31 and 24-34; and

WHEREAS, the applicant proposes to enlarge and maintain the use of an existing school; and

WHEREAS, a public hearing was held on this application on January 8, 2008, after due notice by publication in the *City Record*, with a continued hearing on February 5, 2008, and then to decision on March 4, 2008; and

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

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

WHEREAS, this application is brought on behalf of The Summit School (the “School”), a nonprofit high school

servicing emotionally disturbed and learning disabled students; and

WHEREAS, the site is located on the southwest corner of 188<sup>th</sup> Street and Grand Central Parkway; and

WHEREAS, the site is an irregularly-shaped, five-sided lot with 100 feet of frontage on 188<sup>th</sup> Street, 140 feet on frontage on Grand Central Parkway, a depth of approximately 138 feet along the northern boundary line, and a depth of approximately 140 feet along the eastern boundary; and

WHEREAS, the subject site is within an R1-2 zoning district; and

WHEREAS, the subject site has a total lot area of 18,728 sq. ft. and is occupied by a two-story and basement school building; and

WHEREAS, the School proposes to construct a 4,806 sq. ft. two-story and basement enlargement on the site; and

WHEREAS, the enlargement will be occupied by office space, meeting rooms and classrooms; and

WHEREAS, the applicant proposes 23,284 sq. ft. of floor area (18,728 sq. ft. is the maximum permitted), an FAR of 1.2 (1.0. is the maximum permitted), a two-story encroachment into the front yard (20’-0” is the minimum required front yard), and a reduction in the number of on-site parking spaces to eight (15 are required); and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) office space for counseling, speech, language therapy and guidance services; (2) additional classrooms that conform to facility standards; (3) meeting and conference rooms; and (4) performing arts program space; 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 floor area, front yard and parking waivers are necessary to provide the program space necessary to adequately serve its current student body; and

WHEREAS, the applicant represents that without the waivers, the School would continue to have only 11 homeroom classrooms for its 13 classes, and to lack space for counseling, therapy and guidance services, meetings, music instruction, and performances; and

WHEREAS, the Board acknowledges that the School, as an 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational 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 represents that the configuration of its existing building creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

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# MINUTES

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WHEREAS, as to the configuration of its existing building, the applicant states that a complying front yard of approximately 20 feet is provided along both building frontages, thereby forcing any enlargement to encroach onto the front yard; and

WHEREAS, the applicant also states that the existing layout necessitates the enlargement into the front yard, by allowing the corridors to extend and retaining the existing circulation core; and

WHEREAS, the applicant further states that the existing configuration also precludes an expansion to the rear of the property, since the existing double-height gymnasium would restrict the possibility of a contiguous floor plate; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed enlargement is necessary to address its 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 configuration, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the 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, the applicant states that the enlargement has been designed to minimize the appearance of bulk and to maintain a height and façade that is consistent with that of the existing building; and

WHEREAS, additionally, the applicant states that the building design includes materials and landscaping which are compatible with that of nearby buildings; and

WHEREAS, at hearing, the Board raised concerns with the elimination of six on-site parking spaces and questioned how the School would accommodate the parking demand of students and staff; and

WHEREAS, the applicant stated all students travel to the school via school buses or public transportation, that about 50 staff members relied on public transportation, and that off-site parking was available to serve the 30 staff members who drove to the School; and

WHEREAS, at hearing, the Board asked the applicant to document the availability of off-site parking; and

WHEREAS, the applicant responded by providing a diagram and photographs indicating the availability of at least 11 parking spaces, approximately half of the total, within one block north and one block east of the subject site; 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 given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for floor area, front yard and parking are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School 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 617.12(a) and 617.5 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 R1-2 zoning district, the enlargement of a two-story and cellar educational facility (Use Group 3), which is contrary to ZR §§ 24-11; 25-31 and 24-34, *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 November 28, 2007" – (7) sheets and "Received January 18, 2008" – (1) sheet; and *on further condition*:

THAT the total floor area shall not exceed 23,284 sq. ft. (1.2 FAR) and a minimum of eight parking spaces shall be provided on-site, 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, March 4, 2008.

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# MINUTES

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## 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

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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 11, 2007, acting on Department of Buildings Application No. 310017399, reads in pertinent part:

1. Proposed Floor Area Ratio is contrary to ZR 23-141(a).
2. Proposed open space is contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed rear yard is contrary to ZR 23-47 Minimum required: 30'-0" Proposed 24'-1"
5. Proposed side yards are contrary to ZR-461"; 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 floor area, open space ratio, lot coverage, rear yard and side yards, contrary to ZR §§ 23-141, 23-47, and 23-461; and

WHEREAS, a public hearing was held on this application on January 15, 2008, after due notice by publication in *The City Record*, with a continued hearing on February 12, 2008, and then to decision on March 4, 2008; and

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

WHEREAS, the subject site has a lot area of 4,160 sq.

ft., and is occupied by a single-family home with floor area of approximately 1,915 sq. ft. (0.46 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 1,915 sq. ft. (0.46 FAR), to approximately 3,460 sq. ft. (0.83 FAR); the maximum floor area permitted is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide lot coverage of 41.33 percent (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 24'-1" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with widths of 5'-5" and 5'-7" (side yards with a total minimum width of 13'-0" are required); and

WHEREAS, plans submitted by the applicant identify which portions of the existing home would be retained; 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 floor area ratio, open space ratio, lot coverage rear yard, and side yards, contrary to ZR §§ 23-141, 23-47, and 23-461(a), *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 28, 2008"–(15) 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 386 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

# MINUTES

building: a total floor area of 3,460 sq. ft. (0.83 FAR), lot coverage of 41.33 percent, a rear yard with a minimum depth of 24'-1", one side yard with a width of approximately 5'-5" and a second side yard with a width of 5'-7", 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, March 4, 2008.

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## 237-07-BZ

### CEQR #08-BSA-035K

APPLICANT – Sheldon Lobel, P.C., for Foundation for Sephardic Studies, Inc., owner.

SUBJECT – Application October 22, 2007 – Variance (§72-21) to permit the construction of a two-story community facility building to serve as an annex to the Main Building, two lots east of the subject premises. The proposal is contrary to §23-631 (maximum perimeter wall height and required setback) and §25-31 (minimum parking requirement). R5 zoning district in the Ocean Parkway Special Zoning District.

PREMISES AFFECTED – 718 Avenue S, south side of Avenue S, midblock between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, Block 7089, Lot 7, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 10, 2007, acting on Department of Buildings Application No. 302349260, reads, in pertinent part:

“Proposed community facility building within an R5 zoning district in the Ocean Parkway Special District violates:

- (1) perimeter wall height regulations pursuant to ZR 23-631;

- (2) setback regulations pursuant to ZR 23-631; and
- (3) minimum parking requirements pursuant to 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 within the Special Ocean Parkway District, a proposed two-story and cellar Use Group 4 synagogue building, which does not comply with perimeter wall height, setback regulations, and parking requirements for community facilities, contrary to ZR §§ 23-631, and 25-31; and

WHEREAS, a public hearing was held on this application on February 5, 2008, after due notice by publication in *The City Record*, and then to decision on March 4, 2008; and

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

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

WHEREAS, this application is being brought on behalf of Congregation Bnei Yitzhak, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the south side of Avenue S between East 7<sup>th</sup> and East 8<sup>th</sup> Street, and is currently vacant; and

WHEREAS, the proposal provides for a two-story and cellar synagogue building with the following parameters: a perimeter wall and total height of 34'-10" (21'-0" is the maximum permitted perimeter height and 35'-0" is the maximum permitted total height), and no parking spaces (16 are required); with Use Group 4 synagogue use space on the cellar level through second floor; and

WHEREAS, the applicant states that the main Synagogue building is located two lots south of the subject site and that the subject building will serve as an annex; and

WHEREAS, the proposed annex building will have the following program: (1) kitchens and accessory offices in the cellar; and (2) synagogue space on the first and second floors; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue annex: (1) to accommodate religious services for 175 “early risers”, teens/young adults, and women; (2) to provide educational programs for women; and (3) to provide separate space for men and women during religious services; and

WHEREAS, the applicant states that the proposed amount of space would accommodate growth in the congregation of approximately 150 families thereby alleviating overcrowding in the main synagogue; and

WHEREAS, the applicant also states that it is religious tradition to provide separate space for men and women during religious services; 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

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# MINUTES

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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 represents that the zoning district's height and setback parameters create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the Board notes that specifically, the Ocean Parkway Special District requires a community facility at this location to conform to residential bulk regulations requiring a pitched roof above the perimeter wall; and

WHEREAS, the applicant represents that a complying building would restrict the ceiling height of its prayer and assembly space, and

WHEREAS, the applicant further represents that worship space with a high ceiling is critical to Jewish religious practice, thus necessitating the requested waivers of these height and setback provisions; and

WHEREAS, the applicant submitted a letter prepared by a Rabbinical scholar stating that for theological and acoustical reasons, ceiling heights of synagogues throughout the world generally have heights of at least 18 feet; and

WHEREAS, the applicant states that the requested height and setback waivers enable the Synagogue to have an open second floor worship space with a ceiling height of nearly 18'-0", and

WHEREAS, the applicant further states that the program requirements cannot be accommodated by an enlargement to the main synagogue building; and

WHEREAS, the main building was designed to be contextual with the surrounding area; an enlargement would create a building that was inconsistent in scale; and

WHEREAS, an addition to the main building would also require substantial demolition and reconstruction which would consequently disrupt the worship schedule of the congregants; 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 applicant provided a diagram indicating that five other sites within a 400' radius of the subject site along Avenue S are occupied by community facility uses; and

WHEREAS, the applicant also states that the requested height and setback waivers enable the building's height to fit into the context of the neighborhood; and

WHEREAS, the radius diagram and photographs submitted by the applicant indicate that the subject site abuts a four-story multiple dwelling and that two sites directly across from the site on Avenue S are occupied by four-story multiple dwellings, all of which equal or exceed the height of the proposed building; and

WHEREAS, the Board notes that Avenue S is a wide street with a width of 80'-0"; and

WHEREAS, as to traffic impact and parking, a submission by applicant indicated that approximately 70 percent of the congregants lived within three-quarters of a mile from the premises and that another 20 percent lived within two miles of the Synagogue; and

WHEREAS, the applicant represents that traffic impact would be minimal as congregants are close enough to walk to services, and are not permitted to drive to worship services on religious holidays, Fridays, or Saturdays; 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 notes that the floor area is significantly below the maximum permitted, and the rear yard, front yard, and side yards meet or exceed the minimum requirements of the district;

WHEREAS, the Board 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 Section 617.2(ak) 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. 08BSA035K, dated January 7, 2008; 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;

# MINUTES

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 Ocean Parkway District, a proposed two-story and cellar Use Group 4 synagogue, which does not comply with perimeter wall height, setback regulations, and parking requirements for community facilities, contrary to ZR §§ 23-631, 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 February 29, 2008" – Seven (7) 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 street wall and total building height of 34'-10";

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 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, March 4, 2008.

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## 263-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aliza Goldbrenner and Isaac Goldbrenner, owners.

SUBJECT – Application November 14, 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 (§23-461(a)); and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1169 East 21<sup>st</sup> Street, East 21<sup>st</sup> Street between Avenue J and Avenue K, Block 7603, Lot 29, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 16, 2007, acting on Department of Buildings Application No. 310017433, 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 23-461(a).
  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, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on February 5, 2008, after due notice by publication in *The City Record*, and then to decision on March 4, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 21st Street, between Avenue J and Avenue K; and

WHEREAS, the subject site has a lot area of 5,000 sq. ft., and is occupied by a single-family home with floor area of 3,123 sq. ft. (0.62 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 3,123 sq. ft. (0.62 FAR), to approximately 5,022 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 53.6 percent (a minimum of 150 percent

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# MINUTES

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is required); and

WHEREAS, the proposed enlargement will maintain the existing side yards with widths of approximately 3'-9" and 8'-3", respectively (side yards with a total width of 13'-0" are the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-6" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the applicant identified which portions of the existing home would be retained; 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(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 December 20, 2007"-(1) sheet, and "Received February 19, 2008"-(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 584 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT all balconies and porches are subject to DOB approval;

THAT the following shall be the bulk parameters of the building: a total floor area of 5,022 sq. ft. (1.00 FAR), an open space ratio of 53.6 percent, one side yard with a width of 3'-9" and a second side yard with a width of 8'-3", and a rear yard with a minimum depth of 22'-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 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 4, 2008.

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## 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 – 102-10 159<sup>th</sup> Road, south side of 159<sup>th</sup> Road near the intersection of 192<sup>nd</sup> Street and 159<sup>th</sup> Road, Block 14182, Lot 88, Borough of Queens.

## COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for decision, hearing closed.

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## 160-06-BZ

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under §72-21 to permit the proposed one-story and cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to §22-00. R3-1 district.

PREMISES AFFECTED – 2199 (a/k/a 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

## 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 March 18, 2008, at 1:30 P.M., for deferred decision.

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## 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 65<sup>th</sup> Road, southwest corner Yellowstone Boulevard and 65<sup>th</sup> Road, Block 2130, Lot 37, Borough of Queens.

### COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester and David Freire,

For Opposition: Meir Turner.

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for continued hearing.

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## 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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

### COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jacqueline Cigliano.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

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## 278-07-BZ

APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NY Presbyterian Hospital/Trustees of Columbia University, owner.

SUBJECT – Application December 4, 2007 – Variance (§72-21) to permit the erection of three 30 foot high "pylon" signs that would be located at major entrances to a medical center campus. The proposal is contrary to section 22-342. R8 district.

PREMISES AFFECTED – 630 West 168<sup>th</sup> Street, bounded by Broadway, West 165<sup>th</sup> and 168<sup>th</sup> Streets, Riverside Drive, and Fort Washington Avenue, Block 2138, 2139, Lots 1, 15, 80, 85, 30, 40, Borough of Manhattan.

### COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Margery Perlmutter.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 1:30 P.M., for decision, hearing closed.

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## 285-07-BZ

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

SUBJECT – Application December 17, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a seven-story commercial building. The proposal is contrary to section 32-10. C5-2 district.

PREMISES AFFECTED – 312 Fifth Avenue, northwest side of Fifth Avenue between West 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 833, Lot 44, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –



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# MINUTES

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

**ACTION OF THE BOARD** – Laid over to April 1,  
2008, at 1:30 P.M., for decision, hearing closed.

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**11-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for  
Audrey Grazi and Ezra Grazi, owners.

SUBJECT – Application January 4, 2008 – Special Permit  
 (§73-622) for the enlargement of an existing single family  
dwelling. This application seeks to vary open space and  
floor area (23-141); side yards (23-461) and rear yard (23-  
47) in an R-2 zoning district.

PREMISES AFFECTED – 3573 Bedford Avenue, Bedford  
Avenue between Avenue N and Avenue O, Block 7679, Lot  
23, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to April 1,  
2008, at 1:30 P.M., for continued hearing.

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**16-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Isaiah Florence,  
owner.

SUBJECT – Application January 15, 2008 – Special Permit  
 (§73-622) for the enlargement of an existing single family  
dwelling. This application seeks to vary open space and  
floor area (23-141(a)); side yards (23-461) and rear yard  
(23-47) in an R-2 zoning district.

PREMISES AFFECTED – 2614 Avenue L, between East  
26<sup>th</sup> and East 27<sup>th</sup> Streets, Block 7644, Lot 46, Borough of  
Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to April 1,  
2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:40 P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 11

March 20, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

**CHRISTOPHER COLLINS**, *Vice-Chair*

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

**Roy Starrin**, *Deputy Director*

**Margaret P. Stix**, *Counsel*

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| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                  |     |
|----------------------------------|-----|
| DOCKET .....                     | 168 |
| <b>CALENDAR</b> of April 1, 2008 |     |
| Morning .....                    | 169 |
| Afternoon .....                  | 170 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, March 11, 2008**

Morning Calendar .....171

**Affecting Calendar Numbers:**

|                    |   |
|--------------------|---|
| 824-61-BZ          | 200-266 East 66 <sup>th</sup> Street, Manhattan |
| 50-92-BZ, Vol. II  | 1282 Shakespeare Avenue, Bronx                  |
| 739-76-BZ, Vol. II | 212-95 26 <sup>th</sup> Avenue, Queens          |
| 265-98-BZ, Vol. II | 950 Glenmore Avenue, Brooklyn                   |
| 9-00-BZ, Vol. II   | 4420 15 <sup>th</sup> Avenue, Brooklyn          |
| 120-01-BZ          | 134-02 Cross Bay Boulevard, Queens              |
| 2-07-A thru 5-07-A | 3212/3214/3216/3218 Tiemann Avenue, Bronx       |
| 138-07-A           | 614 West 138 <sup>th</sup> Street, Manhattan    |
| 267-07-A           | 49 W. Market Street, Queens                     |
| 290-07-A           | 10 Clinton Walk, Queens                         |

Afternoon Calendar .....174

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 48-06-BZ  | 420 Morris Park, Bronx                      |
| 78-07-BZ  | 2515 McDonald Avenue, Brooklyn              |
| 730-72-BZ | 2515 McDonald Avenue, Brooklyn              |
| 193-07-BZ | 3591 Bedford Avenue, Brooklyn               |
| 286-07-BZ | 129-01 Merrick Boulevard, Queens            |
| 221-07-BZ | 165 Lenox Avenue, Manhattan                 |
| 227-07-BZ | 1595 Canarsie Road, Brooklyn                |
| 281-07-BZ | 1960 East 4 <sup>th</sup> Street, Brooklyn  |
| 9-08-BZ   | 555 Foster Road, Staten Island              |
| 13-08-BZ  | 34-42 Charlton Street, Manhattan            |
| 14-08-BZ  | 1958 East 13 <sup>th</sup> Street, Brooklyn |

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# DOCKET

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New Case Filed Up to March 11, 2008  
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**50-08-BZ**

265 McKinley Avenue, Between Grant Avenue and Eldert Lane, Block 4175, Lot(s) 1, Borough of **Brooklyn, Community Board: 5**. Special Permit (73-30) to allow a non-accessory radio tower.  
-----

**51-08-BZ**

511 Avenue R, At Kings Highways & Ocean Parkway., Block 6681, Lot(s) 394, Borough of **Brooklyn, Community Board: 15**. Variance to legalize enlargement of a synagouge, contary to bulk regulations.  
-----

**52-08-BZ**

3935 Bedford Avenue, East side of Bedford Avenue., Block 6811, Lot(s) 72, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family residence  
-----

**53-08-BZ**

300 Soundview Avenue, Intersection of Soundview Avenue, White Plains Road and O'Brien Avenue., Block 3474, Lot(s) 1, Borough of **Bronx, Community Board: 9**. Special Permit (73-30) to allow a non-accessory radio tower.  
-----

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

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# CALENDAR

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**APRIL 1, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 1, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **34-99-BZ II**

**APPLICANT** – Rothkrug, Rothkrug & Spector, LLP for Ruach Chaim Institute, owner.

**SUBJECT** – Application March 14, 2008 – Extension of Time to Complete Construction of a (UG4) community use facility (Yeshiva) in an R-2 zoning district which expired on February 27, 2005.

**PREMISES AFFECTED** – 1189 East 29<sup>th</sup> Street, a/k/a 2901 Avenue I, North east corner of East 29<sup>th</sup> Street and Avenue L, Block 7629, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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### **85-02-BZII**

**APPLICANT** – Mothiur Rahman, for Alan G. Markopoulos, owner; G H Parking, lessee.

**SUBJECT** – Application February 20, 2008 – Extension of Term of a previously granted variance (§72-21) for the operation of a (UG8) parking lot in an R-7 zoning district which expired on February 4, 2008.

**PREMISES AFFECTED** – 850 East 181<sup>st</sup> Street, south side of East 181<sup>st</sup> Street and east side of Crotona Parkway, Block 3119, Lot 16, Borough of Bronx.

**COMMUNITY BOARD #16BX**

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### **306-05-BZY thru 308-06-BZY**

**APPLICANT** – New York City Board of Standards and Appeals

**OWNER:** Stuart A. Klein, for Manuel Scharf, owner.

**SUBJECT** – Application October 13, 2005 – Application to consider dismal for lack of prosecution.

**PREMISES AFFECTED** – 202/204/204A/206/206A Beach 3 Street, Block 15601, Lot 34, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **289-06-BZ**

**APPLICANT** – New York City Board of Standards and Appeals.

**OWNER** – Endy Realty LLC

**SUBJECT** – Application October 30, 2006 – To consider dismissal for lack of prosecution – variance to allow a two-family home, contrary to bulk regulations.

**PREMISES AFFECTED** – 4025 Laconia Avenue, between East 228<sup>th</sup> Street and East 227<sup>th</sup> Street, Block 4874, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #1SI**

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## **APPEALS CALENDAR**

### **15-08-A**

**APPLICANT** – Gerald J. Caliendo, R.A., AIA, for Joseph Cohen, owner.

**SUBJECT** – Application January 15, 2008 – Proposed construction of a two story- two family dwelling not fronting a legally mapped street contrary to Article 3, General City Law Section 36. R4A zoning district.

**PREMISES AFFECTED** – 3229 North Chestnut Drive, west side of North Chestnut Drive and North Oak Drive, Block 4604, Lot 40, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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### **17-08-A**

**APPLICANT** – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Virginia Peterson, lessee.

**SUBJECT** – Application January 16, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to General City Law Section 36 and the upgrade of an existing private disposal system is contrary to the Department of Buildings policy.

**PREMISES AFFECTED** – 130 Reid Avenue, west side of Reid Avenue, 135' north of Thetford Lane, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **18-08-A**

**APPLICANT** – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Katherine & Brian Roarty, owners.

**SUBJECT** – Application January 18, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of the existing disposal system partially in the bed of a service road is contrary to Department of Buildings Policy. R4 Zoning District.

**PREMISES AFFECTED** – 15 Jamaica Walk, Jamaica Walk, 203.4' south of Oceanside Avenue, Block 16350, Lot 406, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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**APRIL 1, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 1, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**174-07-BZ**

APPLICANT – Carl A. Sulfaro, Esquire, for David Oil Corporation, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application June 28, 2007 – Special Permit (§73-211) Proposed reconstruction of an existing Auto Service Station with new metal canopy, new fuel tanks, pumps, new accessory convenience store, located in a C2-3/R7-A zoning district.

PREMISES AFFECTED – 1925 Coney Island Avenue, a/k/a 1935 Coney Island Avenue, Northeast corner of Avenue P. Block 6758, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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**189-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.

SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§ 22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**21-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Pilot Realty Co. c/o Sackman Enterprises, owner; TSI Morris Park LLC dba New York Sports Club, lessee.

SUBJECT – Application January 30, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of a two-story commercial building. The proposal is contrary to section 42-10. M1-1 district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, westerly side of Bronxdale Avenue, 675' southerly of Van Nest Avenue, Block 4042, Lot 200, Borough of Bronx.

**COMMUNITY BOARD #11BX**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 11, 2008  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**824-61-BZ**

APPLICANT – Vincent L. Petraro, PLLC, for Thomas E. Quinn, owner.

SUBJECT – Application November 16, 2007 – Extension of Term allowing the use of surplus parking spaces for transient parking within a multiple dwelling presently located in a C1-9/R8B zoning district granted by the Board pursuant to Section 60 (1d) of the Multiple Dwelling Law.

PREMISES AFFECTED – 200-266 East 66<sup>th</sup> Street, block bounded by East 66<sup>th</sup>, East 65<sup>th</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Avenues, Block 1420, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Steven Simich.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of the term for a previously granted variance for a transient parking garage, which expired on March 3, 2008; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, and then to decision on March 11, 2008; and

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

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

WHEREAS, the subject site occupies an entire block bounded by East 65<sup>th</sup> Street, East 66<sup>th</sup> Street, Second Avenue, and Third Avenue; and

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

WHEREAS, the site is located partially within an R8B zoning district, partially within a C1-9 zoning district, and partially within a C2-8 zoning district; and

WHEREAS, the cellar is occupied by a 225-space accessory garage; and

WHEREAS, on November 8, 1961, the Board granted a

variance, under the subject calendar number, to permit a maximum of 149 surplus parking spaces to be used for transient parking for a term of 21 years; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted a ten-year extension of term, to expire on March 3, 2008; 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 *reopens*, and *amends* the resolution having been adopted on November 8, 1961, 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 March 3, 2008, to expire on March 3, 2018; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT this term shall expire on March 3, 2018;

THAT all residential leases and offering plans 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."

(Alt. No. 611/65)

Adopted by the Board of Standards and Appeals, March 11, 2008.

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**50-92-BZ II**

APPLICANT – Walter T. Gorman, P.E. for Higinio Caballero, owner.

SUBJECT – Application December 5, 2007 – Extension of Term (§72-01 and §72-22) to reopen the variance for a (UG8) public parking lot for a period of five years.

PREMISES AFFECTED – 1282 Shakespeare Avenue, Bronx, south east corner of west 169<sup>th</sup> Street, Block 2506, Lot 111, Borough of the Bronx.

**COMMUNITY BOARD #4BX**

# MINUTES

## APPEARANCES –

For Applicant: Patrick Gorman.

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

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a parking lot, which will expire on May 4, 2008; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, and then to decision on March 11, 2008; 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 4, Bronx, recommends approval of this application; and

WHEREAS, the subject premises is located on the southeast corner of Shakespeare Avenue and West 169<sup>th</sup> Street; and

WHEREAS, the site is located within an R7-1 zoning district and is occupied by a parking lot with a total lot area of approximately 12,770.22 sq. ft.; and

WHEREAS, on May 4, 1993, under the subject calendar number, the Board granted a variance to allow the legalization of parking and storage of more than five motor vehicles at the site for a period of ten years; and

WHEREAS, on June 17, 2003, the grant was extended for a term of five years to expire on May 4, 2008; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional five years; and

WHEREAS, the applicant represents that there have not been any changes to the site; 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, dated May 4, 1993, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of five years from the expiration of the prior grant, to expire on May 4, 2013; *on condition* that the use shall substantially conform to the drawings filed with the application marked “Received December 5, 2007”-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 4, 2013;

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 App. No. 210020519)

Adopted by the Board of Standards and Appeals, March 11, 2008.

## 739-76-BZ, Vol. IX

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessees.

SUBJECT – Application January 8, 2008 – Extension of Term of a Special Permit (§73-03) to permit the continued operation of a (UG16) amusement arcade (Peter Pan Games) in a C4-1 zoning district for a term of one year which expired on April 10, 2007 and a waiver of the rules.

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

## APPEARANCES –

For Applicant: Joseph P. Morsellino.

## THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10 A.M., for decision, hearing closed.

## 265-98-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Milford Tile, Incorporated, owner.

SUBJECT – Application November 19, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the operation of an existing contractor's yard for storage, sales and display of tiles with accessory parking (UG17) in an R5 zoning district which expired on November 29, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 22, 2000 and a waiver of rules.

PREMISES AFFECTED – 950 Glenmore Avenue, southwest corner of the intersection of Glenmore Avenue and Crystal Avenue, Block 4210, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

## APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for continued hearing.



# MINUTES

## 9-00-BZ, Vol. II

APPLICANT – Harold Weinberg, P.E., for Beth Jacob Teachers Seminary, owner.

SUBJECT – Application August 10, 2007 – Extension of Time/Waiver-to complete construction and obtain a certificate of occupancy of a variance permitting the erection of one additional story above an existing four story building for use of a girls Yeshiva (UG 3) and Synagogue (UG 4) located in R6 zoning district.

PREMISES ADDRESS – 4420 15<sup>th</sup> Avenue, Northwest corner of 45<sup>th</sup> Street between 44<sup>th</sup> and 45<sup>th</sup> Streets, Block 5612, Lot 79, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Selutto.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10 A.M., for decision, hearing closed.

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## 120-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Anthony Ariola, owner.

SUBJECT – Application January 23, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the commercial use (UG6) in an existing two-story building, which expired on May 14, 2006, located in an R4 zoning district and a Waiver of the rules.

PREMISES AFFECTED – 134-02 Cross Bay Boulevard, western side of Cross Bay Boulevard, between Gold and Silver Roads, Block 11374, Lot 134, Borough of Queens.

### COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 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 Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10 A.M., for decision, hearing closed.

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## 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 138<sup>th</sup> Street, West 138<sup>th</sup> 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 Klein and Lois Penny.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 1, 2008, at 10 A.M., for decision, hearing closed.

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## 267-07-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Deirdre Radtke, lessee.

SUBJECT – Application November 26, 2007 – Reconstruction and enlargement of existing single family dwelling lying in the bed of a mapped street is contrary to General City Law Section 35. The upgrade of an existing private disposal system partially in the bed of a mapped street is contrary to General City Law Section 35 and Buildings Department Policy. R4 Zoning District.

PREMISES AFFECTED – 49 W. Market Street, south side W. Market Street at intersection of mapped Bayside Drive, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

THE VOTE TO CLOSE HEARING –

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

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# MINUTES

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Negative:.....0  
**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for decision, hearing closed.  
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## 290-07-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Mary Jean Farrell-Halliday, lessee.

SUBJECT – Application December 27, 2007 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to Section 35 GCL, not fronting on a legally mapped street, contrary to Section 36 GCL and the proposed upgrade of an existing private disposal system located within the bed of a mapped street contrary to Buildings Department Policy. R4 Zoning district.

PREMISES AFFECTED – 10 Clinton Walk, east of Clinton Walk, north of Rockaway Point Boulevard, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for decision, hearing closed.  
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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, MARCH 11, 2008 1:30 P.M.

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

APPEARANCES – None.

**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, March 11, 2008.  
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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 – None.

**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, March 11, 2008.  
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# MINUTES

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## 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 – None.

**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, March 11, 2008.

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## 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** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 13, 2007, acting on Department of Buildings Application No. 310043388, reads in pertinent part:

- “1. Floor area is contrary to ZR 23-141(a).
2. Open space ratio is contrary to ZR 23-141(a).
3. Side yard requirements are contrary to ZR 23-461(a).
4. Rear yard requirement 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, open space ratio and side and rear yards, contrary to ZR §§ 23-

141(a), 23-461(a), and 23-47; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, with continued hearings on January 15, 2008 and February 12, 2008, and then to decision on March 11, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue N and Avenue O; 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 approximately 2,166 sq. ft. (0.54 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 2,166 sq. ft. (0.54 FAR), to 3,419 sq. ft. (0.855 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed open space ratio is 75 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 4’-3” (a minimum width of 5’-0” is required) and a complying side yard of 11’-11”;

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-½” (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 clearly note the amount of attic space that would count as floor area; and

WHEREAS, further, the Board stated that it would request that DOB confirm that the perimeter wall height and setback comply with zoning district requirements; and

WHEREAS, the applicant provided revised drawings, which note the amount of attic space that has been counted as floor area and which reflect that the building does not encroach into the sky exposure plane; 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

# MINUTES

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 and side and rear yards, contrary to ZR §§ 23-141(a), 23-461(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 February 25, 2008"–(12) 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 686 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 3,419 sq. ft. (0.855 FAR), a minimum open space ratio of 75 percent, side yards with minimum widths of 4'-3" and 11'-11", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT prior to the issuance of any permit, DOB shall confirm that the perimeter wall height and setback comply with zoning district regulations and that there is not any encroachment into the sky exposure plane;

THAT 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 11, 2008.

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## 286-07-BZ

### CEQR #08-BSA-041Q

APPLICANT – Sheldon Lobel, P.C., for Shauwana Dill-Darby, owner.

SUBJECT – Application December 20, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment in a one-story building. The proposal

is contrary to §32-10. C8-1 district.

PREMISES AFFECTED – 129-01 Merrick Boulevard, north side of Merrick Boulevard between Zoller and Eveleth Roads, Block 12490, Lot 11, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 12, 2007, acting on Department of Buildings Application No. 402652679, reads in pertinent part:

“Proposed use of the premises as a Physical Culture Establishment 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 C8-1 zoning district, the legalization of a physical culture establishment (PCE) in a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, and then to decision on March 11, 2008; and

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

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

WHEREAS, the subject site is located on the north side of Merrick Boulevard, between Zoller Road and Eveleth Road; and

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

WHEREAS, the PCE occupies the entire building, with a floor area of 2,120 sq. ft.; and

WHEREAS, the PCE is operated as a Curves fitness establishment; and

WHEREAS, the applicant represents that the PCE will provide facilities for aerobic exercise and strength-training; and

WHEREAS, the hours of operation are: daily, from 7:00 a.m. to 2:00 p.m. and 3:00 p.m. to 8:30 p.m.; and

WHEREAS, the Board notes that the PCE has operated at the site since October 1, 2006 without a special permit; and

WHEREAS, accordingly, the Board will reduce the term of the special permit for the period of time between the commencement of operations at the site and the date of this grant; and

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# MINUTES

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2(ak); 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. 08BSA041Q, dated January 31, 2008; 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 C8-1 zoning district, the legalization of a physical culture establishment in a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 7, 2008"- (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 a certificate of occupancy shall be obtained within six months of the date of this grant, by September 11, 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, March 11, 2008.

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## **221-07-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP c/o Elise Wagner, Esq., for Kipper Productions, Inc., owner.

SUBJECT – Application September 27, 2007 – Variance (§72-21) to permit a music rehearsal studio on the first and second floors in a two-story vacant building. The proposal is contrary to 32-10. C1-4/R7-2 zoning districts.

PREMISES AFFECTED – 165 Lenox Avenue, west side of Lenox Avenue between West 118<sup>th</sup> and West 119<sup>th</sup> Streets, Block 1903, Lot 32, Borough of Manhattan.

### **COMMUNITY BOARD #10M**

APPEARANCES –

For Applicant: Elise Wagner and Jack Freeman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for decision, hearing closed.

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## **227-07-BZ**

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications Inc., for Mikhail Arabov, owner.

SUBJECT – Application October 1, 2007 – Special Permit (§73-30) to permit approval for a proposed 52 foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 1595 Canarsie Road, Block 8277, Lot 9, Borough of Brooklyn.

### **COMMUNITY BOARD #18BK**

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# MINUTES

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## APPEARANCES –

For Applicant: Robert Gardioso.

For Opposition: Frank R. Seddio, Bryan A. Lee, Linda Lorenzana, Mercedes Narusse, Gasder A. Barrne and Mary Anne Sallustro.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

-----

## 281-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Falah and Victor Falah, owners.

SUBJECT – Application December 12, 2007 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R2X (OP) zoning district.

PREMISES AFFECTED – 1960 East 4<sup>th</sup> Street, west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S, Block 6681, Lot 263, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for continued hearing.

-----

## 9-08-BZ

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§107-42); to vary side yards (§23-462) and front yards (§23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

### COMMUNITY BOARD #3SI

#### APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

-----

## 13-08-BZ

APPLICANT – Bryan Cave LLP/Robert Davis, for Little Red School House, Inc., owner.

SUBJECT – Application January 8, 2008 – Variance (§72-21) to permit an addition at the rear of the existing high school and adjacent buildings to meet the school's programmatic needs. The proposal is contrary to §§ 24-11 (lot coverage) and 24-36 (rear yard). R6/M1-6 districts.

PREMISES AFFECTED – 34-42 Charlton Street (a/k/a 34 Charlton, 40 Charlton, 40-42 Charlton Street) bounded by

Varick and Charlton Streets, Avenue of the Americas and Vandam Street, Block 506, Lots 11 & 12, Borough of Manhattan.

### COMMUNITY BOARD # 2M

#### APPEARANCES –

For Applicant: Robert Davis, Michael Patrick, Ruth Jurgensen and Andrew Bartle.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for continued hearing.

-----

## 14-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

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40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 12

March 27, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                  |     |
|----------------------------------|-----|
| DOCKET .....                     | 181 |
| <b>CALENDAR</b> of April 8, 2008 |     |
| Morning .....                    | 182 |
| Afternoon .....                  | 183 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, March 18, 2008**

Morning Calendar .....184

**Affecting Calendar Numbers:**

|                   |  |
|-------------------|--|
| 16-36-BZ, Vol. II | 1885 Westchester Avenue, Bronx                 |
| 57-95-A           | 473 Central Park West, Manhattan               |
| 58-95-A           | 474/475 Central Park West, Manhattan           |
| 59-95-A           | 476 Central Park West, Manhattan               |
| 119-01-BZ         | 8818 Fourth Avenue, Brooklyn                   |
| 211-03-BZ         | 529-535 48 <sup>th</sup> Avenue, Queens        |
| 42-06-BZ, Vol. II | 56-45 Main Street, Queens                      |
| 67-06-BZ          | 2270 Clove Road, Staten Island                 |
| 710-55-BZ         | 246-02 South Conduit Avenue, Queens            |
| 841-76-BZ         | 651 Fountain Avenue, Brooklyn                  |
| 78-79-BZ          | 671 Fountain Avenue, Brooklyn                  |
| 617-80-BZIV       | 770/780 McDonald Avenue, Brooklyn              |
| 141-96-BZ         | 638-40 Utica Avenue, Brooklyn                  |
| 261-07-A          | 135 North 9 <sup>th</sup> Street, Brooklyn     |
| 264-07-A          | 76 Romer Road, Staten Island                   |
| 162-06-A          | 2852 Faber Terrace, Queens                     |
| 165-06-A          | 2848 Faber Terrace, Queens                     |
| 208-07-BZY        | 74 Grand Avenue, Brooklyn                      |
| 231-07-BZY        |  |
| 232-07-BZY        | 87-85 & 87-87 144 <sup>th</sup> Street, Queens |
| 287-07-A          | 697 West 247 <sup>th</sup> Street, Bronx       |
| 163-07-A          | 11 Cliff Street, Staten Island                 |
| 192-07-A          | 3546 Decatur Avenue, Bronx                     |
| 246-07-A          | 97 Victory Boulevard, Staten Island            |

Afternoon Calendar .....200

**Affecting Calendar Numbers:**

|                |  |
|----------------|--|
| 31-06-BZ       | 102-10 159 <sup>th</sup> Street, Queens          |
| 160-06-BZ      | 2199 (a/k/a 2175) Richmond Avenue, Staten Island |
| 299-06-BZ      | 1976 Crotona Parkway, Bronx                      |
| 311-06-BZ thru |  |
| 313-06-BZ      | 300/302/304 Columbia Street, Brooklyn            |
| 119-07-BZ      | 443 39 <sup>th</sup> Street, Brooklyn            |
| 143-07-BZ      | 6404 Strickland Avenue, Brooklyn                 |
| 173-07-BZ      | 1061 East 21 <sup>st</sup> Street, Brooklyn      |
| 10-08-BZ       | 66-68 Bradhurst Avenue, Manhattan                |
| 100-07-BZ      | 642 Barclay Avenue, Staten Island                |
| 219-07-BZ      | 11 West 36 <sup>th</sup> Street, Manhattan       |
| 248-07-BZ      | 32-15 60 <sup>th</sup> Street, Queens            |
| 250-07-BZ      | 837 Belmont Avenue, Brooklyn                     |
| 258-07-BZ      | 105-55 Horace Harding Expressway, Queens         |



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# DOCKET

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New Case Filed Up to March 18, 2008  
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**54-08-BZ**

3199 Bedford Avenue, East side of Bedford Avenue between Avenue J and K., Block 7607, Lot(s) 15, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.  
-----

**55-08-BZ**

350/58 East Houston Street, North west corner of Avenue C., Block 384, Lot(s) 33, Borough of **Manhattan, Community Board: 3**. Special Permit (11-411 & 73-01(d)) to reinstate variance.  
-----

**56-08-A**

322 Ramona Avenue, South side of Ramona Avenue 140.00' west of Huguenot Avenue., Block 6836, Lot(s) 63 (Tent. 57), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the General City Law.  
-----

**57-08-A**

328 Ramona Avenue, South side of Ramona Avenue; 190.00' west of Huguenot Avenue., Block 6836, Lot(s) 63 (Tent. 54), Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the General City Law.  
-----

**58-08-BZ**

614-632 West 58th Street, Twelfth Avenue, West 57th Street, West 58th Street, Eleventh Avenue., Block 1105, Lot(s) 5,14,19,43, Borough of **Manhattan, Community Board: 4**. Special Permit (73-19) to allow a (UG3A) school.  
-----

**59-08-BZ**

591 Forest Avenue, Premises is situated on the north side of Forest Avenue between Pelton Avenue and Regan Avenue., Block 154, Lot(s) 140, Borough of **Staten Island, Community Board: 1**. Special Permit (73-36) to allow the operation of 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.**

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# CALENDAR

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**APRIL 8, 2008, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 8, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**774-55-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of Term/Waiver of the rules for a previously granted variance to permit the operation of a (UG8) parking lot, for more than five cars, for employees and customers of a bank (Citibank) on the adjoining lot which expired on January 31, 2003 in R-5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue between Olmstead and Castle Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**127-05-BZII**

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

SUBJECT – Application January 30, 2008 – Extension of Term/Extension of Time to obtain C of O (§73-243) to reopen and extend the term for an accessory drive-thru facility at an existing eating and drinking establishment located in a C1-1/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, aka 9220 Church Avenue and 526 East 93<sup>rd</sup> Avenue, southeast side of Church Avenue between East 92<sup>nd</sup> Street and the intersection of East 93<sup>rd</sup> Street and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

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**168-07-A**

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**207-07-A**

APPLICANT – Augusta & Ross, for Davis & Warshow, Inc., owner.

SUBJECT – Application August 22, 2007 – Proposed construction of a four story commercial warehouse located within the bed of mapped street (48<sup>th</sup> St.) contrary to Section 35 of the General City Law Section 35. M3-1 Zoning District.

PREMISES AFFECTED – 48-20 57<sup>th</sup> Avenue, westerly side of 49<sup>th</sup> Street at 57<sup>th</sup> Avenue, Block 2564, Lot 1, Borough of Queens.

**COMMUNITY BOARD #5Q**

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**255-07-A**

APPLICANT – Eric Palatnik, P.C., for Yee Kon LLC, owner.

SUBJECT – Application April 8, 2008 – Proposed construction of a daycare center located within the bed of mapped street (Francis Lewis Boulevard contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard (aka 196-23 42<sup>nd</sup> Ave.) corner of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lots 10 & 12, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**259-07-A**

APPLICANT – George N. Mihalios, Esq., for Hikmat Sultan, owner.

SUBJECT – Application November 8, 2007 – Proposed construction of an eight story mixed use building 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.

PREMISES AFFECTED – 41-97 Parsons Boulevard, Block 5374, Lot 11, Borough of Queens.

**COMMUNITY BOARD #7Q**

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# CALENDAR

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**APRIL 8, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 8, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### **238-07-BZ**

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O’Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

SUBJECT – Application October 23, 2007 – Variance (§ 72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§ 117-21 & § 23-145), lot coverage (§ 117-21 & § 23-145), minimum distance between windows (§ 117-21 & § 23-711(b)) and height and setback (§ 117-21, § 23-633 & § 23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§ 42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180’ west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

**COMMUNITY BOARD # 2Q**

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### **242-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1760 Gleason Properties, LLC, owner.

SUBJECT – Application October 26, 2007 – Variance (§72-21) to construct a two story, two family detached residence with an accessory one car garage and one accessory open parking space on a vacant corner lot which encroaches into a required front yard (23-45) in an R5 zoning district.

PREMISES AFFECTED – 1760 Gleason Avenue, Commonwealth Avenue and Saint Lawrence Avenue, Block 3752, Lot 41, Borough of Bronx.

**COMMUNITY BOARD # 9BX**

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### **36-08-BZ**

APPLICANT – Lewis Garfinkel, R.A., for Antoninette Mizrachi, owner.

SUBJECT – Application February 21, 2008 – 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)); side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1177 East 23<sup>rd</sup> Street, east side

of East 23<sup>rd</sup> Street, 130’ north of Avenue L, Block 7623, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

-----

### **44-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 18, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**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: Adam Rothkrug.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for an extension of  
the term for a previously granted variance for a gasoline  
service station, which expired on November 1, 2007; and

WHEREAS, a public hearing was held on this  
application on December 11, 2007, after due notice by  
publication in *The City Record*, with a continued hearing on  
January 15, 2008, and then to decision on March 18, 2008;  
and

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

WHEREAS, Community Board 9, Bronx, recommends  
approval of this application; and

WHEREAS, the subject premises is located on the  
northwest corner of Westchester Avenue and White Plains  
Road; and

WHEREAS, the site is located within a C2-2 (R5)  
zoning district and is occupied by a gasoline service station  
and an accessory convenience store; and

WHEREAS, the site has a total lot area of 13,500 sq. ft.;  
and

WHEREAS, on April 18, 1950, under the subject  
calendar number, the Board granted a variance to permit the

reconstruction of a gasoline station at the site for a term of 15  
years; and

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

WHEREAS, on May 11, 1999, the Board granted an  
amendment, to permit an extension of term for a period of ten  
years from the expiration of the prior grant, to expire on  
November 1, 2007; and

WHEREAS, most recently, on October 22, 2002, the  
Board granted an extension of time to complete construction  
and obtain a new certificate of occupancy; 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, during the hearing process, the Board noted  
that the southern curb cut on White Plains Road interferes with  
an existing bus stop and that the curb cut may potentially  
compromise pedestrian safety and circulation around the site;  
and

WHEREAS, in response, the applicant revised the site  
plan to reflect the elimination of the southern curb cut on  
White Plains Road, so that one curb cut remains on White  
Plains Road and three remain on Westchester Avenue; and

WHEREAS, based upon its review of the record, the  
Board finds that proposed 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 April 18,  
1950, 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 November 1,  
2017 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 July 17, 2007”-  
(1) sheet and “February 12, 2008”-(2) sheets; and; and *on*  
*further condition*:

THAT this grant shall expire on November 1, 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 all work shall be performed and a new certificate  
of occupancy shall be obtained within one year of this grant,  
by March 18, 2009;

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 App. No. 201108078)

Adopted by the Board of Standards and Appeals,

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# MINUTES

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March 18, 2008.  
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**57-95-A**

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the cellar occupancy in a multiple dwelling, located in an R7-2 zoning district, which expired on November 14, 2005; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996; an Amendment to the resolution to eliminate the condition of term limits and a waiver of the rules.

PREMISES AFFECTED – 473 Central Park West, Central Park West, 64'11" north of 107th Street, Block 1843, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Mitchell Ross.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an amendment to reflect the elimination of the term for a previous grant to permit cellar-level apartments, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

WHEREAS, Community Board 7, Manhattan, 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 subject site is on the west side of Central Park West, between West 107<sup>th</sup> Street and West 108<sup>th</sup> Street; and

WHEREAS, the site is occupied by a five-story residential building; and

WHEREAS, the site is located within an R7-2 zoning district; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 1874-61-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, to permit Class A apartments to be located in the cellar of the subject building; and

WHEREAS, the Board concurrently granted appeals for the adjacent buildings at 474/475 and 476 Central Park West, for the same purpose, under BSA Cal. Nos. 1871-61-A and 1937-61-A; and

WHEREAS, currently, separate applications were filed for these sites under BSA Cal. Nos. 58-95-A and 59-95-A, but they were all heard together; and

WHEREAS, after several extensions of term, the subject grant lapsed and, on November 21, 1995, was reinstated under the subject calendar number, for a term of ten years; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant notes that there have not been any changes since the last approval; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all conditions from the previous grant related to fire safety and egress have been maintained; and

WHEREAS, in response, the applicant provided photographs reflecting the maintenance of these conditions; and

WHEREAS, based upon its review of the record, the Board finds that the requested elimination 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 November 21, 1995, so that, as amended, this portion of the resolution shall read: “to permit the elimination of the term of the grant; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT in the event this building is sold separately from the adjacent buildings at 474/475 and 476 Central Park West, an easement permitting the required access to the street must be provided;

THAT all fire safety measures shall be installed and maintained per the BSA-approved plans and prior approvals;

THAT the above conditions shall be reflected on the certificate of occupancy;

THAT all other 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, by September 18, 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;

THAT the Department of Buildings must 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. 100766672)

Adopted by the Board of Standards and Appeals, March 18, 2008.  
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# MINUTES

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## 58-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the cellar occupancy in a multiple dwelling, located in an R7-2 zoning district, which expired on November 14, 2005; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996; an Amendment to the resolution to eliminate the condition of term limits and a waiver of the rules.

PREMISES AFFECTED – 474/475 Central Park West, Central Park West, 64'11" north of 107th Street, Block 1843, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #7M

#### APPEARANCES –

For Applicant: Mitchell Ross.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an amendment to reflect the elimination of the term for a previous grant to permit cellar-level apartments, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

WHEREAS, Community Board 7, Manhattan, 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 subject site is on the west side of Central Park West, between West 107<sup>th</sup> Street and West 108<sup>th</sup> Street; and

WHEREAS, the site is occupied by a five-story residential building; and

WHEREAS, the site is located within an R7-2 zoning district; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 1937-61-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, to permit Class A apartments to be located in the cellar of the subject building; and

WHEREAS, the Board concurrently granted appeals for the adjacent buildings at 473 and 476 Central Park West, for the same purpose, under BSA Cal. Nos. 1871-61-A and 1874-61-A; and

WHEREAS, currently, separate applications were filed for these sites under BSA Cal. Nos. 57-95-A and 59-95-A, but they were all heard together; and

WHEREAS, after several extensions of term, the subject grant lapsed and, on November 21, 1995, was reinstated under the subject calendar number, for a term of ten years; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant notes that there have not been any changes since the last approval; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all conditions from the previous grant related to fire safety and egress have been maintained; and

WHEREAS, in response, the applicant provided photographs reflecting the maintenance of these conditions; and

WHEREAS, based upon its review of the record, the Board finds that the requested elimination 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 November 21, 1995, so that, as amended, this portion of the resolution shall read: “to permit the elimination of the term of the grant; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT in the event this building is sold separately from the adjacent buildings at 473 and 476 Central Park West, an easement permitting the required access to the street must be provided;

THAT all fire safety measures shall be installed and maintained per the BSA-approved plans and prior approvals;

THAT the above conditions shall be reflected on the certificate of occupancy;

THAT all other 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, by September 18, 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;

THAT the Department of Buildings must 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. 100766681)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

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## 59-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application October 25, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the cellar occupancy in a multiple dwelling, located in an R7-2 zoning district, which expired on November 14, 2005; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996; an Amendment to the resolution to eliminate the condition of term limits and a waiver of the rules.

PREMISES AFFECTED – 476 Central Park West, Central Park West, 64'11" north of 107th Street, Block 1843, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #7M

#### APPEARANCES –

For Applicant: Mitchell Ross.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an amendment to reflect the elimination of the term for a previous grant to permit cellar-level apartments, which expired on November 14, 2005; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

WHEREAS, Community Board 7, Manhattan, 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 subject site is on the west side of Central Park West, between West 107<sup>th</sup> Street and West 108<sup>th</sup> Street; and

WHEREAS, the site is occupied by a five-story residential building; and

WHEREAS, the site is located within an R7-2 zoning district; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 1871-61-A, the Board granted an appeal, pursuant to Section 310 of the Multiple Dwelling Law, to permit Class A apartments to be located in the cellar of the subject building; and

WHEREAS, the Board concurrently granted appeals for the adjacent buildings at 473 and 474/475 Central Park West, for the same purpose, under BSA Cal. Nos. 1874-61-A and 1937-61-A; and

WHEREAS, currently, separate applications were filed for these sites under BSA Cal. Nos. 57-95-A and 58-95-A, but they were all heard together; and

WHEREAS, after several extensions of term, the subject grant lapsed and, on November 21, 1995, was reinstated under the subject calendar number, for a term of ten years; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant notes that there have not been any changes since the last approval; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all conditions from the previous grant related to fire safety and egress have been maintained; and

WHEREAS, in response, the applicant provided photographs reflecting the maintenance of these conditions; and

WHEREAS, based upon its review of the record, the Board finds that the requested elimination 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 November 21, 1995, so that, as amended, this portion of the resolution shall read: “to permit the elimination of the term of the grant; *on condition* that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*:

THAT in the event this building is sold separately from the adjacent buildings at 473 and 474/475 Central Park West, an easement permitting the required access to the street must be provided;

THAT all fire safety measures shall be installed and maintained per the BSA-approved plans and prior approvals;

THAT the above conditions shall be reflected on the certificate of occupancy;

THAT all other 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, by September 18, 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;

THAT the Department of Buildings must 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. 100766690)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

## 119-01-BZ

APPLICANT – Edward H. Odesser, Esq., for Lawrence J. Mass, owner.

SUBJECT – Application January 11, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted variance to permit automotive repairs (light type) which expired on June 12, 2002 in a C4-2A (SBRD) zoning district.

PREMISES AFFECTED – 8818 Fourth Avenue, West side of Fourth Avenue, 120’ north of 89<sup>th</sup> Street, Block 6062, Lot 40, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of the time to obtain a certificate of occupancy for an automotive repair station, which expired on June 12, 2002; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, the subject premises is located on the west side of Fourth Avenue, between 88<sup>th</sup> Street and 89<sup>th</sup> Street, within a C4-2A zoning district within the Special Bay Ridge District; and

WHEREAS, on July 24, 1956, under BSA Cal. No. 86-56-BZ, the Board granted a variance to permit the operation of an automotive repair station at the site; and

WHEREAS, the grant was subsequently extended at various times, but expired in 1992; and

WHEREAS, accordingly, on June 12, 2001, under the subject calendar number, the Board granted the re-establishment of the variance for a term of ten years to expire on June 12, 2011; and

WHEREAS, one of the conditions of the grant was that a certificate of occupancy be obtained within one year of the date of the grant, by June 12, 2002; and

WHEREAS, the applicant represents that due to a change in ownership, a new certificate of occupancy was never obtained; and

WHEREAS, thus, the applicant now requests six months 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 *reopens* and *amends* the resolution, dated June 12, 2001, so that as amended this portion of the resolution shall read: “to grant an extension time to obtain a certificate of occupancy for six months; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT a certificate of occupancy shall be obtained by September 18, 2008;

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. 302315028)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## 211-03-BZ

APPLICANT – Eric Palatnik P.C., for 5-33 48th Avenue Corporation, owner.

SUBJECT – Application December 27, 2007 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the proposed expansion and the conversion of an existing warehouse to residential use, which expires on June 8, 2008, in an M1-4/R7A (LIC) zoning district.

PREMISES AFFECTED – 529-535 48<sup>th</sup> Avenue, north side of 48<sup>th</sup> Avenue between Fifth Street and Vernon Boulevard, Block 30, Lot 9, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the



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# MINUTES

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right to complete a proposed mixed-use building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 12, 2008 after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

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

WHEREAS, the applicant proposes to develop the subject site with a four-story, six-unit mixed-use residential/community facility building, with a medical office on the first floor; and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed development complies with the former R6 zoning district parameters as to floor area, height, and front yard; and

WHEREAS, however, on May 11, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Greenpoint-Williamsburg Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with the floor area, height, and front yard parameters, rendering it a non-complying building; 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, on February 14, 2006, under BSA Cal. No. 145-05-BZY, the Board granted a renewal of NB Permit 301822981-01 (the "NB Permit") subsequent to making the finding that the permit was validly issued by DOB to the owner of the subject premises and was in effect until the Enactment Date; and

WHEREAS, under BSA Cal. No. 145-05-BZY and pursuant to ZR § 11-331, the Board reinstated the NB Permit for one term of six months, to expire on August 14, 2006; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, construction of the foundations was completed within six months of the Board's reinstatement of the permit, but the proposed building was not completed within two years of the Enactment Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the NB Permit pursuant to ZR § 11-332 before the deadline of June 11, 2007 and is therefore requesting to complete construction under the common law; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 Board found that prior to the Enactment Date the owner had completed site preparation, excavation and backfill work to an extent which met the required findings of ZR § 11-331; and

WHEREAS, the applicant states that since the reinstatement of the permit under the prior grant, the owner has completed the entire structure of the building and has nearly completed stucco installation, framing, exterior waterproofing façade and windows; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work 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

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# MINUTES

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WHEREAS, the applicant states that the owner has expended \$917,399, including hard and soft costs and irrevocable commitments, out of \$2,790,975 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the budgeted expenditures included site acquisition costs of \$1,485,280 which, for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost, the Board concludes that the actual construction costs for the proposed construction, both soft and hard, approximate \$1.3 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$561,397 for excavation, foundations, construction of the building structure, framing, exterior waterproofing, façade and window installation; and

WHEREAS, the applicant states that the owner also irrevocably owed an additional \$356,000 in outstanding bills for structural and façade work that was completed; and

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

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

WHEREAS, as to serious loss, 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 \$917,399 associated with project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with pouring a new foundation and cutting back the front of the building to provide a complying front yard; and

WHEREAS, further, as noted by the applicant, extensive demolition of the third and fourth floors, estimated at an additional \$1,561,280, would be necessary for a complying building, further compounding the economic harm to the owner; and

WHEREAS, additionally, the applicant explained the diminution in income that would occur if the floor area and height limits, and front yard requirements were imposed; and

WHEREAS, the applicant represents that a complying development would have no community facility space and fewer units, due to the R6B zoning district's required front yard, floor area and height restrictions; and

WHEREAS, the Board agrees that the need to redesign, the expense of demolition and reconstruction, the limitations of any complying development, and the \$917,399 of actual expenditures and outstanding fees 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, 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.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of NB Permit 301822981-01, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 18, 2008.

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## **42-06-BZ, Vol. II**

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for New York Hospital Queens, owner.

SUBJECT – Application January 17, 2008 – Amendment to zoning variance (§72-21) to allow a two-story addition to previously approved five (5) story hospital building located on the campus of New York Hospital – Queens; contrary to regulations for height & setback (§24-522) and rear yard equivalent (§24-382). R6 district.

PREMISES AFFECTED – 56-45 Main Street, West side of Main Street between 56 and Booth Memorial Avenues, Block 5165, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Calvin Wong.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and amendment of a previously granted variance to permit a two-story vertical enlargement of a five-story hospital building; and

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# MINUTES

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WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; 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, Queens, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Main Street, between 56<sup>th</sup> Avenue and Booth Memorial Avenue within an R6 zoning district; and

WHEREAS, on November 14, 2006, under the subject calendar number, the Board granted a variance to permit the construction of a five-story hospital building containing 97,219 sq. ft. of floor area on the existing campus of New York Hospital; and

WHEREAS, the grant allows a building with a total height of 73'-0" which encroaches into the required setback of 15'-0" at a height of 60'-0" and encroaches 20'-0" into the required rear yard equivalent; and

WHEREAS, the subject site has also been granted an authorization pursuant to ZR § 79-31 by the City Planning Commission (CPC) for location of accessory off-street parking anywhere within a Large Scale Community Facility Plan (N 060304 ZAQ) as well as a Zoning Map amendment (C 060303 ZMQ) changing an R4 to an R6 zoning district (approved by the City Council on October 25, 2006). Additionally, the site across Booth Memorial Avenue to the south ("the garage site") was granted a CPC special permit pursuant to ZR § 74-53 to allow a group parking facility in excess of 150 spaces (372 spaces will be provided). The garage site was also the subject of a BSA variance (41-06-BZ) which granted relief from front and side yard requirements and allowed the construction of stair bulkheads along 141<sup>st</sup> Avenue which are not permitted obstructions. The subject application does not affect these prior approvals.

WHEREAS, the applicant currently seeks to construct a two-story vertical enlargement to the new hospital building containing 40,000 sq. ft. of floor area; the proposed building height is 99'-5 1/2" ; and

WHEREAS, the proposed enlargement will increase the degree of non-compliance to height and setback requirements and maintain the encroachment into the rear yard; and

WHEREAS, the applicant states that the revised building will contain 134,805 sq. ft. of floor area, and the overall FAR on the hospital campus would increase from 2.40 to 2.54; and

WHEREAS, the applicant further states that the building footprint will be maintained and the resulting FAR will be significantly below the maximum FAR of 4.80 allowed for community facility use in an R6 district; and

WHEREAS, the applicant represents that the enlargement is necessary to accommodate its modernization

program which is intended to upgrade all portions of the medical facility to ensure continued modern hospital code compliance; and

WHEREAS, the applicant further represents that the additional two stories will be used as "swing space" to permit other portions of the hospital complex to be upgraded without losing patient capacity; and

WHEREAS, the applicant states that that upon completion of the modernization project, the additional space will allow the hospital to convert two-bed rooms to single-bed rooms in conformance with new standards being adopted by the New York State Department of Health; and

WHEREAS, further, the applicant states that no increase in the previously approved 519-bed capacity of the hospital is contemplated; and

WHEREAS, based upon its review of the record, the Board finds that a two-story vertical enlargement of the hospital building is appropriate with certain conditions as set forth below.

WHEREAS, CPC, as Lead Agency, at the time of the prior approval, conducted an environmental review (CEQR No. 05DCP066Q) of the subject actions before the BSA and of related actions approved by CPC, noted above, and issued a Conditional Negative Declaration on September 25, 2006 ("the CND"). On March 17, 2008, the Department of City Planning (DCP) on behalf of the CPC, upon review of the subject BSA amendment request, issued an approval of a Minor Modification of the CND. DCP found that the proposed modification of the BSA variance would not require any changes to the agreed mitigation measures and would not alter the conclusions of the CND.

*Therefore it is Resolved* that the Board of Standards and Appeals, *reopens*, and *amends* the resolution, dated November 14, 2006, so that as amended this portion of the resolution shall read: "to permit a two-story vertical enlargement of the five-story hospital building; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received March 4, 2008"- twelve (12) sheets; and *on further 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) and/or configuration(s) not related to the relief granted.

(DOB Application No. 402270047)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

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**67-06-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Rodriguez Clove, LLC, owner.

SUBJECT – Application November 9, 2007 – SOC Amendment to reduce the required 48 parking spaces from the prior variance granted on March 20, 2007 to 42 cars. This will allow the compliance with the recent DCP Text Amendment requiring landscaping for parking areas. C2-1/R2 zoning districts.

PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149 & 168, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to reduce the number of required parking spaces on an accessory parking lot for retail use (Use Group 6); and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

WHEREAS, Community Board 2, Staten Island, and a local civic organization recommend disapproval of this application; and

WHEREAS, Council Member Oddo and several local residents recommend approval of the application; and

WHEREAS, the subject site is located on the corner of Clove Road and Woodlawn Avenue, partially within a C2-1 zoning district and partially within an R2 zoning district; and

WHEREAS, the site is occupied by a one-story commercial building occupied by one store (Use Group 6); and

WHEREAS, the site will be operated as a Walgreen’s pharmacy; and

WHEREAS, on March 20, 2007, under the subject calendar number, the Board granted a variance to permit an accessory parking lot on the R2 portion of the site; and

WHEREAS, the variance required 48 parking spaces and certain landscaping to be provided; and

WHEREAS, on November 27, 2007, a Zoning Resolution text amendment was adopted per ZR §§ 25-60, Article III Chapter 6, and 37-90, requiring that landscaping,

including shrubbery and plantings, screen open parking areas of commercial parking lots; and

WHEREAS, the applicant represents that it cannot comply with the new landscaping requirements and also provide the 48 parking spaces required; and

WHEREAS, the applicant seeks to reduce the number of required spaces to 42; and

WHEREAS, the Board notes that a revised site plan submitted by the applicant indicates that compliance with landscaping requirements consequently reduces the number of parking spaces that can be accommodated within the accessory parking lot to 42; and

WHEREAS, the applicant further represents that a parking study performed in connection with the variance application indicated that 42 spaces would be more than sufficient to satisfy projected vehicle demand as well as future demand by either a comparably-sized commercial use; and

WHEREAS, the Board notes that the applicant had initially requested a parking waiver permitting 34 spaces, but revised the plans to eliminate the need for it; and

WHEREAS, the Board notes that no changes are proposed to the building envelope; and

WHEREAS, based upon its review of the record, the Board finds that the requested reopening and amendment to reduce the number of required parking spaces is appropriate with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted March 20, 2007, so that as amended this portion of the resolution shall read: “to reduce the number of required parking spaces to 42, *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 March 14, 2008” - (1) sheet; and *on further condition*:

THAT landscaping, including shrubbery and plantings screening the open parking area, shall comply with the commercial and community facility parking lot regulations per ZR §§ 25-60, Article III Chapter 6, and 37-90;

THAT the above condition 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. 500824593)

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

## 710-55-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Tserpes Realty LLC, owner.

SUBJECT – Application October 19, 2007 – Extension of Term for a gasoline service station (Emporium) which expired on January 10, 2008 in an R3-2 zoning district.

PREMISES AFFECTED – 246-02 South Conduit Avenue, intersection of South Conduit Avenue & 139<sup>th</sup> Street, Block 13622, Lot 5, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Steven Simich.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for continued hearing.

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## 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 – None.

**ACTION OF THE BOARD** – Laid over to May 6y 13, 2008, at 10 A.M., for continued hearing.

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## 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

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for continued hearing.

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## 617-80-BZIV

APPLICANT – Eric Palatnik, P.C., for J & S Simcha, Incorporated, owner.

SUBJECT – Application February 12, 2008 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for an existing non-complying catering establishment (UG9) in an M1-1 zoning district which expired on March 14, 2008.

PREMISES AFFECTED – 770/780 McDonald Avenue, west side of McDonald Avenue, 20’ south of Ditmas Avenue, Block 5394, Lots 1 & 11, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 18, 2008, at 10 A.M., for decision, hearing closed.

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## 141-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Lloyd Coy, owner.

SUBJECT – Application July 19, 2007 – Extension of term/Amendment/Waiver-permitting the operation of a motor vehicle repair shop (use group 16) in an R5/C2-2 zoning district and amend the previously approved variance allowing minor changes to the layout and legalization of existing non-complying signage. The Term of the variance expired May 20, 2007.

PREMISES AFFECTED – 638-40 Utica Avenue, located on the west side of Utica Avenue between Winthrop Street and Clarkson Avenue, Block 4617, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 10 A.M., for continued hearing.

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# MINUTES

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## APPEALS CALENDAR

### 261-07-A

APPLICANT – Krygztot Rostek for Belvedere III LLC, owner.

SUBJECT – Application November 9, 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 (M1-2) zoning district. R6B Zoning District.

PREMISES AFFECTED – 135 North 9<sup>th</sup> Street, north side 125' from east corner of Berry Street, Block 2304, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed mixed-use building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 12, 2008 after due notice by publication in *The City Record*, and then to decision on March 18, 2008; and

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

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

WHEREAS, the applicant proposes to develop the subject site with a four-story, six-unit mixed-use residential/community facility building, with a medical office on the first floor; and

WHEREAS, the subject premises is currently located within an R6B zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the proposed development complies with the former R6 zoning district parameters as to floor area, height, and front yard; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint-Williamsburg Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, because the site is now within an R6B district, the proposed development would not comply with the floor area, height, and front yard parameters, rendering it a non-complying building; 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, on February 14, 2006, under BSA Cal. No. 145-05-BZY, the Board granted a renewal of NB Permit 301822981-01 (the “NB Permit”) subsequent to making the finding that the permit was validly issued by DOB to the owner of the subject premises and was in effect until the Enactment Date; and

WHEREAS, under BSA Cal. No. 145-05-BZY and pursuant to ZR § 11-331, the Board reinstated the NB Permit for one term of six months, to expire on August 14, 2006; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, construction of the foundations was completed within six months of the Board’s reinstatement of the permit, but the proposed building was not completed within two years of the Enactment Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the NB Permit pursuant to ZR § 11-332 before the deadline of June 11, 2007 and is therefore requesting to complete construction under the common law; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that “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

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# MINUTES

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WHEREAS, as to substantial construction, the Board found that prior to the Enactment Date the owner had completed site preparation, excavation and backfill work to an extent which met the required findings of ZR § 11-331; and

WHEREAS, the applicant states that since the reinstatement of the permit under the prior grant, the owner has completed the entire structure of the building and has nearly completed stucco installation, framing, exterior waterproofing façade and windows; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work 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 the owner has expended \$917,399, including hard and soft costs and irrevocable commitments, out of \$2,790,975 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the budgeted expenditures included site acquisition costs of \$1,485,280 which, for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost, the Board concludes that the actual construction costs for the proposed construction, both soft and hard, approximate \$1.3 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$561,397 for excavation, foundations, construction of the building structure, framing, exterior waterproofing, façade and window installation; and

WHEREAS, the applicant states that the owner also irrevocably owed an additional \$356,000 in outstanding bills for structural and façade work that was completed; and

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

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

WHEREAS, as to serious loss, 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 \$917,399 associated with project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with pouring a new foundation and cutting back the front of the building to provide a complying front yard; and

WHEREAS, further, as noted by the applicant, extensive demolition of the third and fourth floors, estimated at an additional \$1,561,280, would be necessary for a complying building, further compounding the economic harm to the owner; and

WHEREAS, additionally, the applicant explained the diminution in income that would occur if the floor area and height limits, and front yard requirements were imposed; and

WHEREAS, the applicant represents that a complying development would have no community facility space and fewer units, due to the R6B zoning district's required front yard, floor area and height restrictions; and

WHEREAS, the Board agrees that the need to redesign, the expense of demolition and reconstruction, the limitations of any complying development, and the \$917,399 of actual expenditures and outstanding fees 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, 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.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of NB Permit 301822981-01, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 18, 2008.

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# MINUTES

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## 264-07-A

APPLICANT – Ramulla Associates Architects, for Benjamin Rusi, owner.

SUBJECT – Application November 15, 2007 – Proposed legalization of an existing single family home not fronting a mapped street contrary to General City Law §36. R1-1(SNAD) (SGMD) Zoning district.

PREMISES AFFECTED – 76 Romer Road, east side of Romer Road, 449.51’ north of Four Corners Road, Block 870, Lot 111, Borough of Staten Island.

### COMMUNITY BOARD #2SI

#### APPEARANCES –

For Applicant: Philip Rampulla.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 21, 2007 acting on Department of Buildings Application No. 510024322, reads in pertinent part:

“The street giving access to the proposed construction of a single family detached building Use Group 1 in an R1-1 Residential 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 February 25, 2008 after due notice by publication in the *City Record*, then to decision on March 18, 2008; and

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

WHEREAS, the application is for the legalization of an existing single-family home constructed on a site that does not front on a final mapped street and therefore requires a waiver of Section 36 of the General City Law; and

WHEREAS, the subject site is flag-shaped, with the majority of the 37,585 sq. ft. rectangular lot situated at the end of a driveway that connects to Romer Road; the flagpole portion of the lot has a width of 12 feet and a length of approximately 190 feet and occupies the driveway; and

WHEREAS, the 12-ft. wide portion of the subject site is adjacent to an approximately 12-ft. wide portion of the 74 Romer Road lot and together they form a driveway, which serves both sites; a third site at 68 Romer Road has access directly onto Romer Road; and

WHEREAS, the subject lot configuration was created prior to 1958, and the subject site has been occupied by a single-family home since then; and

WHEREAS, in October 2004, the applicant secured a work permit to enlarge the existing home; and

WHEREAS, the enlargement plans were modified and the applicant ultimately demolished the existing home and commenced construction of a new one at the site, which the applicant represents complies with all relevant zoning district regulations; and

WHEREAS, accordingly, the alteration permit was replaced by a new building permit, which triggered the requirement for a waiver of the General City Law and the legalization of the new building; and

WHEREAS, the applicant states that if the building had been enlarged to the size of the current proposal, rather than demolished and re-built, no waiver would be required; and

WHEREAS, by letter dated October 15, 2007, the Fire Department stated that it had reviewed the application and inspected the subject site and does not support the application because the road leading to the subject site is less than 30 feet in width; and

WHEREAS, further, the Fire Department states that the presence of two homes with garages and driveways (at 68 and 74 Romer Road) on the left side of the road creates potential obstructions for fire equipment that could block the only entrance to the subject property; and

WHEREAS, the Fire Department states that the requirement for a road with a minimum width of 30 feet in this context is a standard that has been applied for 25 years; and

WHEREAS, in response to the issues raised by the Fire Department, the applicant revised the plans to reflect that (1) the home would be fully sprinklered, (2) a new fire hydrant and 8-in. water main would be installed, and (3) the road to the site would be widened to widths of 22 to 24 feet, including a 12-ft. easement on the adjacent site at 74 Romer Road; and

WHEREAS, the applicant provided a copy of an easement agreement with the adjacent property owner reflecting the 12-ft. right-of-way for the ingress and egress over the southwestern 12 feet of the adjacent premises which results in a 24-ft. wide driveway; and

WHEREAS, further, in support of its claim that sufficient access will be maintained along the road, the applicant submitted a revised site plan indicating that (1) No Parking/Fire Lane signs are to be posted along the length of the road, (2) the utility poles have been relocated to the southernmost edge of the driveway and (3) a frontage space measuring 30 feet by 57 feet will be maintained at the entrance of the subject site; and

WHEREAS, in response, the Fire Department reiterated its request for an access road with a minimum width of 30 feet and its opposition to the application in the absence of such a



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# MINUTES

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road; and

WHEREAS, the Board has reviewed the application and the site conditions and has determined that the measures that the applicant has taken to provide safety from fire (1) include increased safety measures such as full sprinklering and a designated fire hydrant and (2) are consistent with what the Fire Department has approved in recent cases; and

WHEREAS, specifically, the Board notes that (1) the building will be 100 percent sprinklered, (2) a new fire hydrant, less than 250 feet away from the building, and water main connection are proposed, (3) that the frontage space of 30 feet by 57 feet exceeds the minimum required 30 feet by 30 feet, (4) the relocated telephone poles allow for an unobstructed access of 22 to 24 feet, (5) No Parking/Fire Lane signs will be posted, (6) as recently as 2005, the Fire Department accepted a 17-ft. wide access road to a new home that would be fully sprinklered and have a 30 by 30 open frontage area, and (7) the Fire Department stated on record that if the proposal had remained an alteration, rather than a new building, it would not have required the provision of a 30-ft. access road; and

WHEREAS, accordingly, as to the classification of the construction, the Board is not persuaded by the Fire Department's position that if construction at the site were classified as an alteration, a different standard for Fire Department access would be in place than if the construction were classified as a new building; and

WHEREAS, the Board does not agree that the Department of Building's classification of the construction should affect the determination as to what level of fire safety would be required at a residence; and

WHEREAS, further, the Board notes that the Fire Department's requirements in prior Board cases has not been consistent with the purported 25-year policy to not accept anything less than a 30-ft. minimum width; and

WHEREAS, based upon the above, notwithstanding the Fire Department's disapproval, 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 December 21, 2007, acting on Department of Buildings Application No. 510024322, 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 February 26, 2008" - (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 subject home be fully sprinklered;

THAT a new fire hydrant will be installed as reflected on the Board-approved plans;

THAT the telephone poles remain in a location, like that on the Board-approved plans, which does not obstruct the access road;

THAT there be No Parking/Fire Lane signs posted along the driveway;

THAT an easement shall be maintained with the adjacent properties at 74 Romer Road to provide for a 12-ft. unobstructed space along the southwestern lot line of that site;

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

THAT the Department of Buildings and, if required, the City Planning Commission shall review and approve the application, including any relevant Special Natural Area District provisions, prior to the issuance of permits; and

THAT the Department of Buildings must 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 18, 2008.

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## **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 –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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# MINUTES

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## 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 May 6, 2008, at 10 A.M., for continued hearing.

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## 208-07-BZY

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – 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.

PREMISES AFFECTED – 74 Grand Avenue (a/k/a 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Lyra Altman and Matthew Barnett.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for continued hearing.

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## 231-07-BZY & 232-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari & Farhad Nobari, owners.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R6 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144<sup>th</sup> Street, eastside between Hillside Avenue and 88<sup>th</sup> Avenue, Block 9689, Lots 6 & 7, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

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

**ACTION OF THE BOARD** – Laid over to April 1 2008, at 10 A.M., for decision, hearing closed.

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## 287-07-A

APPLICANT – Greenberg Traurig by Jay A. Segal, Esq., for Jack Bendheim, owner.

SUBJECT – Application December 21, 2007 – Proposed construction of an accessory tennis court located partially within the bed of a mapped street (West 248<sup>th</sup> Street) contrary to General City Law Section 35. R1-1 SNAD.

PREMISES AFFECTED – 697 West 247<sup>th</sup> Street, north side of West 247<sup>th</sup> Street between Palisade Avenue and Independence Avenue, Block 5937, Lot 300, Borough of Bronx.

### COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Margo Flug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for decision, hearing closed.

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## 163-07-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Sea Cliff Towers Owners Corp., owner.

SUBJECT – Application June 14, 2007 – Proposed construction of an accessory parking lot located within a portion of the bed of a mapped street (Cliff Street ) contrary to General City Law Section 35 . R3-2 Zoning District.

PREMISES AFFECTED – 11 Cliff Street, northeast corner of Cliff Street and Cliff Court, Block 2833, tent. Lot 65, Borough of Staten Island

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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## 192-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,

SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211<sup>th</sup> street) contrary to Section 35 of the General City Law. R7-1 Zoning District.

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# MINUTES

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PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Anthony Scaduto, FDNY

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 10 A.M., for continued hearing.

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**246-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Stacey Farrelly, owner; Dominick Desimone, lessee.

SUBJECT – Application October 30, 2007 – 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.

PREMISES AFFECTED – 97 Victory Boulevard (aka no number Corson Avenue), west side of Victory Boulevard, 180' south of Corson Avenue, Block 23, Lot 55, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:30A.M.

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# MINUTES

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**REGULAR MEETING  
TUESDAY AFTERNOON, MARCH 18, 2008  
1:30 P.M.**

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

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**ZONING CALENDAR**

**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 – 102-10 159<sup>th</sup> Road, south side of  
159<sup>th</sup> Road near the intersection of 192<sup>nd</sup> Street and 159<sup>th</sup>  
Road, Block 14182, Lot 88, Borough of Queens.

**COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Jordan Most.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough  
Commissioner, dated March 18, 2008, acting on Department  
of Buildings Application No. 401554778, reads in pertinent  
part:

“Proposed UG 9 and UG 16 are contrary to ZR  
Section 32-00”; and

WHEREAS, this is an application under ZR § 72-21, to  
permit, within a C1-2 (R3-1) zoning district, the legalization of  
an auto-body repair shop (Use Group 16) and a dance studio  
(Use Group 9) within portions of a two-story commercial  
building, which is 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*, with continued hearings on  
April 10, 2007, July 10, 2007, August 14, 2007, October 16,  
2007, December 11, 2007, February 5, 2008 and March 4,  
2008, and then to decision on March 18, 2008; and

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

WHEREAS, Community Board 10, Queens,  
recommends approval of this application on the condition

that the term be limited to ten years; and

WHEREAS, the site is located on a through lot, with  
frontage on 159<sup>th</sup> Road and 159<sup>th</sup> Drive (aka Remsen Place),  
between 102<sup>nd</sup> Street and a railroad cut adjacent to John F.  
Kennedy International Airport, within a C1-2 (R3-1) zoning  
district; and

WHEREAS, the site has a depth of 180 feet, a width of  
60 feet, and a lot area of 10,800 sq. ft.; and

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

WHEREAS, the first floor is occupied by an auto-body  
repair shop (Use Group 16) and a deli (Use Group 6); the  
second floor is occupied by a dance studio (Use Group 9); and

WHEREAS, the site complies with all zoning  
regulations except for use on the portions of the site occupied  
by the auto-body repair and dance studio uses; and

WHEREAS, the Board notes that the site does not  
provide the required parking (36 spaces are required and ten  
are provided) but that since the application reflects a  
conversion of a legal pre-existing building, no waiver for  
parking is required; and

WHEREAS, the applicant proposes to maintain the  
existing uses at the site, which have existed for more than 35  
years, and does not propose any changes to the building or its  
operation; 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 historic building is obsolete for a  
conforming use due to (1) its unique configuration designed  
for a movie theater, which includes an extraordinary depth  
without windows along the side or rear walls, and (2) minimal  
street frontage in relationship to building depth, including 60  
feet of frontage on an un-mapped street; and

WHEREAS, as to the building’s configuration, the  
applicant notes that the site was originally designed for a  
drive-in movie theater in approximately 1920, and was later  
converted to an indoor movie house; and

WHEREAS, accordingly, the majority of the building  
has a floor to ceiling height of 20’-7” to accommodate the  
movie house, and is now occupied by the auto-body repair;  
and

WHEREAS, additionally, the applicant notes that the  
building extends for a depth of approximately 129 feet without  
windows; also, there are not any windows along the rear wall  
at the 159<sup>th</sup> Drive frontage; and

WHEREAS, the applicant asserts that the windowless  
double-height space is not marketable for a conforming use;  
and

WHEREAS, the applicant asserts that the limited street  
frontage also limits the potential for dividing the building into  
smaller spaces for conforming uses because it would result in  
very long narrow spaces without windows; and

WHEREAS, the applicant notes that the commercial use  
in the area is limited to smaller local retailers and large space  
for such use would not be marketable, with or without

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# MINUTES

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windows; and

WHEREAS, as to the dance studio, the applicant notes that it occupies the second floor, which is not marketable for conforming commercial use since it does not have a presence at street level and is therefore not attractive to pedestrian traffic; 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 conforming residential/commercial scenario in the existing building, (2) a conforming residential scenario of four single-family homes, and (3) a non-complying three-story residential/commercial building; and

WHEREAS, as to the first conforming scenario, the applicant represents that in order to make the building more marketable, partial demolition would be required to create an interior court to accommodate such use given the absence of windows; and

WHEREAS, the applicant notes that the wall separating the two-story space fronting on 159<sup>th</sup> Road and the double-height one-story space at the rear is so structurally substantial that it could only be demolished at considerable expense; and

WHEREAS, as to the residential scenario, the applicant represents that the existing building would have to be demolished at considerable cost and that because 159<sup>th</sup> Drive is not a mapped street, the applicant would need to seek a waiver of General City Law § 36 in order to have two of the homes front on it; and

WHEREAS, further, the applicant represents that there are not any public sewers in 159<sup>th</sup> Drive, so additional expenditure would be required to extend the sewer down 102<sup>nd</sup> Street or a sewer easement arrangement would be required with nearby property owners; and

WHEREAS, the applicant represents that third scenario of demolishing the existing building and constructing a three-story commercial/residential building with an FAR of 1.25, which would require a bulk waiver (0.5 residential FAR is the maximum permitted in the subject zoning district) would also be infeasible due to the demolition costs and constraints of the apartments due to the unique site conditions; and

WHEREAS, the applicant concluded that none of the three scenarios would result in a reasonable return, due to the unique conditions of the site; 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 use 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 two- and three-story mixed-use buildings with ground floor commercial use; and

WHEREAS, specifically, the nearby commercial uses on 159<sup>th</sup> Road include a laundromat, two hardware/home improvement stores, a liquor store, and a restaurant; and

WHEREAS, additionally, the applicant notes that the site is approximately a block away from John F. Kennedy International Airport, which is within a large M1-1 zoning district and a major AirTrain station is located down the block to the east on 159<sup>th</sup> Road; and

WHEREAS, the applicant notes that the rear entrance to the site on 159<sup>th</sup> Drive does not have any commercial signs and is compatible with nearby uses; and

WHEREAS, further, the applicant notes that the auto-body use, which is limited to body repair and does not include automotive service uses, has operated at the site for more than 30 years and no changes are proposed; and

WHEREAS, the applicant represents that the paint spray room at the site is licensed and operates pursuant to a New York City Department of Environmental Protection (DEP) Triennial Certificate of Operation; and

WHEREAS, the Board notes that the majority of the auto-body use is contained within the large windowless building; and

WHEREAS, further, the Board notes that the primary use of an auto-body repair shop does not generate any significant traffic because patrons drop off their cars, which are generally stored in the building as work is completed on them; and

WHEREAS, the applicant represents that the ground floor is an 8-inch thick concrete and that since there is no demolition proposed, and the site operates pursuant to a spray paint license, the soil will not be disturbed; and

WHEREAS, additionally, the applicant states that the drain is only used in rare instances of flooding; and

WHEREAS, as noted below, the applicant has executed and signed a Restrictive Declaration, which addresses any potential environmental impacts; and

WHEREAS, as to the dance school use, the Board notes that it is compatible with both the commercial and residential uses on 159<sup>th</sup> Road; 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 applicant does not propose (1) any changes to the existing building or (2) any expansion of the non-conforming 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

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# MINUTES

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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; 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. 06BSA057Q, dated February 20, 2008; 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: the October 2006 Environmental Assessment Statement (EAS), the February 2008 EAS, the January 2007 Phase I Environmental Site Assessment (ESA) Report, the June 2007 Phase II Subsurface Workplan and HASP (Health and Safety Plan) and the December 2007 Limited Phase II Subsurface Investigation Report; and

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

WHEREAS, a Restrictive Declaration was executed on February 21, 2008 and recorded on March 12, 2008 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 a C1-2 (R3-1) zoning district, the legalization of an auto-body repair shop (Use Group 16) and a dance studio (Use Group 9) within portions of a two-story commercial building, which is contrary to ZR § 32-00, *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 October 23, 2006" – three (3) sheets and "Received February 20, 2008" – one (1) sheet; and

*on further condition:*

THAT the non-conforming uses at the site shall be limited to Use Group 9 dance studio on the second floor at the 159<sup>th</sup> Road frontage and Use Group 16 auto-body repair on a portion of the first floor at the 159<sup>th</sup> Road frontage and in the one-story portion of the building at the rear, as reflected 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) only;

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

THAT the Department of Buildings must 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 18, 2008.

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## **160-06-BZ**

APPLICANT – Rothkrug Rothkrug and Spector, for Barbara Berman, owner.

SUBJECT – Application July 24, 2006 – Variance under §72-21 to permit the proposed one-story and cellar Walgreens drug store with accessory parking for 24 cars. The proposal is contrary to §22-00. R3-1 district.

PREMISES AFFECTED – 2199 (a/k/a 2175) Richmond Avenue, corner of Richmond Avenue and Travis Avenue, Block 2361, Lots 1, 7, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Superintendent, dated July 7, 2006, acting on Department of Buildings Application No. 500824566, reads in pertinent part:

"Proposed new commercial building Use Group 6 is not permitted as-of-right in a Residential R3-1 Zoning District;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of a one-story commercial building (Use Group 6) to be used as a pharmacy with accessory parking which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on January 8, 2008, after due notice by publication in *The City Record*, with continued hearings on February 5,

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# MINUTES

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2008 and March 4, 2008, and then to decision on March 18, 2008; and

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

WHEREAS, Community Board 2, Staten Island, recommended approval of this application subject to a condition limiting truck deliveries and garbage collection between the hours of 9:00 a.m. and 5:00 p.m.; and

WHEREAS, the proposed building will have one story and a partial cellar with a total floor area of 7,264 sq. ft., an FAR of 0.36, a rear yard of 8'-0", a height of 18'-0" in the front, with a small portion of the entrance at a height of 27'-11 1/2", and a height of 15'-0" in the rear, and 24 parking spaces; and

WHEREAS, the subject premises is located within an R3-1 zoning district on the southeast corner of Richmond Avenue and Travis Avenue, and

WHEREAS, the site has a slightly irregular trapezoidal shape, with approximately 205 feet of frontage on Richmond Avenue extending approximately 96'-5" in depth at its shortest point and 105'-5" in depth at its longest point; and

WHEREAS, the site is currently vacant and has a lot area of 19,955 sq. ft.; and

WHEREAS, the applicant states that the proposed first floor will be occupied by retail use; the partial cellar will be occupied by accessory storage and mechanical equipment; and

WHEREAS, the site will be operated as a Walgreen's pharmacy; and

WHEREAS, as noted above, the proposed building requires a use waiver; 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 development: (1) the site's subsurface rock condition; (2) the site's slope; and (3) the site's location on a heavily-traveled arterial road; and

WHEREAS, as to the subsurface rock condition, the applicant states that a large rock outcropping consisting of shallow apparent bedrock and/or large boulders occupies 25 percent of the land within the proposed building footprint; and

WHEREAS, the applicant represents that construction of any building on the site would require excavation and removal of the rock; and

WHEREAS, the applicant further represents that such excavation would typically require pneumatic or hydraulic hammers at considerable additional cost; and

WHEREAS, as to the site's slope, the applicant states that the site has a change in grade in excess of six feet; and

WHEREAS, the applicant represents that this condition would necessitate the installation of a retaining wall along the rear lot line so that the grade for the remainder of the site can be lowered to a height that would allow access from Richmond Avenue; and

WHEREAS, the applicant further represents that a lowering of the site grade would create additional excavation difficulties due to the site's subsurface rock conditions; and

WHEREAS, the applicant states that the site's topographical conditions impede the development of the site for a conforming residential or community facility use; and

WHEREAS, as to its location, the applicant states that the site is located on an especially wide portion of Richmond Avenue, an eight-lane north/south arterial roadway more than 150'-0" in width; and

WHEREAS, the applicant further states that the site is directly north, south and east of commercial uses; and

WHEREAS, the applicant represents that the heavy incidence of traffic and the preponderance of commercial uses stifle demand for a complying residential development which would front on Richmond Avenue; 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 initially submitted a feasibility study which analyzed two as-of-right alternatives: (i) two one-story community facility buildings with 3,000 square feet of floor area and (ii) a development consisting of eight semi-detached single-family homes totaling 12,472 square feet of floor area; and

WHEREAS, the study concluded that neither conforming scenario would realize a reasonable return; and

WHEREAS, the applicant notes that the feasibility study was submitted before the results of the applicant's topographical investigation were completed, and that if it had reflected the costs associated with installation of a retaining wall and excavating the subsurface rock it would have shown an even lower return for the conforming scenarios; and

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

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

WHEREAS, the applicant represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, indicating that approximately half of the frontage along the east and west sides of Richmond Avenue has been developed for commercial uses; and

WHEREAS, further, photographs submitted by the applicant depict commercial buildings similar in scale to the proposed building located across Richmond Avenue; and

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# MINUTES

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WHEREAS, at hearing, the Board noted that the site plan did not comply with the new landscaping regulations requiring buffering landscaping surrounding the parking area and adjoining lot lines, as would be required if the proposed building were in a commercial district; and

WHEREAS, the applicant responded by submitting a revised site plan which indicates that landscaping, including shrubbery and plantings will screen the open parking area from the adjoining frontage and from Richmond Avenue, in conformance with the new landscaping standards set forth in ZR §§ 25-60, Article III Chapter 6, and 37-90; and

WHEREAS, in response to the concern of the Community Board, at hearing the Board requested that the applicant restrict the hours of pickups and deliveries to and from the site; and

WHEREAS, in response, the applicant stated that it would limit truck deliveries and garbage removal to the hours between 9:00 a.m. and 5:00 p.m.; and

WHEREAS, additionally, the Board directed the applicant to relocate the trash collection site and exterior lighting away from residences and to reduce the height of the building; and

WHEREAS, in response, the applicant submitted revised plans relocating the trash collection site, redirecting exterior lighting, and reducing the building height by three feet in the pharmacy portion at the rear of the building; and

WHEREAS, the Board asked whether the overall height of the building could similarly be reduced; and

WHEREAS, the applicant represented that an 18'-0" foot ceiling was necessary within the general sales area to accommodate truss work supporting the ceiling thereby allowing column-free space within the sales 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, but is the result of the site's pre-existing subsoil condition, slope and heavily trafficked location; and

WHEREAS, the Board notes that the applicant will provide an 8'-0" rear yard and reduced the height of the building at the rear by three feet from what was originally proposed; and

WHEREAS, the Board notes that as a community facility use, a complying building could obstruct the rear yard up to 23'-0" to the rear lot line; 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 Department of City Planning (DCP) through a rezoning application (C 030293 ZMR) reviewed the

EAS (CEQR No. 03DCP033R) and determined that there would not be any adverse environmental impacts due to the proposed project. DCP issued a Negative Declaration on November 17, 2003; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals adopts DCP's Negative Declaration under 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 R3-1 zoning district, the proposed construction of a one-story commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 19, 2008" - two (2) sheets and "Received March 3, 2008" - one (1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 7,264 sq. ft., an FAR of 0.36, a rear yard of 8'-0", a height of 18'-0" in the front and 15'-0" in the rear, and 24 parking spaces, as indicated on the BSA-approved plans;

THAT landscaping, including shrubbery and plantings screening the open parking area, shall comply with the commercial and community facility parking lot regulations set forth in ZR §§ 25-60, Article III Chapter 6, and 37-90;

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 18, 2008.

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## **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



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# MINUTES

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## COMMUNITY BOARD #6BX

APPEARANCE –

In Favor: Daniel Braff.

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for an adjourned hearing.

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## 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 April 8, 2008, at 1:30 P.M., for deferred decision.

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## 119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§ 72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§ 42-10), rear yard (§ 43-26) and parking (§ 44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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## 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 §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 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Moshe Friedman.

For Opposition: Saul Needle of Community Board 18 and Melvin Levy.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 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 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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## 10-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for NYC Partnership Housing Development Fund Company, Inc., owner; TSI West 145<sup>th</sup> LLC, dba New York Sports Club, lessee.

SUBJECT – Application January 4, 2008 – Special Permit (§73-36) to allow the legalization of the existing Physical Culture Establishment on a portion of the cellar level and first floor in a nine-story mixed-use building. The proposal is contrary to section 32-10. C4-4D.

PREMISES AFFECTED – 66-68 Bradhurst Avenue, easterly side of Bradhurst Avenue, easterly of West 145<sup>th</sup> Street, Block 2045, Lot 21, Borough of Manhattan.

## COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Fredrick Becker.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to April 8 2008, at 10 A.M., for decision, hearing closed.

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## 100-07-BZ

APPLICANT – David L. Businelli, for Ekram Tadros, owner.

SUBJECT – Application April 26, 2007 – Variance (§ 72-21) to allow a one-story and cellar community facility

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# MINUTES

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building (medical offices - UG4) to violate front yard (§ 24-34) and side yard (§ 107-464) requirements. R3X district (SRD).

PREMISES AFFECTED – 642 Barclay Avenue, west side Barclay Avenue, south of Hylan Boulevard, Block 6398, Lot 9, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Cesaro Giaquinto.

For Opposition: Anthony Sagaria.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**219-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Eternal Sino Int. Dev. Condo., LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application September 24, 2001 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the second floor of an existing building. Proposal contrary to section 42-13. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36<sup>th</sup> Street, located on the north side of West 36<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 838, Lot 35, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**248-07-BZ**

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for postponed hearing.

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**250-07-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cornerstone Residence, LLC, owner.

SUBJECT – Application November 2, 2007 – Variance (§ 72-21) to allow a two-story, two-family dwelling; contrary to front yard (§ 23-45) and side yard (§ 23-461(a)) requirements. R5 district.

PREMISES AFFECTED – 837 Belmont Avenue, northeast

corner of the intersection of Atkins Avenue and Belmont Avenue, Block 4023, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Adam Rothkrug

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 1:30 P.M., for continued hearing.

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**258-07-BZ**

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

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Carl A. Sulfaro.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:30 P.M.*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 13-14

April 11, 2008

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## DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
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## CONTENTS

DOCKET .....209-210

**CALENDAR** of April 15, 2008

Morning .....211

Afternoon .....211-212

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, April 1, 2008**

Morning Calendar .....213

**Affecting Calendar Numbers:**

|                            |  |
|----------------------------|--|
| 751-60-BZ                  | 105 New Dorp Lane, Staten Island               |
| 739-76-BZ IX               | 212-95 26 <sup>th</sup> Avenue, Queens         |
| 9-00-BZ II                 | 420 15 <sup>th</sup> Avenue, Brooklyn          |
| 289-06-BZ                  | 4025 Laconia Avenue, Bronx                     |
| 66-90-BZ II                | 43-07 Astoria Boulevard, Queens                |
| 16-92-BZ                   | 115 King Street, 78 Sullivan Street, Brooklyn  |
| 34-99-BZ II                | 1189 East 29th Street, Brooklyn                |
| 85-02-BZ II                | 850 East 181 <sup>st</sup> Street, Bronx       |
| 370-02-BZ II               | 56-14 Main Street, Queens                      |
| 373-02-BZ II               | 56-44 Main Street, Queens                      |
| 2-07-A thru 5-07-A         | 3212, 3214, 3216, 3218 Tiemann Avenue, Bronx   |
| 138-07-A                   | 614 West 138 <sup>th</sup> Street, Manhattan   |
| 231-07-BZY &<br>232-07-BZY | 87-85 & 87-87 144 <sup>th</sup> Street, Queens |
| 15-08-A                    | 3229 North Chestnut Drive, Bronx               |
| 17-08-A                    | 130 Reid Avenue, Queens                        |
| 18-08-A                    | 15 Jamaica Walk, Queens                        |

Afternoon Calendar .....226

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 145-07-BZ | 1005 46 <sup>th</sup> Street, Brooklyn          |
| 278-07-BZ | 630 West 168 <sup>th</sup> Street, Manhattan    |
| 285-07-BZ | 312 Fifth Avenue, Manhattan                     |
| 197-05-BZ | 813/815 Broadway, Manhattan                     |
| 68-07-BZ  | 102-48 65 <sup>th</sup> Road, Queens            |
| 109-07-BZ | 33-57 59 <sup>th</sup> Street, Queens           |
| 111-07-BZ | 155 Norfolk Street, Brooklyn                    |
| 158-07-BZ | 184-20 Union Turnpike, Queens                   |
| 174-07-BZ | 1925 Coney Island Avenue, Brooklyn              |
| 189-07-BZ | 40-55 College Point Boulevard, Queens           |
| 218-07-BZ | 110-11 Astoria Boulevard, Queens                |
| 271-07-BZ | 213-219 West 23 <sup>rd</sup> Street, Manhattan |
| 11-08-BZ  | 3573 Bedford Avenue, Brooklyn                   |
| 16-08-BZ  | 2614 Avenue L, Brooklyn                         |
| 21-08-BZ  | 1601 Bronxdale Avenue, Bronx                    |

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# DOCKET

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New Case Filed Up to April 1, 2008

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**60-08-A**

101-20 39th Avenue, Between 102nd and 103rd Streets., Block 1770, Lot(s) 22, Borough of **Queens, Community Board: 3**. Construction within mapped street, contrary to Section 35 of the General City Law.

-----

**61-08-BZ**

439 86th Street, Northerly side of 86th Street 234' 21/2" feet easterly of 4th Avenue., Block 6035, Lot(s) 64, Borough of **Brooklyn, Community Board: 10**. Special Permit (73-36) to allow the operation of a physical culture establishment.

-----

**62-08-A**

398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot(s) 25, Borough of **Staten Island, Community Board: 2**. Construction not fronting on a legally mapped street, contrary to Section 36, Article 3 of the General City Law.

-----

**63-08-BZ**

116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot(s) 23, Borough of **Queens, Community Board: 6**. Special Permit (73-244) to legalize the existing eating, drinking with dancing establishment.

-----

**64-08-A**

74 Grand Avenue, Grand Avenue between Myrtle Avenue and Park Avenue (BQE service road)., Block 1892, Lot(s) 48 & 58, Borough of **Brooklyn, Community Board: 2**. Appeal for vested rights to continue development under the prior zoning.

-----

**65-08-BZ**

120-50 Springfield Boulevard, Northwest corner of 121st Avenue and Springfield Boulevard., Block 12694, Lot(s) 56, Borough of **Brooklyn, Community Board: 12**. Special Permit (73-30) to allow an non-accessory radio tower.

-----

**66-08-BZ**

1497 East 21st Street, East side of East 21st Street between Avenue N and Avenue M., Block 7657, Lot(s) 12, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.

-----

**67-08-BZ**

3842 Bedford Avenue, West side of Bedford Avenue., Block 6807, Lot(s) 22, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home.

-----

**68-08-A**

135-23 82nd Avenue, Fronts 82nd Avenue between 135th Street & 138th Street (a.k.a. Hoffman Avenue)., Block 9669, Lot(s) 30, Borough of **Queens, Community Board: 8**. Appeal for vested rights to continue the development under the prior zoning.

-----

**69-08-BZ**

61-40 Mount Olivet Crescent, Northwest corner of 62nd Avenue and Mount Olivet Crescent., Block 2767, Lot(s) 1, Borough of **Queens, Community Board: 5**. Special Permit (73-30) to allow a non-accessory radio tower.

-----

**70-08-A**

215 Van Name Avenue, North of the corner formed by intersection of Forest Avenue., Block 1194, Lot(s) 42, Borough of **Staten Island, Community Board: 1**. Appeal for a common-law vested right to continue the development under the prior zoning district.

-----

**71-08-A**

215 Van Name Avenue, North of the corner formed by intersection of Forest Avenue., Block 1194, Lot(s) 41, Borough of **Staten Island, Community Board: 1**. Appeal for a common-law vested right to continue the development under the prior zoning district.

-----

**72-08-A**

215 Van Name Avenue, North of the corner formed by intersection of Forest Avenue., Block 1194, Lot(s) 40, Borough of **Staten Island, Community Board: 1**. Appeal for a common-law vested right to continue the development under the prior zoning district.

-----

**73-08-A**

345 Van Name Avenue, Northeast of the corner formed by the intersection of Van Name Avenue and Forest Avenue., Block 1198, Lot(s) 42, Borough of **Staten Island, Community Board: 1**. Appeal for a common-law vested rights to continue development under the prior zoning district.

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# DOCKET

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**74-08-A**

345 Van Name Avenue, Northeast of the corner formed by the intersection of Van Name Avenue and Forest Avenue., Block 1198, Lot(s) 43, Borough of **Staten Island**, **Community Board: 1**. Appeal for a common-law vested rights to continue development under the prior zoning district.

-----

**75-08-A**

345 Van Name Avenue, North of the corner formed by intersection of Forest Avenue., Block 1194, Lot(s) 44, Borough of **Staten Island**, **Community Board: 1**. Appeal for a common-law vested right to continue the development under the prior zoning district.

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**76-08-BZ**

621 Beach 9th Street, South of the corner of Caffney Avenue., Block 1558, Lot(s) 15, Borough of **Queens**, **Community Board: 14**. Variance to allow legalization of the rear yard, contrary to use 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.**

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# CALENDAR

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**APRIL 15, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 15, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**546-70-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, River York Stratford LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3)) of the MDL to permit transient parking for the unused and surplus parking spaces, not to exceed 50 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1377-1391 York Avenue, West side of York Avenue between East 73rd and East 74th Streets, Block 1458, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**590-70-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 85th Realty LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3)) of the MDL to permit transient parking for the unused and surplus spaces not to exceed 23 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1596-1608 York Avenue East side of York Avenue, between East 84th and East 85th Streets, Block 1581, Lot 49, Borough of Manhattan.

**COMMUNITY BOARD # 8M**

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**APPEALS CALENDAR**

**288-07-BZY & 289-07-BZY**

APPLICANT – Anthony J. Tucci, Esq., for LT and Development Corp., owner.

SUBJECT – Application December 21, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on December 2005. R3-X

PREMISES AFFECTED – 421 and 425 Burgher Avenue, bound by Burgher and Mason Avenue, Block 3361, Lots 27 and 25, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**1-08-A thru 8-08-A**

APPLICANT – Rampulla Associates Architects, for Bay Properties, owner.

SUBJECT – Application January 3, 2008 – Proposed construction of eight, one- family homes not fronting a legally mapped street contrary to Section 36 of the General City Law. R1-2 SRD, SGMD.

PREMISES AFFECTED – 65, 69, 73, 77, 83, 87, 91, 93 Giegerich Avenue, west side 154.75' to Minerva Avenue, Block 7792, Lot 242 (ten. 286), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**APRIL 15, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 15, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**269-06-BZ**

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.

SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to section 22-00. R3-2 district (South Richmond Special District).

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**171-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED – 167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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*Jeff Mulligan, Executive Director*

**269-07-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Seaside Enterprises, LLC, owner.

SUBJECT – Application November 26, 2007 – Special Permit (§73-125) to allow a cellar and two (2) story ambulatory diagnostic/treatment care facility (medical offices, UG 4). R3-1 district.

PREMISES AFFECTED – 378 Seaview Avenue, south side of Seaview Avenue, between Mason Avenue and Simpson Street, Block 3380, Lots 65, 68 and 70, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**272-07-BZ**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76<sup>th</sup> Associates, owner; Equinox 76<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar, ground, and second floors in a mixed-use building under construction. The proposal is contrary to section 32-10. C2-7A and C4-6A districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, aka 205 West 76<sup>th</sup> Street, west side of Amsterdam Avenue between West 76<sup>th</sup> and West 77<sup>th</sup> Streets, Block 1168, Lot 30, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**23-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Bokharian Communities Center, Inc., owner.

SUBJECT – Application February 1, 2008 – Variance (§72-21) to permit the construction of a community facility building (Use Group 4). The proposal is contrary to sections 24-10 and 25-30. R1-2 district.

PREMISES AFFECTED – 182-69 80<sup>th</sup> Road, located at the northwest corner of the intersection of 80<sup>th</sup> Road and Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

**COMMUNITY BOARD #8Q**

-----

**54-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Esther Muller, owner.

SUBJECT – Application March 12, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); rear yard (§23-47) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 3199 Bedford Avenue, east side of Bedford Avenue, between Avenue J and K, Block 7607, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, APRIL 1, 2008  
10:00 A.M.**

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

-----  
**SPECIAL ORDER CALENDAR**

**751-60-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 105  
New Dorp Equities, Incorporated, owner.

SUBJECT – Application November 7, 2007 – Extension of  
Term of a previously granted Variance (§72-21) for the  
operation of a gasoline service station, in C2-1 in R3-1 and  
R3X zoning district, which expired on March 23, 2006; an  
amendment for an additional pump island and waiver of the  
rules of procedure.

PREMISES AFFECTED – 105 New Dorp Lane, northern  
corner of New Dorp Lane and New Dorp Plaza, Block 3630,  
Lot 30, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver, a  
reopening, an amendment to the approved plans, and an  
extension of term, which expired on March 13, 2006; and

WHEREAS, a public hearing was held on this  
application on March 4, 2008, after due notice by publication  
in *The City Record*, and then to decision on April 1, 2008; and

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

WHEREAS, Community Board 2, Staten Island,  
recommended approval of the proposal; and

WHEREAS, the site is located on the northwestern  
corner of New Dorp Lane and New Dorp Plaza; and

WHEREAS, the site is within a C2-1 zoning district  
(partially within an R3-1 district and partially within an R3X  
district) and is occupied with an automotive repair/gasoline  
service station with accessory uses; 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  
permitting the construction and maintenance of an 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 21, 1998, the grant  
was amended to extend the term for ten years from the  
expiration of the prior grant on March 23, 1996; and

WHEREAS, the applicant now seeks to extend the term  
of the variance, which expired on March 23, 2006; and

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

WHEREAS, the applicant represents that a timely  
renewal was not sought due to an administrative oversight;  
and

WHEREAS, the Board notes that any extension of term  
would date back to the period of the prior expiration; and

WHEREAS, additionally, the applicant seeks an  
amendment to permit the relocation of a pump island, the  
addition of a pump island, and the replacement of two parking  
spaces with one parking space for handicapped motorists; and

WHEREAS, based upon its review of the record, the  
Board finds that the requested amendment to the plans 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, as adopted February 7, 1961, so  
that as amended this portion of the resolution shall read: “to  
permit the noted amendment to the plans and to extend the  
term for ten years from the expiration of the prior grant, to  
expire on March 23, 2016, *on condition* that any and all work  
shall substantially conform to drawings filed with this  
application marked “Received March 18, 2008”-(5) sheets;  
and *on further condition*:

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

THAT the term shall expire on March 23, 2016;

THAT the site be maintained free of debris and graffiti;

THAT all landscaping be planted and maintained per the  
BSA-approved plans;

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

THAT a certificate of occupancy shall be obtained by  
April 1, 2009;

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. 51007759)

Adopted by the Board of Standards and Appeals, April  
1, 2008.

# MINUTES

## 739-76-BZ, Vol. VIII

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessees.

SUBJECT – Application January 8, 2008 – Extension of Term of a Special Permit (§73-03) to permit the continued operation of a (UG16) amusement arcade (Peter Pan Games) in a C4-1 zoning district for a term of one year which expired on April 10, 2007 and a waiver of the rules.

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

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for a waiver, a reopening, and an extension of the term of the special permit which expired on April 10, 2007; and

WHEREAS, the applicant concurrently seeks (1) a one-year extension to the term of the special permit, which expired on April 10, 2007 and (2) a one-year extension to the term of the special permit, which expires on April 10, 2008; and

WHEREAS, the term of the special permit is limited to one year, therefore two one-year terms are required; and

WHEREAS, in the interest of convenience, the Board heard both applications together, but provided separate resolutions for each request; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, and then to decision on April 1, 2008; and

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

WHEREAS, on February 8, 1977, the Board granted an application permitting, in an existing shopping center, the conversion of a retail store to an amusement arcade for a term of one year; and

WHEREAS, at the time of the initial grant, the location of the arcade was 212-65 26<sup>th</sup> Avenue; in 1997, the Board permitted the relocation of the arcade to the subject premises; and

WHEREAS, based upon the submitted evidence, the Board finds that the instant application is appropriate to grant, with 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, said resolution having been adopted on February 8, 1977, as later amended, 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 year from April 10, 2007 expiring on April 10,

2008; on condition that the use and operation of the site shall substantially conform to the previously approved plans; and on further condition:

THAT the term of this grant shall be for one year from the expiration of the prior grant, expiring on April 10, 2008;

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 the operation of the arcade at the subject premises shall comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

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

(DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, April 1, 2008.

-----

## 739-76-BZ, Vol. IX

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessees.

SUBJECT – Application January 8, 2008 – Extension of Term of a Special Permit (§73-03) to permit the continued operation of a (UG16) amusement arcade (Peter Pan Games) in a C4-1 zoning district for a term of one year which expired on April 10, 2007 and a waiver of the rules.

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

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for a waiver, a reopening, and an extension of the term of the special permit which expires on April 10, 2008; and

WHEREAS, the applicant concurrently seeks (1) a one-year extension to the term of the special permit, which expired on April 10, 2007 and (2) a one-year extension to the term of the special permit, which expires on April 10, 2008; and

WHEREAS, the term of the special permit is limited to

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# MINUTES

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one year, therefore two one-year terms are required; and

WHEREAS, in the interest of convenience, the Board heard both applications together, but provided separate resolutions for each request; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, and then to decision on April 1, 2008; and

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

WHEREAS, on February 8, 1977, the Board granted an application permitting, in an existing shopping center, the conversion of a retail store to an amusement arcade for a term of one year; and

WHEREAS, at the time of the initial grant, the location of the arcade was 212-65 26<sup>th</sup> Avenue; in 1997, the Board permitted the relocation of the arcade to the subject premises; and

WHEREAS, based upon the submitted evidence, the Board finds that the instant application is appropriate to grant, with 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, said resolution having been adopted on February 8, 1977, as later amended, 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 year from April 10, 2008 expiring on April 10, 2009; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, expiring on April 10, 2009;

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 the operation of the arcade at the subject premises shall comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, April 1, 2008.

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## 9-00-BZ, Vol. II

APPLICANT – Harold Weinberg, P.E., for Beth Jacob Teachers Seminary, owner.

SUBJECT – Application August 10, 2007 – Extension of Time/Waiver-to complete construction and obtain a certificate of occupancy of a variance permitting the erection of one additional story above an existing four story building for use of a girls Yeshiva (UG 3) and Synagogue (UG 4) located in R6 zoning district.

PREMISES ADDRESS – 4420 15<sup>th</sup> Avenue, Northwest corner of 45<sup>th</sup> Street between 44<sup>th</sup> and 45<sup>th</sup> Streets, Block 5612, Lot 79, 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, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of the time to complete construction for the enlargement of an existing yeshiva and synagogue building, which expired on September 12, 2004; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, and then to decision on April 1, 2008; and

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

WHEREAS, the subject premises is located on the northwest corner of 15<sup>th</sup> Avenue and 45<sup>th</sup> Street; and

WHEREAS, the site is occupied by a four-story yeshiva (UG 3) and synagogue building (UG 4), located partially within an R6 zoning district and partially within a C1-3(R6) zoning district; and

WHEREAS, on September 12, 2000, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of an existing yeshiva and synagogue building, which did not comply with floor area ratio, front wall height, setbacks, and sky exposure plane; and

WHEREAS, the applicant represents that the building has not been completed due to funding constraints but that the applicant is prepared to complete the building now; and

WHEREAS, the instant application seeks a three-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated September 12, 2000, so that

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# MINUTES

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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 expiration of this grant, to expire on April 1, 2011; *on condition:*

THAT construction be completed by April 1, 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. 301106032 & NB 12/85)

Adopted by the Board of Standards and Appeals, April 1, 2008.

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## 289-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER – Endy Realty LLC

SUBJECT – Application October 30, 2006 – To consider dismissal for lack of prosecution – variance to allow a two-family home, contrary to bulk regulations.

PREMISES AFFECTED – 4025 Laconia Avenue, between East 228<sup>th</sup> Street and East 227<sup>th</sup> Street, Block 4874, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #1SI

APPEARANCES – None.

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

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-411, to permit, on a site within an R4 zoning district, the re-establishment of a variance granted under BSA Cal. No. 136-57-BZ to permit the continued use of the building by commercial use contrary to zoning district regulations; and

WHEREAS, the variance granted under BSA Cal. No. 136-57-BZ, which permitted commercial use (Use Group 6) of the one-story building and accessory parking at the site expired on May 13, 1990; and

WHEREAS, on October 30, 2006, the application was filed, under the subject calendar number; and

WHEREAS, on December 18, 2006, Board staff issued a Notice of Objections; and

WHEREAS, on April 9, 2007, the applicant made a submission, which was not responsive to the Notice of Objections; and

WHEREAS, accordingly, on April 25, 2007, Board staff issued a second Notice of Objections requesting supplemental

information from the applicant; and

WHEREAS, the Board did not receive any additional information; and

WHEREAS, on December 21, 2007, Board staff issued a Dismissal Notice stating that if the applicant failed to fully respond to the Notice of Objections within 45 days, it would schedule a dismissal hearing; and

WHEREAS, the Board did not receive any additional information; and

WHEREAS, accordingly, the Board placed the subject case on the April 1, 2008 dismissal calendar; and

WHEREAS, on February 13, 2008, the Board sent the applicant a letter stating that the case had been placed on the April 1, 2008 dismissal calendar; and

WHEREAS, the applicant failed to appear at the April 1, 2008 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. 289-06-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, April 1, 2008.

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## 66-90-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H. G. Realty Corporation, owner.

SUBJECT – Application January 31, 2008 – Extension of Time to obtain a Certificate of Occupancy, which expired on November 14, 2002, for an Automotive Service Station (Mobil) in an R5 zoning district and a waiver of the rules.

PREMISES AFFECTED – 43-07 Astoria Boulevard, northeast corner of 43<sup>rd</sup> Street, Block 780, Lot 18, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

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## 16-92-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §72-01 and §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.

# MINUTES

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: Sheldon Lobel, Aharon Lieberman and Phaedra Thomas.

For Opposition: Molly Rouzie, Jozsef Keinal, Adam Armstrong, Amy Helfand, Risha Gorig, John Marcidro, Michael Goodall, John Mc Gettrick and other.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for continued hearing.

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## 34-99-BZ, Vol. II

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Ruach Chaim Institute, owner.

SUBJECT – Application March 14, 2008 – Extension of Time to Complete Construction of a (UG4) community use facility (Yeshiva) in an R-2 zoning district which expired on February 27, 2005.

PREMISES AFFECTED – 1189 East 29<sup>th</sup> Street, a/k/a 2901 Avenue I, North east corner of East 29<sup>th</sup> Street and Avenue L, Block 7629, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 10 A.M., for decision, hearing closed.

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## 85-02-BZ, Vol. II

APPLICANT – Mothiur Rahman, for Alan G. Markopoulos, owner; G H Parking, lessee.

SUBJECT – Application February 20, 2008 – Extension of Term of a previously granted variance (§72-21) for the operation of a (UG8) parking lot in an R-7 zoning district which expired on February 4, 2008.

PREMISES AFFECTED – 850 East 181<sup>st</sup> Street, south side of East 181<sup>st</sup> Street and east side of Crotona Parkway, Block 3119, Lot 16, Borough of Bronx.

## COMMUNITY BOARD #16BX

APPEARANCES –

For Applicant: Mothiur Rahman.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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## 370-02-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-14 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 40, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

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## 373-02-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-44 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 55, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 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.

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# MINUTES

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## COMMUNITY BOARD #12BX

### 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated December 7, 2007, acting on Department of Buildings Application Nos. 201091736, 201091745, 201091754, and 201091763, which reads in pertinent part:

“Proposed two family dwelling is in the bed of a 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 October 2, 2007, after due notice by publication in the *City Record*, hearings continued on October 30, 2007, January 29, 2008, February 11, 2008, and March 11, 2008, and then to decision on April 1, 2008; and

WHEREAS, this application requests permission to build four two-story, two- family homes partially in the bed of an unnamed mapped street; and

WHEREAS, by letters dated February 12, 2007 and April 16, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 21, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an Amended Drainage Plan No. 43-Q (28) dated March 30, 1967, which calls for a future 15-in. diameter combined sewer in Unnamed Street between Tiemann Avenue and Gunther Avenue and for a 15-in. diameter combined sewer in Tiemann Avenue between Unnamed Street and Burke Avenue; and

WHEREAS, therefore, DEP requests that the applicant provide a minimum 30-ft. corridor in the bed of Unnamed Street between Tiemann Avenue and Gunther Avenue for the purpose of installation, maintenance and/or reconstruction of the future 15-in. diameter combined sewer; and

WHEREAS, by letter dated May 31, 2007, the applicant has provided a revised site plan showing the distances between the mapped Unnamed Street between Tiemann Avenue and Gunther Avenue, Tiemann Avenue between Unnamed Street and Burke Avenue, and the existing water main and the proposed development; and

WHEREAS, the applicant also requests that he be allowed to amend the Drainage Plan No. 43-Q (28) dated March 30, 1967 instead of having to provide a 30-ft. corridor through the premises as requested by DEP; and

WHEREAS, by letter dated June 4, 2007, DEP reviewed the revised site plan and requires the applicant to show how the sewer connections are planned and the proposed methods of discharge of storm and sanitary flows for the

subject development; and

WHEREAS, on October 17, 2007 and on March 1, 2008 the applicant submitted additional information that addresses the issues raised by DEP regarding the proposed sewers connections and proposed storm and sanitary flow discharge for the premises; and

WHEREAS, by letter dated March 3, 2008, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated May 8, 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; 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, the applicant submitted a revised site plan incorporating additional information about the proposed curbs and sidewalks; and

WHEREAS, by letter dated July 18, 2007, DOT states that it has reviewed the applicant’s revised site plan and the Fire Department’s Letter of No Objection and has no further comments or objections; and

WHEREAS, the Board raised issues regarding the width of the portion of Tiemann Avenue fronting the premises and the impact development on both sides of the street might have on traffic circulation; and

WHEREAS, in response, the applicant provided a map indicating that Tiemann Avenue is established at a width 60 feet on the Final Map (property line to property line) with curb to curb width of 30 feet and a sidewalk width of 15 feet along the northern and southern sides of Wickham Avenue; and

WHEREAS, as part of the Builder Pavement Plan the applicant has proposed a curb to curb width of 34 feet and a sidewalk width of 13 feet; and

WHEREAS, the Board requested that the applicant obtain approval for the street width from the DOT; and

WHEREAS, the applicant submitted a Waiver of Improvements for the development located across Tiemann Avenue from the premises for which a Builders Pavement Plan had already been filed; the Waiver states that 13 feet is the proper curb alignment along Tiemann Avenue; 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 December 7, 2007, acting on Department of Buildings Application Nos. 201091736, 201091745, 201091754, and 201091763, is hereby 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 4, 2008 ”-(1) sheet; that the

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# MINUTES

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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 a Builder's Pavement Plan be filed and approved before DOB issues any permits; and

THAT the Department of Buildings must 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 1, 2008.

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## 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 138<sup>th</sup> Street, West 138<sup>th</sup> 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.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the instant appeal comes before the Board in response to an application by the Department of Buildings (“DOB”) to revoke a certificate of occupancy (“CO”) issued to the subject premises, on the basis that it improperly approved the conversion of single room occupancy (“SRO”) units to class A apartment units; 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 30, 2007, December 11, 2007, January 29, 2008 and March 11, 2008, and then to decision on April 1, 2008; and

WHEREAS, the subject premises is a four-story

building in an R8 zoning district; and

WHEREAS, the subject building is located at 614 West 138<sup>th</sup> Street, Manhattan; and

WHEREAS, according to records of the New York Division of Housing and Community Renewal (“DHCR”), the building currently consists of seven Class A rent stabilized apartments; and

WHEREAS, the legal occupancy of the building, according to a certificate of occupancy issued in 1971 (the “1971 CO”), was “one furnished room” and one apartment on the first story, and three “furnished rooms” on the second, third and fourth stories, for a total of 10 SRO dwelling units; and

WHEREAS, DOB states that § 27-217 of the Administrative Code provides that a change in use and occupancy requires a new certificate of occupancy; and

WHEREAS, DOB further states that § 27-198 of the Administrative Code provides, in part, that prior to the authorization by DOB of a conversion of any SRO units to permanent class A apartments, the applicant for such conversion must obtain a Certificate of No Harassment (“CNH”) from the New York City Department of Housing Preservation and Development (“HPD”), the issuance of which indicates that the owner did not engage in harassment of the SRO unit occupants over a certain period of time (adopted as “Local Law 19”); and

WHEREAS, under §§ 27-217 and 27-198 of the Administrative Code, a CNH would therefore be required before a new certificate of occupancy could be issued; and

WHEREAS, the DOB states that it issued a new certificate of occupancy to the subject building as a class A multiple dwelling on March 6, 2006 (“the Current CO”); and

WHEREAS, DOB later determined that the Current CO had been issued without the filing of a CNH; and

WHEREAS, DOB thus brings the instant appeal seeking to revoke the Current CO as being erroneously issued; and

WHEREAS, the appeal raises three separate but related issues: (1) whether the current CO is legally valid; (2) whether, notwithstanding the legal status of the building, there is sufficient evidence that its actual use changed to a class A multiple dwelling prior to the 1983 adoption of the Administrative Code § 27-198 regarding conversion of SRO buildings; and (3) whether the Board could find it inequitable to revoke the Current CO; and

### Issuance of the Current CO

WHEREAS, DOB states that the owner of the subject building (the “Respondent”) filed five permit applications between 1997 and 2004, including applications seeking to convert SRO units to class A apartments, and had secured a CNH in connection with at least one of these applications, but failed to perform the permitted work before the lapse of the permit(s) and the expiration of the CNH; and

WHEREAS, on February 22, 2005, the Respondent filed with HPD for another CNH; and

WHEREAS, on May 17, 2005, the Respondent filed professionally certified Alteration Type 1 Application No. 104114487 “to obtain [an] Amended Certificate of

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# MINUTES

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Occupancy for existing conditions. No work to be performed;” attached to the application were floor plans showing the layouts of seven class A apartments; no CNH accompanied the application; and

WHEREAS, on June 15, 2005, DOB issued a temporary certificate of occupancy for the subject building, pursuant to Application No. 104114487; and

WHEREAS, in connection with Respondent’s February 22, 2005 filing, HPD made a finding on January 23, 2006 that there was a reasonable cause of harassment and denied the CNH; and

WHEREAS, the Respondent appealed to the Office of Administrative Trials and Hearings (“OATH”) for a decision which would allow issuance of a new certificate of occupancy legalizing the current use; the matter was calendared for a hearing for March 30, 2006; and

WHEREAS, however, notwithstanding the denial of a CNH, DOB issued the Current CO to the subject building on March 6, 2006, as a class A multiple dwelling; and

WHEREAS, at a pre-hearing meeting, it was disclosed that the Current CO had been issued and HPD stated that it therefore lacked jurisdiction to issue a CNH; the Respondent declined to pursue its appeal at OATH and the March 30, 2006 CNH hearing did not occur; and

WHEREAS, in response to an inquiry by HPD concerning the validity of the Current CO, DOB found that the “job folder” assembled in connection with Job # 104114487 did not contain a CNH; and

WHEREAS, Manhattan Borough Commissioner Christopher M. Santulli, P.E. requested production of a valid CNH from the owner on August 12, 2006; and

WHEREAS, upon receiving no response, DOB determined that the issuance of the Current CO without a CNH had been in error and that the building was legally an SRO; thus, the instant appeal was brought to revoke the Current CO; and

WHEREAS, DOB contends that the Current CO was erroneously issued because the application on which it was based included no CNH and, therefore, failed to comply with the requirements of § 27-198 of the Administrative Code regarding alterations to SRO multiple dwellings; and

WHEREAS, DOB further contends that since the permit ought not to have been issued, the remedy for the erroneous approval is revocation of the Current CO; and

## Validity of the Current CO

WHEREAS, as to the validity of the Current CO, DOB argues that the cited provisions of the Administrative Code clearly prohibit it from approving building plans and issuing a permit for the conversion of an SRO multiple dwelling to a class A multiple dwelling, absent a certification by HPD that there has been no harassment of lawful occupants within the 36-month period prior to the date of a submission of an application for a certificate of no harassment; and

WHEREAS, the Respondent states, in an affidavit submitted to the Board, that Job # 104114487 was a “no work” application that disclosed in an attachment (“Schedule A”) that the existing legal use of the subject

building consisted of one apartment and ten furnished rooms and that the proposed use consisted of seven class A apartments; and

WHEREAS, Respondent argues that the Code provisions apply only to a change in use, not to the legalization of an existing use proposed by Job # 104114487, and

WHEREAS, however, the Board finds that the relevant Code provisions do not distinguish between “no work” applications and applications to perform work, and that because Job # 104114487 would result in a new certificate of occupancy, the requirement of a CNH would apply to the filing of the permit application; and

WHEREAS, it is uncontroverted that the Respondent did not file a CNH in connection with Job # 104114487; and

WHEREAS, the Respondent states that it was constrained from filing a CNH in connection with Job # 104114487 through circumstances over which it had no control; and

WHEREAS, the Respondent further states that after an application for a CNH was filed with HPD prior to its filing with DOB of Job # 104114487, the tenants of the subject building commenced a rent strike and attempted to extort a substantial sum of money in exchange for withdrawing allegedly baseless claims of harassment; and

WHEREAS, according to the Respondent, an HPD investigator visited the subject building while litigation was underway and documented harassment which then formed the basis for HPD’s denial of a CNH; and

WHEREAS, the Board finds that the Code provisions requiring submission of a CNH in connection with the legal conversion of SRO units to be unambiguous and not susceptible to interpretation or discretion in meeting their requirements; and

WHEREAS, therefore, even accepting Respondent’s facts as true, a CNH would still be required before a valid certificate of occupancy could be issued; and

WHEREAS, further, the Respondent might have obtained a CNH by pursuing its appeal to OATH, rather than ceasing its application for one subsequent to the issuance of the Current CO; and

WHEREAS, the Respondent further contends that the instant appeal should be denied because it is untimely under the Board’s Rules of Practice and Procedure; and

WHEREAS, §1-07(b) of the Board’s Rules preclude consideration of an appeal that is filed more than thirty days from the date of a final determination by a relevant commissioner; and

WHEREAS, the Respondent contends that the date of the final determination which would serve as the basis of the appeal to be either the issuance of the Current CO on March 8, 2006, or DOB’s letter of August 17, 2006 seeking a copy of the CNH, and that either date precedes the filing of the appeal by at least nine months; and

WHEREAS, DOB, in written and oral submissions to the Board, argues that it can never be time-barred from reviewing a certificate of occupancy (see e.g., Matter of



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# MINUTES

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Parkview Assocs. v. City of New York, 71 N.Y.2d 274, 282 (1988) (mistake does not estop a government agency from correcting its errors) and that therefore § 1-07(b) of the Rules applies only to preclude untimely appeals to DOB determinations filed by affected parties, and

WHEREAS, at hearing, the Respondent stated that the Board's resolution in BSA Cal. No. 353-05-BZY supports its position that DOB's appeal is time-barred; and

WHEREAS, the Board finds that its resolution in BSA Cal. No. 353-05-BZY, a case which addressed the question of whether an owner was time-barred from seeking to renew a building permit and extend the time to complete construction, is entirely irrelevant to question of whether DOB would be time-barred from bringing an appeal; and

WHEREAS, accordingly, the Board finds that the instant appeal is not time-barred; and

## Conversion Prior to 1983

WHEREAS, the Respondent states that while the building may have contained SRO units at one time, the units were reconfigured to class A apartments prior to the adoption of the Administrative Code § 27-198 governing conversions of SRO buildings; and

WHEREAS, the Respondent asserts that when it was purchased in a 1996 mortgage foreclosure sale, the subject building consisted of seven vacant class A apartments, each with a private kitchen and bathroom; and

WHEREAS, the Respondent further states that it was told by the mortgagee that the building had been converted to class A apartments at least ten years before DOB issued the Current CO, and possibly as much as 25 years earlier; and

WHEREAS, the Respondent asserts that it was therefore not responsible for an illegal conversion of the former SRO units to class A apartments; and

WHEREAS, at hearing, DOB testified that, if it could be proven that the property was altered prior to the 1983 adoption of the Code provisions, despite the absence of any issued permits or a valid certificate of occupancy, legalization of this work could be allowed without subjecting the application to the Code requirements, and a CNH would not be needed as part of the job permitting process; and

WHEREAS, at hearing, the Board asked the Respondent whether it could prove that the building was converted to rent stabilized Class A dwelling units prior to 1983 and suggested potential sources of documentation such as: pre-1983 DOB drawings/permits; registration documents from DHCR; documents from the foreclosure sale indicating the status of building use; affidavits from tenants, neighbors, employees, or former managers who could fix the date of conversion from SRO units to class A apartments; and/or HPD "I-Cards" documenting inspections performed at the subject building; and

WHEREAS, in response, the Respondent submitted affidavits from two individuals who lived in the neighborhood from at least 1980, who both attested that renovations resulting in the conversion of the building were completed in 1982; and

WHEREAS, DOB argues that affidavits cannot supersede certificates of occupancy to establish the legal use of a building; and

WHEREAS, the Board agrees that the affidavits are not particularly compelling because of their lack of specificity in the circumstances surrounding the alleged conversion; and

WHEREAS, to bolster an affidavit, the Respondent produced an affiant to testify at hearing who stated that she lived across from the subject building and knew the former building owner during the early 1980's; and

WHEREAS, the neighbor testified that she recalled seeing only the apartment on the first floor; she was therefore unable to corroborate the conversion of the ten SRO units to class A apartments prior to adoption of the relevant Code provisions; and

WHEREAS, through its staff, the Board suggested four additional sources of documentation that could demonstrate that the conversion of the building to Class A apartments took place before the 1983 adoption of the Code provisions; (i) a copy of DOB alteration application ALT 907-81 which is listed by DOB as having been filed with respect to the Subject Building; (ii) Coles Cross-Reference Directory telephone listings at the building; (iii) Con Edison documentation showing separate metering or accounts at the building; and (iv) rent rolls filed with DHCR; and

WHEREAS, the Respondent was unable to submit any additional evidence that the actual use of the building changed to a class A apartment building prior to the 1983 adoption of the Code provisions; and

WHEREAS, the Board has reviewed all the evidence submitted by the Respondent prior to and during the hearing process, and is not persuaded that the actual use changed prior to adoption of § 27-198 of the Administrative Code; and

## Revocation of the Current CO

WHEREAS, DOB contends that revocation is the appropriate remedy to correct the improper issuance of the Current CO; and

WHEREAS, the Respondent argues that revocation is an extreme remedy that would create an illegal occupancy; and

WHEREAS, the Respondent further argues that the illegal occupancy would enable the current rent-stabilized tenants to avoid rent payments; and

WHEREAS, at hearing, the Board asked the Respondent to submit a brief on this issue, but the Respondent declined to do so; and

WHEREAS, the Respondent also asserts that the illegal occupancy created by a revocation of the Current CO would make the building vulnerable to a vacate order; and

WHEREAS, at hearing, DOB testified that the agency would not issue a vacate order based solely on an illegal occupancy; that a vacate order would ensue only in response to a life safety condition –unlikely in this case in that DOB had signed off on the building's safety and construction inspections had not indicated any dangerous condition; and

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# MINUTES

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WHEREAS, the Respondent also contends that the illegal occupancy of the building would trigger a default on mortgages covering the subject building as well as another building; and

WHEREAS, the Respondent claims that this is the case because its mortgage on the subject building contains a provision stating that it will be in default and subject to foreclosure if the occupancy of the building is contrary to law; and

WHEREAS, the Board notes that similar violations are common among New York City buildings and foreclosure for such a reason is rare, if not nonexistent; and

WHEREAS, to avoid the potential enumerated consequences, the Respondent has requested that the Board withhold a decision on the instant appeal pending its submission of another CNH application to HPD; and

WHEREAS, however, DOB contends that permitting the Current CO to remain in place would actually make it impossible to file a CNH application and to legalize the occupancy of the building; and

WHEREAS, DOB states that by law, HPD has no jurisdiction to process an application for a CNH for a building with a certificate of occupancy as a class A multiple dwelling and the Respondent would be unable to apply to and secure a CNH from HPD unless the 1971 CO were reinstated; and

WHEREAS, DOB cites to § 645(e) of the New York City Charter stating that “every certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction, be and remain binding and conclusive upon all agencies and officers of the city”; and

WHEREAS, DOB further notes that the procedures for the legal conversion of SRO units, set forth in §§ 27-2093 and 27-198 of the Administrative Code would therefore be inapplicable to the Subject Building if the Current CO as a class A multiple dwelling remained in place; and

WHEREAS, the Respondent further argues that revocation would be unjustified and inequitable because it has committed no wrong, and that the Board should therefore deny the instant appeal; and

WHEREAS, as an administrative agency, the Board is not empowered to grant equitable relief to the Respondent (see People ex rel. New York Tel. Co. v. Public Serv. Comm., 157 A.D. 156, 163 (3d Dep’t 1913); see also Faymor Development Co. v Board of Standards and Appeals, 45 N.Y.2d 560, 565 (1978)); and

WHEREAS, since the Board lacks the powers of a court acting in equity, it cannot fashion a remedy that ignores the clear, unambiguous requirement of a CNH established by § 27-198 of the Administrative Code, no matter how persuasive the merits; and

WHEREAS, DOB testified that the revocation of the Current CO would reinstate the preexisting certificate of occupancy; and

WHEREAS, the Board therefore rejects the contention that revocation of the Current CO would be an inequitable or

excessive remedy, noting that a revocation merely restores the Respondent to the same position it had before the Current CO was issued; and

*Therefore it is Resolved*, that the subject appeal, insomuch as the Board has determined both that the legal use of the premises is an SRO under Administrative Code § 27-198(a) (6), and, has determined that the record contains insufficient evidence showing that actual use of the subject building changed to Class A apartment prior to its enactment, the Board hereby grants the request by DOB to revoke a certificate of occupancy issued to the subject premises, on the basis that it improperly approved the conversion of single room occupancy (“SRO”) units to class A apartment units.

Adopted by the Board of Standards and Appeals, April 1, 2008.

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## **231-07-BZY & 232-07-BZY**

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari & Farhad Nobari, owners.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R6 zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144<sup>th</sup> Street, eastside between Hillside Avenue and 88<sup>th</sup> Avenue, Block 9689, Lots 6 & 7, Borough of Queens.

## **COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Josh Rinesmith.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331, to renew a building permit and extend the time for the completion of the foundations of a major development under construction; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, with a continued hearing on March 18, 2008, and then to decision on April 1, 2008; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application citing concerns about parking; and

WHEREAS, the provision of parking spaces is not within the Board’s scope of review for an application to vest a building permit; and

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

WHEREAS, the subject site is located on the two

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# MINUTES

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contiguous zoning lots (tentatively Lots 6 and 7, formerly known as Lot 6) located on the east side of 144<sup>th</sup> Street between Hillside Avenue and 88<sup>th</sup> Avenue, and has a combined lot area of 5,000 sq. ft.; and

WHEREAS, Lot 6 corresponds to 87-87 144<sup>th</sup> Street and Lot 7 corresponds to 87-85 144<sup>th</sup> Street; and

WHEREAS, the two lots are the result of a subdivision of a larger preexisting lot; and

WHEREAS, each zoning lot is 25 feet wide by 100 feet deep; and

WHEREAS, each zoning lot is proposed to be developed with a four-story eight-family semi-detached dwelling, for a total of 16 dwelling units (the "Proposed Development"); and

WHEREAS, on August 9, 2007, the Department of Buildings issued NB Permit No. 402614701 for the building on Lot 6 ("Lot 6 Building") and on August 16, 2007 issued NB Permit No. 402614694 for the building on Lot 7 ("Lot 7 Building") (collectively, the "NB Permits");

WHEREAS, when the NB Permits were issued and when construction commenced, the site was within an R6 zoning district; and

WHEREAS, the Proposed Development complies with the former R6 zoning district parameters; specifically for floor area (5,500 sq. ft. was the maximum permitted), FAR (2.2 FAR was the maximum permitted for residential buildings), side yards (no side yards were required), and parking (none was required), for each of the two respective buildings; and

WHEREAS, however, on September 10, 2007 (the "Enactment Date"), the City Council voted to adopt the Jamaica Plan rezoning amendment, which rezoned the site to R5; and

WHEREAS, because the site is now within an R5 zoning district, the Proposed Development would not comply with the new zoning provisions regarding floor area (3,125 s.f. is the maximum permitted), FAR (1.25 FAR is the maximum permitted for residential buildings), side yards (one 8'-0" side yard is required), and parking (parking for 85 percent of the units is required), for each of the two respective buildings; and

WHEREAS, the applicant now applies to the Board to reinstate the NB Permits 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 Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, a threshold issue in this case was the proper categorization of the Proposed Development; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including a "minor development" and a "major development;" and

WHEREAS, a minor development contemplates construction of one building on a single zoning lot which is non-complying under an amendment to the ZR; and

WHEREAS, a major development comprises construction of multiple non-complying buildings on contiguous zoning lots, provided that all the proposed buildings were planned as a unit as evidenced by an approved site plan showing all the buildings; and

WHEREAS, the Proposed Development contemplates construction of two buildings and the applicant has submitted a DOB approved site plan showing that the Proposed Development was planned as a unit, thereby meeting the definition of a major development; and

WHEREAS, however, the applicant initially sought to extend the time to complete the construction of a minor development; and

WHEREAS, the Board accordingly requested that the applicant revise the application to reflect that the Proposed Development is a major 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, pursuant to ZR § 11-331, a major development may be vested upon a showing that excavation was completed and substantial progress was made as to the required foundation for just one of the multiple buildings; and

WHEREAS, the applicant represents that, as of the Enactment Date, excavation was completed and substantial progress was made as to the required foundations for the building on Lot 6; and

## Excavation Work

WHEREAS, more specifically, the applicant claims that work completed on Lot 6 prior to the Enactment Date includes: (1) all the excavation work; (2) all the lagging work; and (3) all the steel pile installation; and

WHEREAS, in support of this statement, the applicant has submitted the following: pile logs prepared by the project engineer; dated photographs of the site showing excavation and shoring; an affidavit from the project developer describing the completed work; dated invoices;

# MINUTES

and copies of cancelled checks; and

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

WHEREAS, based on its review of the evidence, the Board has determined that excavation was completed prior to the Enactment Date; and

## Foundation Work

WHEREAS, as to substantial progress on the foundation, the applicant represents that 81 cubic yards of concrete were poured for the foundation for the Proposed Development between August 29, 2007 and the Enactment Date on September 10, 2007; and

WHEREAS, in support of the contention that 81 cubic yards of concrete were poured prior to the effective date 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 claims that 116 cubic yards of concrete were required for the foundation of the Lot 6 Building and that by the Enactment Date 57 cubic yards had been poured; and

WHEREAS, in support, the applicant has submitted evidence in the form of affidavits from the owners/project managers describing the completed work, a foundation plan marked to indicate the work completed, and photographs; and

WHEREAS, in further support, the applicant has submitted a letter from the project engineer stating that 79.5 percent of the foundation work necessary for the Lot 6 Building had been completed by the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which indicate that 64 percent of the cost of completing the footings and the foundation walls had been incurred as of the Enactment Date; and

## Conclusion

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, thus, the Board concludes that substantial progress had been made on the foundations as of the Enactment Date; and

WHEREAS, because the Board finds that excavation was complete and 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 Nos. 402614694 and 402614701 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 October 1, 2008.

Adopted by the Board of Standards and Appeals, April 1, 2008.

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## **15-08-A**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Joseph Cohen, owner.

SUBJECT – Application January 15, 2008 – Proposed construction of a two story- two family dwelling not fronting a legally mapped street contrary to Article 3, General City Law Section 36. R4A zoning district.

PREMISES AFFECTED – 3229 North Chestnut Drive, west side of North Chestnut Drive and North Oak Drive, Block 4604, Lot 40, Borough of Bronx.

## **COMMUNITY BOARD #12BX**

APPEARANCES –

For Applicant: Sandy Anagnostou.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated December 18, 2007, acting on Department of Buildings Application No. 201125530, reads in pertinent part:

“1. The Construction of a 2 story, 2 family dwelling in an R4A Zoning District facing North Chestnut Drive, which is physically open but is not mapped street, is contrary to General City Law 36; Therefore refer to BSA for their resolution”; and

WHEREAS, a public hearing was held on this application on April 1, 2008, 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 20, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Bronx Borough Commissioner, dated December 18, 2007, acting on Department of Buildings Application No. 201125530, 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 15, 2008”-(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

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# MINUTES

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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 1, 2008.

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## 17-08-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Virginia Peterson, lessee.

SUBJECT – Application January 16, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to General City Law Section 36 and the upgrade of an existing private disposal system is contrary to the Department of Buildings policy.

PREMISES AFFECTED – 130 Reid Avenue, west side of Reid Avenue, 135’ north of Thetford Lane, Block 16350, Lot 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 9, 2008, acting on Department of Buildings Application No. 410043796, reads in pertinent part:

“For the Board of Standard & Appeals Only

A1- The street giving access to the existing building to be altered 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 altered 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

A2- The proposed upgrade of the private disposal system is contrary to the Department of Building policy”; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated, February 8, 2008, the Fire Department states that it has reviewed the subject proposal

and has no objections; and

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

*Therefore it is Resolved* that the decision of the Bronx Borough Commissioner, dated January 9, 2008, acting on Department of Buildings Application No.410043796, 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 16, 2008”-(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, April 1, 2008.

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## 18-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Katherine & Brian Roarty, owners.

SUBJECT – Application January 18, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of the existing disposal system partially in the bed of a service road is contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 15 Jamaica Walk, Jamaica Walk, 203.4’ south of Oceanside Avenue, Block 16350, Lot 406, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 10, 2008, acting on Department of Buildings Application No. 410032334, reads in pertinent part:

# MINUTES

“A1- The street giving access to the existing building to be altered 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 altered 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.

A2- The proposed upgrade of the private disposal system is partially in the bed of a service road contrary to the Department of Building policy”; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated, February 8, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 10, 2008, acting on Department of Buildings Application No.410032334, 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 18, 2008”-(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, April 1, 2008.

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Jeffrey Mulligan, Executive Director

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, APRIL 1, 2008 1:30 P.M.

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

### ZONING CALENDAR

#### 145-07-BZ

#### CEQR #07-BSA-094K

APPLICANT – Akerman Senterfitt/Stadtmauer Bailkin LLP, for Maimonides Research & Development, owner.

SUBJECT – Application June 4, 2007 – Variance (§72-21) to allow the enlargement of an existing building to violate lot coverage requirements (§24-11) for a proposed community facility (medical facility). R6 district.

PREMISES AFFECTED – 1005 46<sup>th</sup> Street, Northeast corner of 46<sup>th</sup> Street and 10<sup>th</sup> Avenue Block 5614, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Calvin Wong.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 30, 2007, acting on Department of Buildings Application No. 301819646, reads in pertinent part:

“Proposed infill addition increases the degree of non-compliance above the first floor with regard to lot coverage and is contrary to ZR 24-11;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, an enlargement to an existing building which does not comply with lot coverage regulations for a proposed community facility (medical facility), contrary to ZR § 24-11; and

WHEREAS, a public hearing was held on this application on February, 26, 2008, after due notice by publication in the *City Record*, and then to decision on April 1, 2008; 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 12, Brooklyn, recommends approval of this application; and

WHEREAS, a local civic organization and certain neighborhood residents provided written and oral testimony in

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# MINUTES

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opposition to this application citing concerns with the expansion of community facility uses in a residential neighborhood; and

WHEREAS, the application is brought on behalf of the Maimonides Research and Medical Foundation (“Maimonides”), a nonprofit medical facility; and

WHEREAS, the site is located on the northeast corner of 46<sup>th</sup> Street and 10<sup>th</sup> Avenue; and

WHEREAS, the site is rectangular and has a lot area of approximately 3,000 sq. ft.; and

WHEREAS, the site is occupied by a vacant four-story multiple dwelling with a central interior courtyard along the side lot line measuring approximately 25’-0” by 11’-8”;

WHEREAS, the building was built in 1920 for and occupied by residential use; and

WHEREAS, Maimonides will occupy the building as its Department of Urology (Use Group 4); and

WHEREAS, the building has a floor area of approximately 9,432 sq. ft. (3.16 FAR); and

WHEREAS, the applicant initially proposed to enlarge the building by a partial infill of the open interior courtyard to permit construction of an elevator and fire stair, which would increase the building footprint area by 299 sq. ft. and raise the lot coverage to 89 percent; and

WHEREAS, the applicant now proposes a partial infill of the open interior courtyard which increases the building footprint by 85.7 sq. ft. and its lot coverage to 82 percent (70 percent is the maximum permitted); and

WHEREAS, the existing building is non-complying as to lot coverage, with lot coverage of 79 percent; the proposed enlargement would thereby increase the degree of non-compliance by three percent; and

WHEREAS applicant represents that the proposed building will not create any new non-compliances except for lot coverage and that the building will still be below the maximum permitted FAR of 4.8; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of Maimonides; and (2) the constraints of the existing building; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of Maimonides which require the requested waivers: (1) the floor plates required for a functional medical facility; (2) a need to make the building handicapped-accessible; and (3) the need to consolidate and expand urology services at a location proximate to the main campus; and

WHEREAS, the applicant represents that devoting a portion of the enclosed courtyard to an elevator to create larger floorplates, improve circulation in the building and allow for handicapped-accessibility will allow it to better accommodate the health care needs of the surrounding community; and

WHEREAS, the applicant states that the proposed building will house its urology services which include inpatient admissions, outpatient surgery and ambulatory

medical care services; and

WHEREAS, the applicant represents that its Department of Urology is presently housed in three separate buildings, leading to inefficiencies in service delivery; and

WHEREAS, the applicant further represents that the Department of Urology services must remain in close proximity to the main campus because its physicians, nurses and staff will divide their workday between both facilities; and

WHEREAS, the applicant states that the proposed building is located within two blocks of Maimonides’ main campus; and

WHEREAS, the Board notes that under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of educational institutions are entitled to significant deference; and

WHEREAS, the applicant represents that Maimonides is an accredited teaching hospital with more than 400 medical residents enrolled in 24 residency programs, including a residency in urology; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement is necessary to address Maimonides’ programmatic needs, given the limitations of the existing building; and

WHEREAS, the applicant represents that the building was built as a multiple dwelling approximately 90 years ago and that its services would be constrained by the building’s design, which has a single interior staircase constructed in the center that results in a useable width of only five feet at its narrowest point, and the building’s lack of an elevator; and

WHEREAS, the applicant represents that it is unable to feasibly accommodate construction of an elevator within an as-of-right building envelope; 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 Maimonides, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Maimonides 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 asserts that the existing building, which will remain, is compatible with the context of the immediate area; and

WHEREAS, the applicant notes that the increase in lot coverage is limited to the infill of a portion of a central courtyard, which is not visible from the street; and

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# MINUTES

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WHEREAS, the applicant has reduced the size of the elevator and relocated a proposed staircase from the courtyard to a side yard, so any potential effects of the enlargement to the adjacent building would be minimal; and

WHEREAS, the applicant also notes that the only change to the building's envelope will be the infill of a courtyard and the installation of a fire stair in the side yard which is a permitted obstruction; and

WHEREAS, the applicant further notes that noise attenuation measures will comply with the Building Code; and

WHEREAS, with respect to the concerns raised by local residents as to the potential impact of the expansion of community facility uses on a residential neighborhood, the Board notes that the proposed use of the building is 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 the hardship was not self-created and that no development that would meet the programmatic needs of Maimonides 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 applicant initially proposed infill of 299 sq. ft. per floor to accommodate both an elevator and a fire stair, and requested a variance allowing lot coverage of 89 percent; and

WHEREAS, in response to community concerns, the applicant revised its plans to relocate the fire stair to the side yard and to reduce the size of the proposed elevator, thereby reducing the proposed infill to 89.9 sq. ft. per floor and the requested lot coverage to 82 percent; and

WHEREAS, at hearing, the Board asked the applicant to explain why the proposed elevator had increased in size from the 60.75 sq. ft. shown in the initial submission to the 89.9 sq. ft. currently proposed; and

WHEREAS, a submission by the applicant indicates that the initial plans were in error in showing the dimensions of a passenger elevator, rather than the dimensions of a standard sized hospital elevator, which is necessarily larger to accommodate the transport of patients on stretchers or gurneys; and

WHEREAS, the applicant represents that the requested lot coverage is the minimum necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board notes that the applicant has reduced the size of the enlargement so as to reduce any impact and the increase to lot coverage is minimal; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow Maimonides 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 an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA094K, dated June 4, 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 R6 zoning district, an enlargement to an existing building which does not comply with lot coverage regulations for a proposed community facility (medical facility), contrary to ZR § 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 June 4, 2007" – three (4) sheets and "Received February 1, 2008" – six (6) sheets; and *on further condition*:

THAT the lot coverage post-enlargement shall not exceed 82 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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 1, 2008.

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# MINUTES

## 278-07-BZ

APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NY Presbyterian Hospital/Trustees of Columbia University, owner.

SUBJECT – Application December 4, 2007 – Variance (§72-21) to permit the erection of three 30 foot high "pylon" signs that would be located at major entrances to a medical center campus. The proposal is contrary to section 22-342. R8 district.

PREMISES AFFECTED – 630 West 168<sup>th</sup> Street, bounded by Broadway, West 165<sup>th</sup> and 168<sup>th</sup> Streets, Riverside Drive, and Fort Washington Avenue, Block 2138, 2139, Lots 1, 15, 80, 85, 30, 40, Borough of Manhattan.

### COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Rachel Winard.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 4, 2007, acting on Department of Buildings Application Nos. 110024385, 110024394, and 110031616 reads in pertinent part:

“Proposed height of the pylon/sign structure is not permitted as of right in an R8 zoning district and is contrary to ZR 22-342”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the construction of three 30-foot pylon signs to be located at entrances to a medical center campus which do not comply with sign height regulations, contrary to ZR § 24-342; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in the *City Record*, and then to decision on April 1, 2008; 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 12, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the NY Presbyterian Hospital/ Trustees of Columbia University, as owners and operators of a nonprofit medical center (the “Medical Center”); and

WHEREAS, the Medical Center has been designated a Large Scale Community Facility Development by the New York City Planning Commission; and

WHEREAS, the Medical Center campus is bounded by Broadway on the east, West 168<sup>th</sup> Street on the north, Riverside Drive and Fort Washington Avenue on the west, and 165<sup>th</sup> Street on the south (the “Campus”) within an R8 zoning district; and

WHEREAS, the Campus comprises more than 24 six-story to 22-story buildings on two super blocks, with a combined lot area of approximately 626,444 sq. ft.; and

WHEREAS, the approximate existing floor area is 3,520,280 sq. ft.; and

WHEREAS, ZR § 24-342 restricts the height of signage located in residence districts to a maximum of the lesser of 20 feet above curb level or the height of the ground floor ceiling; and

WHEREAS, the applicant proposes to construct one 30-foot high pylon sign at each of three major entrances of the Campus: (1) at the northwest corner of Fort Washington Avenue and West 165<sup>th</sup> Street (12’-0” is the maximum height permitted); (2) on the south side of West 168<sup>th</sup> Street between Broadway and Fort Washington Avenue (15’-0” is the maximum height permitted); and (3) on Broadway near 168<sup>th</sup> Street (20’-0” is the maximum height permitted); and

WHEREAS, because each of the three 30-foot signs exceeds the maximum height permitted, the instant variance application was filed; and

WHEREAS, the applicant represents that the proposed signs will not create any new non-compliances except for height; and

WHEREAS, the applicant states that the variance request is necessitated by unique conditions of the site that create serious navigational issues for staff, visitors and patients, specifically: (1) the Medical Center’s size; (2) the lack of a unified campus with a single entrance; (3) the configuration of the Medical Center’s individual buildings; and (4) the topography of the Campus; and

WHEREAS, as to its size, the applicant represents that the Campus comprises more than 24 buildings ranging from six to 22 stories in size that house hundreds of different clinical and teaching departments employing more than 15,000 staff; and

WHEREAS, the applicant further represents that the Medical Center attends to more than one million patients annually, including “transfer patients” transported by ambulance from other New York City and regional hospitals; and

WHEREAS, the applicant states that patients, staff and visitors frequently have difficulty finding their destinations because the Campus lacks a single or principal entrance; instead, entry is accessed through any one of the Medical Center’s individual buildings, which are accessed from many different street frontages, and departments are spread throughout the Campus; and

WHEREAS, the applicant further states that a number of major Medical Center buildings are set back a distance from the street with building entrances that are not clearly visible from the street; and

WHEREAS, at hearing, the applicant also noted that Fort Washington Avenue is characterized by a steep slope, which further inhibits the ability of patients, staff and visitors to identify individual buildings; and

WHEREAS, the applicant asserts that the Medical Center’s size, lack of a single entrance, configuration and

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# MINUTES

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topography combine to impair the ability of these patients, staff, and visitors to navigate around and through the Campus and can delay the delivery of health care services to critical care patients; and

WHEREAS, the applicant proposes to alleviate the current navigation problems through the implementation of a comprehensive wayfinding signage program, including as of right street signs, pedestrian locational maps, identifying banners, and Internet maps; and

WHEREAS, specifically, as part of this program, the applicant proposes to place the noted 30-foot pylon signs at three major entrances at the Campus to act as primary identification markers for three critical medical center facilities; (1) the Herbert Irving Pavilion, an ambulatory surgery, diagnostic, laboratory and out-patient treatment facility that is connected to a 700-bed hospital with intensive care units and specialized surgical facilities; (2) the Medical Center's main clinical facility; and (3) the walk-in Emergency Center, which connects internally to the Children's Hospital; and

WHEREAS, the applicant represents that because the Medical Center is situated on an extremely steep slope and is surrounded on all sides by busy streets with heavy pedestrian and vehicular traffic, as well as obstructions at curb level, the proposed pylon height is necessary to be visible from long distances and from various vantage points in order to direct traffic, including regional ambulances carrying transfer patients, to the appropriate drop-off points; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the proposed pylons are necessary for the Medical Center, given the size and terrain of the Campus, and the obstructions caused by heavy traffic; and

WHEREAS, accordingly, based upon the above, the Board finds that the size and complexity of the Campus, when considered in conjunction with the programmatic needs of the Medical Center, creates unnecessary hardship and practical difficulty in developing signage that complies with the applicable zoning regulations; and

WHEREAS, since the Medical 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, the applicant notes that the immediate neighborhood, between West 165th Street and West 169th Street is dominated by institutional medical, educational and community facility uses, much of which is owned by the applicant; and

WHEREAS, the applicant further notes that large multi-family residential uses predominate to the north and south of the Campus; and

WHEREAS, the applicant states, however, that the

residential building nearest to a proposed sign is located at least 100 feet from the pylon sign proposed at Fort Washington Avenue and 165th Street, so that any potential effects of the signage would be minimal; and

WHEREAS, the applicant also notes that the only change to the Medical Center's Campus will be the positioning of the three signs and asserts that they are compatible with the context of the immediate area; and

WHEREAS, the applicant provided a series of photomontages and urban design analyses demonstrating how the signs would be integrated into the streetscape; 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 alternative configuration would meet the programmatic needs of the Medical Center; 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 locations of the proposed pylon sites were selected to present the most significant visual impact; signs were designed to be visible from two street frontages and to identify more than one building, in order to reduce the number of signs that would be necessary; and

WHEREAS, the applicant further represents that alternative horizontal signage would require a larger footprint in front of buildings than the proposed vertical signs, thereby impeding pedestrian traffic flow, and would be obstructed by vehicular traffic; and

WHEREAS, renderings submitted by the applicant demonstrate that pylon signs that were twenty feet in height were less effective in identifying the Medical Center campus and individual buildings; and

WHEREAS, accordingly, the Board finds that the requested signage height and number of signs is the minimum necessary to allow the Medical Center 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 617.12 (aj) and 617.5 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 R8 zoning district, the construction of 30-foot signs to be located at three entrances to a medical center

# MINUTES

campus which do not comply with sign height regulations, contrary to ZR § 24-342, *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 3, 2008"-three (3) sheets; and *on further condition*:

THAT the total sign height shall not exceed 30'-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, April 1, 2008.

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## 285-07-BZ

### CEQR #08-BSA-040M

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

SUBJECT – Application December 17, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a seven-story commercial building. The proposal is contrary to section 32-10. C5-2 district.

PREMISES AFFECTED – 312 Fifth Avenue, northwest side of Fifth Avenue between West 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 833, Lot 44, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 15, 2008, acting on Department of Buildings Application No. 110009204, reads in pertinent part:

"ZR 32-10: The proposed physical culture establishment use is not permitted as-of-right in the commercial district (C5-2) and is contrary to the 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 establishment of a physical culture establishment (PCE) on the second floor of a seven-story commercial building,

contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in *The City Record*, and then to decision on April 1, 2008; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Fifth Avenue, between West 31<sup>st</sup> Street and West 32<sup>nd</sup> Street; and

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

WHEREAS, the PCE will occupy 1,440 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE will be operated as Beach Spa, Inc.; and

WHEREAS, the applicant represents that the PCE will provide facilities for massage therapy and skin care; and

WHEREAS, the hours of operation are: from 12:00 p.m. to 12:00 a.m., 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 the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2(ak); 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. 08BSA040M, dated February 19, 2008; 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;

# MINUTES

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 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 establishment of a physical culture establishment on the second floor of a seven-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 20, 2008"-(2) sheets; and *on further condition*:

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

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

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

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

THAT 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 1, 2008.

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## 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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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## 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 65<sup>th</sup> Road, southwest corner Yellowstone Boulevard and 65<sup>th</sup> Road, Block 2130, Lot 37, Borough of Queens.

## COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

For Opposition: Meir Turner and Eleanor Ney.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for decision, hearing closed.

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## 109-07-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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## 111-07-BZ

APPLICANT – Harold Weinberg, P.E., for Javier Galvez, owner.

SUBJECT – Application May 4, 2007 – Special Permit

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# MINUTES

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(§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 and Frank Sellitto.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for decision, hearing closed.

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**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.

THE VOTE TO REOPEN HEARING –

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

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for decision, hearing closed.

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**174-07-BZ**

APPLICANT – Carl A. Sulfaro, Esquire, for David Oil Corporation, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application June 28, 2007 – Special Permit (§73-211). Proposed reconstruction of an existing Auto Service Station with new metal canopy, new fuel tanks, pumps, new accessory convenience store, located in a C2-3/R7-A zoning district.

PREMISES AFFECTED – 1925 Coney Island Avenue, a/k/a 1935 Coney Island Avenue, Northeast corner of Avenue P. Block 6758, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Carl A. Sulfaro.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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**189-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.

SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pauls.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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**218-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Matthew Foglia, owner.

SUBJECT – Application September 24, 2007 – Variance (§72-21) to allow the conversion and enlargement of an existing building to office use; contrary to use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 110-11 Astoria Boulevard, located at the intersection of Astoria Boulevard and Ditmars Boulevard, Block 1679, Lot 34, Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for decision, hearing closed.

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**271-07-BZ**

APPLICANT – The Rizzo Group, for Mitchell Marks, owner; Club Ventures II, LLC., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (PCE) in the C2-7A portion of the zoning district. A variance is also requested to allow the PCE use in the 22'3" portion of the site in the R8A zoning

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# MINUTES

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district. The proposal is contrary to §§ 22-10 and 32-18.  
PREMISES AFFECTED – 213-219 West 23<sup>rd</sup> Street, north side of 23<sup>rd</sup> Street between Seventh and Eighth Avenues, Block 773, Lot 34, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Kenneth Barbina

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**11-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Audrey Grazi and Ezra Grazi, owners.

SUBJECT – Application January 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3573 Bedford Avenue, Bedford Avenue between Avenue N and Avenue O, Block 7679, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for decision, hearing closed.

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**16-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Isaiah Florence, owner.

SUBJECT – Application January 15, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (§23-141(a)); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 2614 Avenue L, between East 26<sup>th</sup> and East 27<sup>th</sup> Streets, Block 7644, Lot 46, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 8, 2008, at 1:30 P.M., for decision, hearing closed.

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**21-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Pilot Realty Co. c/o Sackman Enterprises, owner; TSI Morris Park LLC dba New York Sports Club, lessee.

SUBJECT – Application January 30, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of a two-story commercial building. The proposal is contrary to section 42-10. M1-1 district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, westerly side of Bronxdale Avenue, 675' southerly of Van Nest Avenue, Block 4042, Lot 200, Borough of Bronx.

**COMMUNITY BOARD #11BX**

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 15

April 17, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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### CONTENTS

|                                |         |
|--------------------------------|---------|
| DOCKET .....                   | 237     |
| <b>CALENDAR</b> of May 6, 2008 |         |
| Morning .....                  | 238     |
| Afternoon .....                | 238-239 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, April 8, 2008**

Morning Calendar .....240

**Affecting Calendar Numbers:**

|             |  |
|-------------|--|
| 710-55-BZ   | 246-02 South Conduit, Queens                         |
| 617-80-BZIV | 770/180 McDonald Avenue, Brooklyn                    |
| 265-98-BZ   | 950 Glenmore Avenue, Brooklyn                        |
| 120-01-BZ   | 134-02 Cross Bay Boulevard, Queens                   |
| 774-55-BZ   | 2155-2159 Newbold Avenue, Bronx                      |
| 127-05-BZII | 9216 Church Avenue, aka 9220 Church Avenue, Brooklyn |
| 267-07-A    | 49 W. Market Street, Queens                          |
| 287-07-A    | 697 West 247 <sup>th</sup> Street, Bronx             |
| 290-07-A    | 10 Clinton Walk, Queens                              |
| 123-07-A    | 723R Driggs Avenue, Brooklyn                         |
| 208-07-BZY  | 74 Grand Avenue aka 72-96 Grand Avenue, Brooklyn     |
| 64-08-A     | 74 Grand Avenue (aka 72-96 Grand Avenue), Brooklyn   |
| 168-07-A    | 1479 Rosedale Avenue, Bronx                          |
| 207-07-A    | 48-20 57 <sup>th</sup> Avenue, Queens                |
| 255-07-A    | 40-54 Francis Lewis Boulevard, Queens                |
| 259-07-A    | 41-97 Parsons Boulevard, Queens                      |

Afternoon Calendar .....247

**Affecting Calendar Numbers:**

|                |   |
|----------------|---|
| 311-06-BZ thru | 300/302/304 Columbia Street, Brooklyn       |
| 313-06-BZ      |   |
| 221-07-BZ      | 165 Lenox Avenue, Manhattan                 |
| 10-08-BZ       | 66-68 Bradhurst Avenue, Manhattan           |
| 200-07-BZ      | 3333 Hylan Boulevard, Staten Island         |
| 281-07-BZ      | 1960 East 4 <sup>th</sup> Street, Brooklyn  |
| 13-08-BZ       | 34-42 Charlton Street, Manhattan            |
| 14-08-BZ       | 1958 East 13 <sup>th</sup> Street, Brooklyn |
| 238-07-BZ      | 5-11 47 <sup>th</sup> Avenue, Queens        |
| 242-07-BZ      | 1760 Gleason Avenue, Bronx                  |
| 36-08-BZ       | 1177 East 23 <sup>rd</sup> Street, Brooklyn |
| 44-08-BZ       | 1015 East 23 <sup>rd</sup> Street, Brooklyn |



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# DOCKET

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New Case Filed Up to April 8, 2008

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**77-08-BZ**

36 West 93rd Street, Between Central Park West and Columbus Avenue., Block 1206, Lot(s) 20, Borough of **Manhattan, Community Board: 7**. Variance to permit the enlargement of an existing five-story with subcellar and cellar school building.

-----  
**78-08-BZ**

611-617 East 133rd Street, The small block bounded by East 133rd Street and Cypress Place., Block 2546, Lot(s) 27, Borough of **Bronx, Community Board: 1**. Variance to allow the construction of a new five story building for use as an elementary school, contrary to use regulations.

-----  
**79-08-BZ**

117-23 132nd Street, Easterly side of 132nd Street 220 feet southerly of Foch Boulevard., Block 11696, Lot(s) 55, Borough of **Queens, Community Board: 12**. Variance to allow a one family residential building, contrary to use regulations.

-----  
**80-08-BZ**

1073 East 24th Street, East side of East 24th Street 175.0 ft. north of Avenue K., Block 7606, Lot(s) 15, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) to legalize the enlargement of a single family residence.

-----  
**81-08-A**

514-516 East 6th Street, Between Avenue A and Avenue B., Block 401, Lot(s) 17,18, Borough of **Manhattan, Community Board: 3**. Appeal seeking to revoke DOB's permits and approvals for the enlargement of five-story 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.**

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# CALENDAR

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**MAY 6, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 6, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**184-94-BZ**

APPLICANT – Renanim Manhattan, Incorporated, for Vertical Properties, LLC, owner.

SUBJECT – Application March 20, 2007 – Extension of Term/Waiver to permit a (UG3) nursery school on the ground floor of a five story and cellar mixed use building in a C8-4 zoning district which expired on June 13, 2005.

PREMISES AFFECTED – 336 East 61<sup>st</sup> Street, south side of East 61<sup>st</sup> Street, between First and Second Avenues, Block 1435, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**24-96-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #3M**

-----

**306-05-BZY**

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED – 206A Beach 3<sup>rd</sup> Street, Block 15604, Lot 34, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**APPEALS CALENDAR**

**265-07-A**

APPLICANT – Abigail Patterson, for West 70<sup>th</sup> Associates, owner.

SUBJECT – Application November 19, 2007 – 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.

PREMISES AFFECTED – 57 West 70<sup>th</sup> Street, north side of 70<sup>th</sup> Street, 160' east of corner formed by 70<sup>th</sup> Street and Columbus Avenue, Block 1123, Lot 7, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**MAY 6, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 6, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**248-07-BZ**

APPLICANT – Eric Palatnik, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**257-07-BZ**

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections 24-522 (height, setbacks, and sky exposure plane for community facility), 24-11 (community facility lot coverage), and 24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

**COMMUNITY BOARD #11M**

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# CALENDAR

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## **12-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Empire State Development Corp., owner; Harlem Center, LLC, lessee.

SUBJECT – Application January 3, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on a portion of the cellar and ground floor in a ten-story commercial building. The proposal is contrary to section 32-10. C4-7 district.

PREMISES AFFECTED – 317 Lenox Avenue aka 105 W. 125<sup>th</sup> Street, west side of Lenox Avenue, between 125<sup>th</sup> Street and 126<sup>th</sup> Street, Block 1910, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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## **25-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Torah Academy For Girls, owner.

SUBJECT – Application March 25, 2006 – Variance (§72-21) to permit the enlargement of the existing school approved by BSA in a prior grant in 2002 (158-02-BZ). The proposal is contrary to sections 24-11 (lot coverage), 24-34 (minimum front yard), 24-382 (minimum rear yard), and 24-521 (height, setback and sky exposure plane). R4-1 district.

PREMISES AFFECTED – 444 Beach 6<sup>th</sup> Street, between Jarvis and Meehan Avenues, Block 1559, Lot 1, Borough of Queens.

**COMMUNITY BOARD #14Q**

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## **52-08-BZ**

APPLICANT – Dennis D. Dell' Angelo, for Yossi Amar, owner.

SUBJECT – Application March 7, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and lot coverage (23-141); side yards (23-461) and rear yard requirement (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3935 Bedford Avenue, east side of Bedford Avenue, Block 6811, Lot 72, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, APRIL 8, 2008  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**710-55-BZ**

APPLICANT – Vincent L. Petraro, PLLC, for Tserpes Realty LLC, owner.

SUBJECT – Application October 19, 2007 – Extension of Term for a gasoline service station (Emporium) which expired on January 10, 2008 in an R3-2 zoning district.

PREMISES AFFECTED – 246-02 South Conduit Avenue, intersection of South Conduit Avenue & 139<sup>th</sup> Street, Block 13622, Lot 5, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Steven Simich.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance permitting a gasoline service station which expired on January 10, 2008; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, with a continued hearing on March 18, 2008, and then to decision on April 8, 2008; and

WHEREAS, Community Board 13, Queens, has recommended approval of this application; and

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

WHEREAS, the site is located at the intersection of South Conduit Avenue and 246<sup>th</sup> Street; and

WHEREAS, the site is located in an R3-2 zoning district and is occupied by a gasoline service station and accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1955, when, under the subject calendar number, the Board granted a variance for the reconstruction of an existing gasoline service station for a term of 15 years; and

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

WHEREAS, on March 30, 1999, the term was extended for ten years, from the date of its expiration on January 10, 1998; and

WHEREAS, most recently, on June 28, 2000, the grant was reopened to permit an extension of time to complete construction and obtain a new certificate of occupancy; and

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

WHEREAS, during its site examination the Board noted the placement of curb cuts that were not approved under the original grant; and

WHEREAS, the applicant states that a Department of Transportation (“DOT”) project extending a traffic median along 246<sup>th</sup> Street hindered safe access into the subject site though the two curb cuts approved under the original grant, and

WHEREAS, the applicant further states that DOT modified the curb cuts to alleviate the constrained site accessibility created by the traffic median; and

WHEREAS, the applicant submitted a revised site plan accurately depicting the current curb cuts; and

WHEREAS, at the Board’s request, the applicant confirmed that its signage complies with C1 zoning district regulations; 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 December 20, 1955, 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 January 10, 2008, to expire on January 10, 2018, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 11, 2008”- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 10, 2018;

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

THAT signage shall comply with C1 zoning district regulations;

THAT a revised certificate of occupancy shall be obtained by October 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)/configuration(s) not related to the relief granted.”

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# MINUTES

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(N.B. 3148-55)

Adopted by the Board of Standards and Appeals, April 8, 2008.

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## 617-80-BZIV

APPLICANT – Eric Palatnik, P.C., for J & S Simcha, Incorporated, owner.

SUBJECT – Application February 12, 2008 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for an existing non-complying catering establishment (UG9) in an M1-1 zoning district which expired on March 14, 2008.

PREMISES AFFECTED – 770/780 McDonald Avenue, west side of McDonald Avenue, 20’ south of Ditmas Avenue, Block 5394, Lots 1 & 11, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

### 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, Commissioner Hinkson and Commissioner Montanez.....5

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 which expired on March 14, 2008; and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in *The City Record*, and then to decision on April 8, 2008; and

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

WHEREAS, the subject premises is located on the west side of McDonald Avenue, 20 feet south of Ditmas Avenue; and

WHEREAS, the site is occupied by a catering establishment building and is located within an M1-1 zoning district; and

WHEREAS, on September 9, 1980, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to legalize the enlargement of an existing building used by a catering establishment, which exceeds the permitted floor area ratio and encroaches into the rear yard, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and extended several times; and

WHEREAS, on July 24, 2001, the Board approved a modification to the plans to permit certain modifications including a height increase of 5’-0” to accommodate an air conditioning system and the addition of an elevator; and

WHEREAS, subsequent grants limited the amount of

time to complete construction and obtain a certificate of occupancy to terms of two years; and

WHEREAS, most recently, on March 14, 2006, the Board permitted a two-year extension of time to complete construction and obtain a certificate of occupancy, which expired on March 14, 2008; and

WHEREAS, the current application seeks a two-year extension of time to complete construction; and

WHEREAS, the applicant represents that approximately 80 percent of the construction has been completed, but that the project has been delayed due, in part, to modifications in the building design; and

WHEREAS, the applicant submitted photographs and financial statements documenting the work completed and the associated expenditures; and

WHEREAS, additionally, the applicant provided a timetable, which reflects the amount of work needed to be completed and the associated projected costs; and

WHEREAS, the Board notes that the applicant has performed a significant amount of construction since the last extension and finds that a two-year extension of time 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 14, 2006, 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 expiration of the last grant, to expire on March 14, 2010; *on condition*:

THAT construction be completed and a certificate of occupancy be obtained by March 14, 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. 300540029)

Adopted by the Board of Standards and Appeals, April 8, 2008.

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## 34-99-BZ, Vol. II

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Ruach Chaim Institute, owner.

SUBJECT – Application March 14, 2008 – Extension of Time to Complete Construction of a (UG4) community use facility (Yeshiva) in an R-2 zoning district which expired on February 27, 2005.

PREMISES AFFECTED – 1189 East 29<sup>th</sup> Street, a/k/a 2901 Avenue I, North east corner of East 29<sup>th</sup> Street and Avenue L, Block 7629, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

# MINUTES

## 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a reopening of a previously granted variance permitting the construction of a community facility for an extension of time to complete construction, which expired on February 27, 2005; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in *The City Record*, and then to decision on April 8, 2008; and

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

WHEREAS, the site is located on the northeast corner of 29<sup>th</sup> Street and Avenue L; and

WHEREAS, the site is located in an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 2001 when, under the subject calendar number, the Board granted a variance permitting the construction of a yeshiva; and

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

WHEREAS, the applicant represents that approximately 25 percent of the construction has been completed and that 50 percent of the construction budget has been committed or expended, but that the project has been delayed due, in part, to delays in securing financing; and

WHEREAS, the applicant submitted photographs and financial statements documenting the work completed and the associated expenditures; and

WHEREAS, additionally, the applicant provided a timetable, which reflects the amount of work needed to be completed; and

WHEREAS, pursuant to ZR § 72-01, the Board may permit an extension of time to complete construction; and

WHEREAS, according to Section 1-05(g) of the Board's Rules of Practice and Procedure, the Board may hear an application for an extension of time to obtain a certificate of occupancy that is filed more than 30 days subsequent to the expiration date provided that a waiver is requested in the application; and

WHEREAS, the applicant has requested the Board to waive the Rules of Practice and Procedure; and

WHEREAS, based upon its review of the record, the Board finds 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, *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on February 27, 2001, so that as amended this portion of the resolution shall read: "to permit a three-year extension of time to complete construction, *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT substantial construction be completed by April 8, 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)/configuration(s) not related to the relief granted."

(DOB Application No. 300652531)

Adopted by the Board of Standards and Appeals, April 8, 2008.

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## 265-98-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Milford Tile, Incorporated, owner.

SUBJECT – Application November 19, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the operation of an existing contractor's yard for storage, sales and display of tiles with accessory parking (UG17) in an R5 zoning district which expired on November 29, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 22, 2000 and a waiver of rules.

PREMISES AFFECTED – 950 Glenmore Avenue, southwest corner of the intersection of Glenmore Avenue and Crystal Avenue, Block 4210, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

### APPEARANCES –

For Applicant: Elizabeth Safian.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

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## 120-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Anthony Ariola, owner.

SUBJECT – Application January 23, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the commercial use (UG6) in an existing two-story building, which expired on

# MINUTES

May 14, 2006, located in an R4 zoning district and a Waiver of the rules.

PREMISES AFFECTED – 134-02 Cross Bay Boulevard, western side of Cross Bay Boulevard, between Gold and Silver Roads, Block 11374, Lot 134, Borough of Queens.

## COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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## 774-55-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of Term/Waiver of the rules for a previously granted variance to permit the operation of a (UG8) parking lot, for more than five cars, for employees and customers of a bank (Citibank) on the adjoining lot which expired on January 31, 2003 in R-5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue between Olmstead and Castle Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Elizabeth Larsen.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for continued hearing.

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## 127-05-BZII

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

SUBJECT – Application January 30, 2008 – Extension of Term/Extension of Time to obtain C of O (§73-243) to reopen and extend the term for an accessory drive-thru facility at an existing eating and drinking establishment located in a C1-1/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, aka 9220 Church Avenue and 526 East 93<sup>rd</sup> Avenue, southeast side of Church Avenue between East 92<sup>nd</sup> Street and the intersection of East 93<sup>rd</sup> Street and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for continued hearing.

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## 267-07-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Deirdre Radtke, lessee.

SUBJECT – Application November 26, 2007 – Reconstruction and enlargement of existing single family dwelling lying in the bed of a mapped street is contrary to

General City Law Section 35. The upgrade of an existing private disposal system partially in the bed of a mapped street is contrary to General City Law Section 35 and Buildings Department Policy. R4 Zoning District.

PREMISES AFFECTED – 49 W. Market Street, south side W. Market Street at intersection of mapped Bayside Drive, Block 16350, Lot 300, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 29, 2007, acting on Department of Buildings Application No. 402659262 reads in pertinent part:

“A-1 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

A-2 The proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35 and the Department of Buildings Policy; and

WHEREAS, this application requests permission to reconstruct and enlarge an existing single-family home and upgrade an existing private sanitary system partially located within the bed of a mapped street (at the intersection of Bayside Drive and Rockaway Point Boulevard); and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in the *City Record*, and then to decision on April 8, 2008; and

WHEREAS, by letter dated March 17, 2008, 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 18, 2007, the Fire Department states that it has reviewed the above application and has no objection; and

WHEREAS, by letter dated January 17, 2008, the Department of Environmental Protection states that it reviewed the above application and has no objections; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated October 29, 2007, acting on Department of Buildings Application No. 402659262, is modified by the power vested in the Board by Section 35 of

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# MINUTES

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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 26, 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, April 8, 2008.

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## 287-07-A

APPLICANT – Greenberg Traurig by Jay A. Segal, Esq., for Jack Bendheim, owner.

SUBJECT – Application December 21, 2007 – Proposed construction of an accessory tennis court located partially within the bed of a mapped street (West 248<sup>th</sup> Street) contrary to General City Law Section 35. R1-1 SNAD.

PREMISES AFFECTED – 697 West 247<sup>th</sup> Street, north side of West 247<sup>th</sup> Street between Palisade Avenue and Independence Avenue, Block 5937, Lot 300, Borough of Bronx.

## COMMUNITY BOARD #8BX

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 26, 2007, and updated on January 8, 2008, acting on Department of Buildings Application No. 200973660, reads in pertinent part:

“Proposed construction in the bed of a mapped street, as indicated on tax map and/or Zoning Map, and/or survey is contrary to General City Law Section 35,” and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in the *City Record*, with a continued hearing on March 18, 2008, and then to closure and decision on April 8, 2008; and

WHEREAS, this application seeks permission to build a tennis court with retaining walls, a portion of which would be located within the bed of a mapped but unbuilt street (West 248<sup>th</sup> Street); and

WHEREAS, the proposed tennis court is to be located on portions of two zoning lots (Block 5937, Lot 300 and Block 5926, Lot 300) that are contiguous, but which cannot be merged due to the intervening mapped, but unbuilt street bed of West 248<sup>th</sup> Street; and

WHEREAS, by letter dated January 15, 2008, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 4, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an Adopted Drainage Plan No. 40-K which calls for a future 15-in. diameter combined sewer in the bed of West 248<sup>th</sup> Street between Palisade Avenue and Independence Avenue; and

WHEREAS, therefore, DEP requests that the applicant provide a minimum 32’-0” corridor in the bed of West 248<sup>th</sup> Street between Palisade Avenue and Independence Avenue for the purpose of installation, maintenance, and/or reconstruction of the future 15-in. diameter combined sewer; and

WHEREAS, by letter dated March 10, 2008, the applicant provided a revised site plan providing an approximately 30’-0” wide sewer corridor on the southern side of West 248<sup>th</sup> Street, including a northerly portion of Block 5926, Lot 298 and excluding a portion of Block 5926, Lot 300 measuring 62’-0” by 7’-0”;

WHEREAS, by letter dated March 24, 2008, DEP notes that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated March 20, 2008, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT’s March 20, 2008 letter indicates that the applicant’s property is not within its ten-year capital plan; and

WHEREAS, as this property is located within an NA-2 Special Natural Area District, authorization by the City Planning Commission is needed for modifications of topographic features, plantings, and site alteration; and

WHEREAS, at hearing the Board asked the applicant why the tennis court is not situated to avoid crossing the bed of the mapped, but unbuilt street and the sewer corridor; and

WHEREAS, in response, the applicant stated that siting the tennis court at an alternative location was not possible without affecting protected topographical features or plantings; and

WHEREAS, the Department of Buildings has required the owner to execute a Restrictive Declaration prior to the issuance of an alteration permit for the construction of the tennis court; and

WHEREAS, the Restrictive Declaration requires the owner to remove the tennis court from both parcels if the



# MINUTES

parcels are conveyed into separate ownership; and

WHEREAS, the Restrictive Declaration would not be necessary if the tennis court did not overlap the bed of a mapped but unbuilt street, in which case the zoning lots could be merged and the tennis court would qualify as an accessory use to a residential use; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval; and

*Therefore it is Resolved* that the decision of the Bronx Borough Commissioner, dated January 8, 2008, acting on Department of Buildings Application No. 200973660, is hereby 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 21, 2008"-(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 City Planning Commission approval shall be obtained before the issuance of an alteration permit;

THAT the Restrictive Declaration and sewer easement be duly recorded in the Office of the County Clerk prior to the issuance of an alteration permit and be referenced on the Certificate of Occupancy;

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 8, 2008.

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## 290-07-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Mary Jean Farrell-Halliday, lessee.

SUBJECT – Application December 27, 2007 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to Section 35 GCL, not fronting on a legally mapped street, contrary to Section 36 GCL and the proposed upgrade of an existing private disposal system located within the bed of a mapped street contrary to Buildings Department Policy. R4 Zoning district.

PREMISES AFFECTED – 10 Clinton Walk, east of Clinton Walk, north of Rockaway Point Boulevard, Block 16350, Lot 300, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated December 18, 2007, acting on Department of Buildings Application No. 410025404 reads in pertinent part:

"A-1 The site and building are located in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law; and

A-2 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, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City New York; and

A-3 The proposed upgraded private disposal system is in the bed of a mapped street is contrary to the Department of Buildings Policy;" and

WHEREAS, this application requests permission to reconstruct and enlarge an existing single-family home and upgrade an existing private sanitary system partially located within the bed of a mapped street (Twelfth Avenue ); and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in the *City Record*, and then to decision on April 8, 2008; and

WHEREAS, by letter dated March 14, 2008, 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 8, 2008, the Fire Department states that it has reviewed the above application and has no objection; and

WHEREAS, by letter dated January 17, 2008, the Department of Environmental Protection states that it reviewed the above application and has no objections; and; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated December 18, 2007, acting on

# MINUTES

Department of Buildings Application No. 410025404 is modified by the power vested in the Board by Sections 35 and 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 27, 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, April 8, 2008.

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## 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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for decision, hearing closed.

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## 208-07-BZY

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – 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.

PREMISES AFFECTED – 74 Grand Avenue (a/k/a 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 10 A.M., for decision, hearing closed.

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## 64-08-A

APPLICANT – Law Office of Fredrick A. Becker, for JN520 LLC, owners.

SUBJECT – Application March 28, 2008 – An Appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior R6 Zoning District. R6B Zoning District.

PREMISES AFFECTED – 74 Grand Avenue (aka 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lots 48 & 46, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for decision, hearing closed.

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## 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Zenali Tirado, Francisco M. Gonzalez, Nerva Martinez and Carlos Aladovar.

For Administration: Lisa Orrantia.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for continued hearing.

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# MINUTES

## 207-07-A

APPLICANT – Agusta & Ross, for Davis & Warshow, Inc., owner.

SUBJECT – Application August 22, 2007 – Proposed construction of a four story commercial warehouse located within the bed of mapped street (48<sup>th</sup> St.) contrary to Section 35 of the General City Law Section 35. M3-1 Zoning District.

PREMISES AFFECTED – 48-20 57<sup>th</sup> Avenue, westerly side of 49<sup>th</sup> Street at 57<sup>th</sup> Avenue, Block 2564, Lot 1, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 15, 2008, at 10 A.M., for decision, hearing closed.

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## 255-07-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon LLC, owner.

SUBJECT – Application April 8, 2008 – Proposed construction of a daycare center located within the bed of mapped street (Francis Lewis Boulevard contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard (aka 196-23 42<sup>nd</sup> Ave.) corner of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lots 10 & 12, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Jerry Iannece, Henry Euler, Terri Pouymari, Dennis Devati, Judy Gagliano, Maria Denoti and Marie Russo.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for continued hearing.

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## 259-07-A

APPLICANT – George N. Mihalios, Esq., for Hikmat Sultan, owner.

SUBJECT – Application November 8, 2007 – Proposed construction of an eight story mixed use building 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.

PREMISES AFFECTED – 41-97 Parsons Boulevard, Block 5374, Lot 11, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: George N. Mihalios.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:30A.M.

## REGULAR MEETING TUESDAY AFTERNOON, APRIL 8, 2008 1:30 P.M.

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

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## ZONING CALENDAR

### 311-06-BZ thru 313-06-BZ

#### CEQR #07-BSA-040K

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** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated November 3, 2006, acting on Department of Buildings Application Nos. 302189600, 302189593, and 30218984, each read in pertinent part:

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

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of three attached two-family residential buildings, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 14, 2007 after due notice by publication in the *City Record*, with a continued hearing on September 18,

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# MINUTES

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2007, and then to decision on April 8, 2008; 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 disapproval of the application, citing concerns about the design and materials used for the building; and

WHEREAS, the site is located on the northwest corner of Columbia Street and Woodhull Street within an M1-1 zoning district; and

WHEREAS, the site consists of two zoning lots – Lots 1 and 2 - proposed to be combined into a single zoning lot that will be divided into three tax lots – Lots 38, 39, and 40; each tax lot will be occupied by one two-family attached/semi-detached building; and

WHEREAS, the site is currently vacant; and

WHEREAS, the three proposed buildings (together, the “Proposed Building”) will have four stories and a combined floor area of 4,665.6 sq. ft. (2.20 FAR); and

WHEREAS, an earlier iteration of the proposal provided for interior connections from three of the dwelling units to the associated cellars below, and also characterized the top floor as attic space; and

WHEREAS, the Board directed the applicant to confirm whether or not those two levels and the floor space associated with them would count towards the floor area calculations; and

WHEREAS, in response, the applicant revised the plans to (1) eliminate the internal connections to the cellars and (2) to characterize the top floor as a fourth floor and to include the floor area associated with it in the floor area calculations; and

WHEREAS, the site has a width of 36 feet, a depth of 59 feet, and a lot area of 2,124 sq. ft.; 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 has a narrow width; and (2) the site is small; and

WHEREAS, as to the width, the applicant represents that the combined site has a depth of 36 feet from the Columbia Street frontage; prior to the merger of the lots, the existing Lots 1 and 2 have widths of 59 feet and depths of 16 feet and 20 feet, respectively; and

WHEREAS, additionally, the applicant represents that the combined site, with a length of 59 feet and a lot area of 2,124 sq. ft., is small; and

WHEREAS, the applicant represents that these conditions cannot accommodate a conforming use; and

WHEREAS, specifically, the applicant represents that a site 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, further, the applicant represents that there is a disproportionately high cost per square foot of construction associated with the small size of any conforming development

at the site; 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 represents that only four of the 21 lots on the subject block are used for manufacturing/industrial or commercial uses and two of these active uses occupy considerably larger lots; and

WHEREAS, of the four noted lots: (1) Lot 13 is occupied by a one-story iron warehouse, with 150 feet of frontage on Hamilton Avenue and 50 feet of frontage on Summit Street for a total lot area of 10,550 sq. ft., (2) Lot 29 is occupied by a three-story brick factory, with 75 feet of frontage on Summit Street, a depth of 88.67 feet, and a total lot area of 6,438 sq. ft.; (3) Lot 4 is occupied by a one-story brick garage; and (4) Lot 3 is occupied by a three-story mixed-use commercial/manufacturing building; 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 provided a survey of vacant lots surrounding the site, which reflects that there has been little to no construction on small lots within the M1-1 zoning district during the last 50 years; 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 one-story building for a conforming manufacturing or commercial use; and

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

WHEREAS, the applicant notes that the block directly

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# MINUTES

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across Columbia Street is within a C2-3 (R6) zoning district; and

WHEREAS, the applicant states that the Proposed Building's height and bulk configurations were designed to be compatible with the character of the surrounding area and comply with R6 zoning district bulk regulations; and

WHEREAS, four lots on the block are occupied by three-story mixed-use residential/commercial buildings and the lot adjacent to the north is occupied by a five-story multiple dwelling 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 residential use, and finds that the introduction of six 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 agrees 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. 07BSA040K, dated November 28, 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 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 28, 2006 EAS and the January 2007 Phase I Environmental Site Assessment Report; and November 23, 2007 Air Quality and Noise submissions; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials and Noise; and

WHEREAS, a DEP Restrictive Declaration (the "DEP

RD") was executed on August 1, 2007 and submitted for proof of recording on August 28, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any hazardous materials and noise 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, with respect to potential air quality impacts from the Brooklyn Battery Tunnel ventilation building (the "ventilation building") on the proposed project site, the applicant's environmental consultant provided an air quality study which was conducted in 2007 for a proposed rezoning application for a site at 45 Summit Street (ULURP No. C060477K); and

WHEREAS, the proposed rezoning would facilitate the development of a four-story residential building ranging in height from 43 feet to 55 feet on a zoning lot that at its shortest dimension would be located 190 feet from the ventilation building; and

WHEREAS, the air quality study concluded that no ambient air quality standards would be violated based in part on the distance from the ventilation building to the proposed residential building and that the proposed residential building at 45 Summit Street, with a height ranging from 43 feet to 55 feet, would be shorter than the emissions stacks of the ventilation building, with a height of 90 feet; and

WHEREAS, the study was approved by the Department of City Planning's (DCP) Environmental Assessment & Review Division in 2007; and

WHEREAS, the Board notes that the subject site is located farther away (approximately 380 feet) from the ventilation building than the Summit Street site is; and

WHEREAS, the Board accepts the consultant's determination that no ambient air quality standards would be violated at this distance from the ventilation building, based on the information provided in the 2007 air quality study; and

WHEREAS, further, the applicant represents that based on the ambient noise measurements taken by the consultant, DEP concurred with the consultant that the required level of attenuation is 35 dBA in order to obtain an interior noise level of 45 dBA in a closed-window condition; 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

# MINUTES

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 construction of three attached two-family residential buildings, 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 September 20, 2007" – six (6) 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 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 applicant will provide windows with an Outdoor-Indoor Transmission Class rating of 35 dBA or greater to achieve the necessary window attenuation with an alternate means of ventilation;

THAT the following are the bulk parameters of the Proposed Building: four stories, 4,665.6 sq. ft. of floor area (2.20 FAR), a street wall and total height of 43 feet, and six 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, April 8, 2008.

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## 158-07-BZ

### CEQR #07-BSA-098Q

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: Eric Palatnik.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated May 17, 2007, acting on Department of Buildings Application No. 402315320, reads in pertinent part:

"Proposed retail store (Use Group 6) located in an R1-2 district is contrary to Section 22-10 Z.R. 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 R1-2 zoning district, the reconstruction of a one-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on October 30, 2007, after due notice by publication in *The City Record*, with continued hearings on January 8, 2008, February 12, 2008, and March 4, 2008, and then to decision on April 8, 2008; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application, with the following conditions: (1) that a refrigerated garbage unit be maintained onsite if the establishment sells food; (2) that no garbage pick-up be permitted during evening hours; and (3) the business not operate after 11:00 p.m.; and

WHEREAS, certain community members submitted testimony that reiterates the Community Board's concerns and also notes concerns about increased traffic around the site and the potential incompatibility of the proposed use with the adjacent residential uses; and

WHEREAS, the subject site is located within an R1-2 zoning district on the southwest corner of Union Turnpike and Chevy Chase Street, and

WHEREAS, the site has a width of approximately 103 feet at its Chevy Chase Street frontage, a width of approximately 110 feet at its Union Turnpike frontage, and a total lot area of approximately 11,319 sq. ft.; and

WHEREAS, the site was formerly occupied by a one-story dry cleaning establishment which was partially damaged by fire in 2002; the building shell has been reconstructed and is proposed to be completed pursuant to the subject proposal; and

WHEREAS, the applicant proposes to reconstruct the one-story building on the existing footprint to have 3,600 sq.

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# MINUTES

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ft. of floor area (0.32 FAR) a height of 18 feet (excluding the decorative parapet), and 12 parking spaces onsite; the building will be occupied by Use Group 6 retail use; and

WHEREAS, as noted above, the proposal requires a use waiver; 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 conforming development: (1) the history of commercial use at the site; (2) the close proximity of an electrical substation; (3) the location on a heavily-trafficked street; and (4) the contamination of the site from a prior dry cleaning use; and

WHEREAS, as to the history of commercial use at the site, the applicant notes that the site was occupied by a commercial use for at least 50 years, until a fire damaged the building in approximately 2002; and

WHEREAS, as to the close proximity of an electrical substation, the applicant notes that the adjacent lot to the west is occupied by an electrical transfer yard, which is designed for truck access and contains large structures housing mechanical equipment; and

WHEREAS, the applicant notes that the other lot adjacent to the transfer yard on Union Turnpike is a large community facility, which occupies more than half of the subject block and that no residential use abuts the transfer yard on its Union Turnpike frontage, where trucks access the site; and

WHEREAS, the applicant represents that the use of the adjacent site on Union Turnpike is not compatible with a conforming development and compromises the marketability of the subject site for such a use, particularly when considered in the aggregate with the other unique site conditions; and

WHEREAS, as to the site's location on the corner of Union Turnpike and Chevy Chase Street, the applicant notes that Union Turnpike is a wide street with a width of 100 feet, which is heavily-trafficked; and

WHEREAS, the applicant asserts that the high amount of traffic at the location, which includes that for the many nearby commercial businesses, diminishes the marketability for a conforming and complying residential use; and

WHEREAS, specifically the applicant notes that the permitted conforming use of the site would be one or two single-family homes and that homes at that density are not compatible with the wide street and adjacent use and would thus not be marketable; and

WHEREAS, in support of this claim, the applicant provided testimony from a neighborhood real estate broker who stated that no new residential development has taken place on Union Turnpike between Cunningham Park and Utopia Parkway in recent years; and

WHEREAS, the applicant submitted evidence into the record, which reflects that the residential buildings with frontage on Union Turnpike were constructed between approximately 1920 and 1961; and

WHEREAS, the applicant noted that many of the residential buildings with frontage on Union Turnpike also have commercial use on the first floor; and

WHEREAS, further, the real estate consultant stated that another site within a residential zoning district nearby on Union Turnpike has been on the market for more than one year without any success; 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, as to the contamination of the site, the applicant represents that the site was operated as a dry cleaning business for approximately 20 years and that there could be significant environmental remediation costs if the soil were disturbed to accommodate a conforming development; and

WHEREAS, the Board notes that the applicant did not submit any evidence to support a claim that there would be significant environmental remediation costs and does not accept this claim; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed a conforming single-family home; and

WHEREAS, the study concluded that a single-family home would not yield a reasonable rate of return; and

WHEREAS, at hearing, the Board directed the applicant to analyze an additional as-of-right alternative of two single-family homes fronting on Chevy Chase Street, rather than Union Turnpike; and

WHEREAS, the applicant notes that the two homes in that configuration would have backyards abutting the electrical substation and would, similarly, result in a negative rate of return; and

WHEREAS, the applicant submitted testimony into the record from a real estate professional in support of the claim that such homes would not be marketable; and

WHEREAS, at the Board's request, the applicant modified the financial analysis to include comparables, which it found to be more relevant to the subject site; and

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

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

WHEREAS, the applicant represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant notes that the site across Chevy Chase Street from the subject site is within a C1-2 (R2-4) zoning district, as are the sites diagonally across Union Turnpike to the east; and

WHEREAS, these sites are occupied by commercial uses; and

WHEREAS, in addition to commercial uses, as noted

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# MINUTES

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above, to the west of the site on Union Turnpike are the electrical transfer station and a large three-story synagogue; and

WHEREAS, the applicant submitted photographs of the streetscape along Union Turnpike, which reflect that there are several dozen commercial uses to the east and west of the site; and

WHEREAS, specifically, every block within the study (approximately six blocks in either direction) has at least one commercial or community facility use, including the blocks within the subject zoning district; and

WHEREAS, the photographs also reflect that there are very few buildings on this stretch of Union Turnpike occupied exclusively by residential use; and

WHEREAS, the applicant notes that the site had been historically used for commercial use for approximately 50 years until 2002; and

WHEREAS, further, the applicant notes that the size and location of the proposed building on the site are comparable to that of the most recent use as a drycleaner; and

WHEREAS, in response to the Community Board's concerns, the applicant agrees: (1) to limit the use of the building to Use Group 6 uses, other than eating and drinking establishments; (2) to provide a refrigerated refuse area if food is sold onsite; (3) to close operations by 11:00 p.m., daily; and (4) to prohibit garbage pick-up during evening hours; and

WHEREAS, after the hearing was closed, the Board received written testimony from additional community members who represent that they were not notified of the first public hearing and who oppose certain aspects of the application; the Board re-opened the record to allow the written testimony and the applicant's response to be entered; the Board also re-opened the hearing on April 1, 2008 to permit additional oral testimony; and

WHEREAS, specifically, the community members expressed concern that: (1) they had not received notification of the hearing; (2) the roof design was not compatible with nearby residential use; (3) lights, signs, or windows on the Chevy Chase Street frontage would negatively impact nearby adjacent use; (4) certain landscaping be maintained or planted; and (5) the terms of an agreement between the applicant and the new owner of the adjacent site on Chevy Chase Street inappropriately precludes the owner of the adjacent site from opposing the activity on the subject site; and

WHEREAS, the applicant responded to the concerns by agreeing to: (1) eliminate any signage on the Chevy Chase Street frontage; (2) eliminate the parapet above the building height of 18'-0" on the Chevy Chase Street frontage, except for a portion at the corner of the building; and (3) eliminate any lights from the Chevy Chase Street frontage; and

WHEREAS, additionally, the applicant noted that no construction is proposed along the west side of the site and that it proposes to maintain the existing trees and add landscaping in the western side yard; and

WHEREAS, the Board has determined that these changes address the primary newly-raised concerns and are appropriate; and

WHEREAS, the Board notes that it has not taken into consideration any agreement between the applicant and the new owner of the adjacent site, as such an agreement would not be relevant to the subject application; and

WHEREAS, additionally, the applicant agrees to provide screening and landscaping adjacent to residential uses and to direct any lighting away from nearby residences; and

WHEREAS, the Board notes that the parking is situated on the Union Turnpike frontage, furthest from the residential uses at the rear of the site; and

WHEREAS, at hearing, the applicant stated that the proposed use may include a delicatessen-type use, but would not include an eating and drinking establishment with full food preparation facilities; and

WHEREAS, the Board notes that the proposal respects the height and floor area limits of the subject zoning district and provides for the required amount of parking based on the floor 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, but is the result of the unique site conditions; and

WHEREAS, the Board notes that the proposal provides for the reconstruction of the pre-existing building which was damaged by fire; 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

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. 07BSA098Q, dated June 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



# MINUTES

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, within an R1-2 zoning district, the reconstruction of a one-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-10; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 11, 2007" – one (1) sheet, "Received February 15, 2008" – one (1) sheet "Received April 4, 2008" – two (2) sheets and "Received April 7, 2008" – one (1) sheet; and on further condition:

THAT the following are the bulk parameters of the proposed building: a floor area of 3,600 sq. ft. (0.32 FAR), one front yard of 47'-11", side yards of 38'-0" and 5'-0", a total height of 18'-0" (excluding the decorative parapet), and 12 parking spaces, as indicated on the BSA-approved plans;

THAT all signage shall comply with C1 zoning district parameters;

THAT the use of the site shall be limited to Use Group 6 retail and shall not include an eating and drinking establishment;

THAT all lighting shall be directed away from residences;

THAT no lighting or signage shall be placed on the eastern building wall, at the Chevy Chase Street frontage;

THAT a refrigerated refuse area shall be provided, if food is sold at the site;

THAT garbage pickup shall be limited to the hours between 7:00 a.m. and 7:00 p.m.;

THAT any operation of the site shall cease by 11:00 p.m., daily;

THAT landscaping and screening, including shrubbery and plantings, shall be provided and maintained as per the BSA-approved plans;

THAT the above conditions shall be stated 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, April 8, 2008.

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## 221-07-BZ

### CEQR #08-BSA-023M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP c/o Elise Wagner, Esq., for Kipper Productions, Inc., owner.

SUBJECT – Application September 27, 2007 – Variance (§72-21) to permit a music rehearsal studio on the first and second floors in a two-story vacant building. The proposal is contrary to 32-10. C1-4/R7-2 zoning districts.

PREMISES AFFECTED – 165 Lenox Avenue, west side of Lenox Avenue between West 118<sup>th</sup> and West 119<sup>th</sup> Streets, Block 1903, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Sheila Pozon.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 17, 2007, acting on Department of Buildings Application No. 104889523, reads in pertinent part:

"Proposed music rehearsal studio (UG 9) at first and second floors is not permitted as-of-right in C1-4/R7-2 zoning district and is contrary to ZR 32-10"; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-4 (R7-2) zoning district, a music rehearsal studio (Use Group 9) in an existing two-story and mezzanine commercial building, which is contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 12, 2008 after due notice of publication in the *City Record*, with continued hearing on March 11, 2008 and then to decision on April 8, 2008; and

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

WHEREAS, Community Board 10, Manhattan, recommends approval of the application; and

WHEREAS, the site is located on the west side of Lenox Avenue (A/K/A Malcolm X Boulevard) between West 118<sup>th</sup> Street and West 119<sup>th</sup> Street; and

WHEREAS, the site has a lot area of approximately 3,253 sq. ft.; and

WHEREAS, site is occupied by a two-story and mezzanine building with 7,546 sq. ft. of floor area; and

WHEREAS, the site has a rectangular shape with approximately 35'-6" of frontage on Lenox Avenue extending to a depth of approximately 97'-0"; and

WHEREAS, the applicant states that the site was sold by the City of New York as a vacant lot in November 1990 to the previous owner subject to a condition that a temporary

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# MINUTES

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certificate of occupancy be secured within two years of its conveyance or ownership could be recaptured by the City; and

WHEREAS, the applicant further states that the owner acquired the still vacant site from the previous owner in May 2001 with a deed condition requiring that a temporary certificate of occupancy be secured for a development within 18 months or ownership of the site would revert to the City; and

WHEREAS, the applicant represents that the City of New York through its Department of Citywide Administrative Services denied its request to waive the deed requirement and to grant additional time to obtain a temporary certificate of occupancy; and

WHEREAS, the applicant states that it therefore proceeded to build the subject building; and

WHEREAS, the existing two-story and mezzanine building has a total floor area of 7,546 sq. ft. (2.32 FAR); and

WHEREAS, the proposed uses for the building are (1) a music rehearsal studio (UG 9) on the first and second floors and (2) a not-for-profit organization (UG 4) on the mezzanine; and

WHEREAS, the music rehearsal studio will occupy 6,432 sq. ft. of floor area (1.98 FAR), and the community facility will occupy 1,114 sq. ft. of floor area (0.34 FAR); 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's poor soil conditions; and (2) the presence of a geological fault and stream running beneath the property; and

WHEREAS, as to the poor soil conditions, the applicant notes that the site's soil consists of loose fill material underlain by silty sand; and

WHEREAS, as to the geological fault that runs beneath the property, the applicant states that a geotechnical engineering study conducted on the site measured groundwater at a depth of 10.5 feet due to a stream running through a subsurface geological fault; and

WHEREAS, the applicant represents that the subject site is the only one in the vicinity with a stream underneath the entire property; and

WHEREAS, the applicant claims that because of the site's poor soil conditions, geological fault and stream, shallow footings could not be used; instead, a deep foundation system using piles was required; and

WHEREAS, the applicant states that drilled piles typically cost two to three times more than driven piles; and

WHEREAS, the applicant documented additional construction costs associated with the need for drilled piles; 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 and community facility

building and an as of right residential building; and

WHEREAS, the applicant concluded that both scenarios would result in a loss, due to the premium construction costs associated with the site's unique subsurface conditions; and

WHEREAS, specifically, the applicant noted that second floor commercial space is not marketable at this location and income from such use would thereby be limited; and

WHEREAS, at hearing the Board asked the applicant whether it was feasible to enlarge the subject building to include four additional stories of residential units; and

WHEREAS, the applicant further represents that the resulting residential rental income would be insufficient to offset the additional foundation costs or the cost of the residential enlargement; 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 use 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 further represents that the immediate area is characterized by residential buildings with ground floor commercial uses; and

WHEREAS, the applicant states that several commercial districts which permit Use Group 9 uses as of right are located nearby, including one such district two blocks to the south of the subject site, and that such a use is consistent with the character of the area; and

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

WHEREAS, the Board agrees that the surrounding area is characterized by lower floor commercial uses, and finds that the introduction of the proposed Use Group 9 use will not impact nearby conforming uses; and

WHEREAS, the applicant represents that because the proposed use will not require physical alteration to the exterior of the subject building, it would not adversely affect the surrounding area, including the architectural resources of the Mount Morris Park Historic District located northeast of the of the subject building on the north side of 119<sup>th</sup> Street and on the east side of Lenox Avenue; and

WHEREAS, at hearing the Board asked how the applicant proposed to mitigate noise from the subject building; and

WHEREAS, in a submission to the Board, the applicant stated that the building is a sound-proof facility with double thickness walls that are internally lined with sound-abatement materials meeting professional standards and studio doors equipped with sound abating gaskets and seals; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding

# MINUTES

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 topographical conditions of the site; and

WHEREAS, the Board observes that the proposed use as a Use Group 9 music rehearsal studio is limited in scope and compatible with nearby development; and

WHEREAS, the applicant states that the proposed building has an FAR of 2.32, significantly less than the FAR of 4.0 permitted for an as of right residential development, or the 6.5 FAR permitted for a complying community facility use; and

WHEREAS, the Board notes that the proposed use is the minimum variance 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 an Unlisted action pursuant to 6 NYCRR, Part 617.42 (ak) 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. 08BSA023M, dated January 23, 2008; 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

*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, to permit, within a C1-4 (R7-2) zoning district, a music rehearsal studio (Use Group 9) in an existing two-story and mezzanine commercial building, which is 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 September 27, 2007” – Six (6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: two stories and a mezzanine, a total floor area of 7,546 sq. ft. (2.32 FAR), a Use Group 9 floor area of 6,432 sq. ft. (1.98 FAR), and a community facility floor area of 1,114 sq. ft. (0.34 FAR);

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 8, 2008.

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## **10-08-BZ CEQR #08-BSA-043K**

APPLICANT – Law Office of Fredrick A. Becker, for NYC Partnership Housing Development Fund Company, Inc., owner; TSI West 145<sup>th</sup> LLC, dba New York Sports Club, lessee.

SUBJECT – Application January 4, 2008 – Special Permit (§73-36) to allow the legalization of the existing Physical Culture Establishment on a portion of the cellar level and first floor in a nine-story mixed-use building. The proposal is contrary to section 32-10. C4-4D.

PREMISES AFFECTED – 66-68 Bradhurst Avenue, easterly side of Bradhurst Avenue, easterly of West 145<sup>th</sup> Street, Block 2045, Lot 21, Borough of Manhattan.

### **COMMUNITY BOARD #10M**

#### APPEARANCES –

For Applicant: Fredrick Becker.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 5, 2007, acting on Department of Buildings Application No. 104930817, reads in pertinent part:

“Proposed Physical Culture Establishment is contrary to Zoning Resolution Section 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4D zoning district, the legalization of a physical culture establishment

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# MINUTES

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(PCE) on portions of the first floor and cellar level of a nine-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 26, 2008, after due notice by publication in *The City Record*, with a continued hearing on March 18, 2008, and then to decision on April 8, 2008; and

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

WHEREAS, Community Board 11, Manhattan, did not provide a recommendation on the application; and

WHEREAS, the subject site is located on the northeast corner of Bradhurst Avenue and West 145<sup>th</sup> Street; and

WHEREAS, the site is occupied by a nine-story mixed-use residential/ commercial building; and

WHEREAS, the PCE occupies approximately 15,903 sq. ft. of floor space on the first floor and cellar level; and

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

WHEREAS, the Board notes that the PCE has operated at the site since approximately December 1, 2007; accordingly, the term will be reduced for the amount of time between December 1, 2007 and the date of this grant; and

WHEREAS, the applicant represents that the PCE provides facilities for cardiovascular exercise and weight-training; and

WHEREAS, the 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 identify where the residential units in the building are in relation to the PCE use and to describe all sound attenuation measures; and

WHEREAS, in response, the applicant stated that the majority of the PCE use is either adjacent to commercial use or under the second floor open roof deck, but that there are sound attenuation measures in place below any adjacent residential use; and

WHEREAS, additionally, as to sound attenuation, the applicant submitted revised plans, which describe the measures that are in place to buffer any noise from the PCE to adjacent uses; and

WHEREAS, the applicant represents that the sound attenuation measures including the following: a spring hung ceiling, six inches of batt insulation, and two layers of sheetrock, which were undertaken in accordance with recommendations from acoustical consultants; and

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

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

satisfactory; and

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2(ak); 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. 08BSA043M, dated January 3, 2008; 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 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 C4-4D zoning district, the legalization of a physical culture establishment on portions of the first floor and cellar level of a nine-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 March 31, 2008"-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 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 above conditions shall appear on the Certificate of Occupancy;

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# MINUTES

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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 all sound attenuation measures shall be installed and maintained as per 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 8, 2008.

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## 16-08-BZ

APPLICANT – Eric Palatnik, P.C., for Isaiah Florence, owner.

SUBJECT – Application January 15, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (§23-141(a)); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 2614 Avenue L, between East 26<sup>th</sup> and East 27<sup>th</sup> Streets, Block 7644, Lot 46, Borough of 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 18, 2008, acting on Department of Buildings Application No. 310005767, reads in pertinent part:

- “1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) 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 23-47 in that the back yard is less than the required minimum 30’-0”;

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 FAR, open space ratio, and rear and side yards, contrary to ZR §§ 23-141(a), 23-461(a), and 23-47; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on April 8, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Avenue L, between East 26<sup>th</sup> Street and East 27<sup>th</sup> 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 floor area of approximately 3,173 sq. ft. (0.80 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 3,173 sq. ft. (0.80 FAR), to 3,914 sq. ft. (0.98 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 60 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 4’-6” (a minimum width of 5’-0” is required) and a complying side yard of 8’-5” (side yards with a minimum total width of 13’-0” are required); and

WHEREAS, the proposed enlargement will maintain the rear yard with a depth of 24’-3” (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 confirm whether a three-story bay window would increase the degree of non-compliance of the side yard; and

WHEREAS, in response, the applicant revised the drawings to reflect the removal of the noted bay window; 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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# MINUTES

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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 R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, rear and side yards, contrary to ZR §§ 23-141(a), 23-461(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 March 19, 2008"-(12) sheets; and *on further condition*:

THAT the floor area in the attic shall be limited to 720.5 sq. ft.;

THAT there shall be no habitable room in the cellar;

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 3,914 sq. ft. (0.98 FAR), an minimum open space ratio of 60 percent, side yards with minimum widths of 4'-6" and 8'-5", and a rear yard with a minimum depth of 24'-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 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 8, 2008.

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## 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 James Heineuran.

For Opposition: James G. Shawgig, Rosemarie Trotta, Carole Timko, Linda Nigio, William Koman, Edwin Converg, Nevgul Laverie and John Lafemina.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 238-07-BZ

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O'Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

SUBJECT – Application October 23, 2007 – Variance (§ 72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§ 117-21 & § 23-145), lot coverage (§ 117-21 & § 23-145), minimum distance between windows (§ 117-21 & § 23-711(b)) and height and setback (§ 117-21, § 23-633 & § 23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§ 42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180' west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

### COMMUNITY BOARD # 2Q

APPEARANCES –

For Applicant: Howard Goldman, William P. Kelly, Jay Vangora, Arnold F. Flemming and Thomas Paino.

For Opposition: ?????

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 242-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 1760 Gleason Properties, LLC, owner.

SUBJECT – Application October 26, 2007 – Variance (§72-21) to construct a two story, two family detached residence with an accessory one car garage and one accessory open parking space on a vacant corner lot which encroaches into a required front yard (23-45) in an R5 zoning district.

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# MINUTES

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PREMISES AFFECTED – 1760 Gleason Avenue, Commonwealth Avenue and Saint Lawrence Avenue, Block 3752, Lot 41, Borough of Bronx.

**COMMUNITY BOARD # 9BX**

APPEARANCES –

For Applicant: Elizabeth Safian.

For Opposition: James C. Jones, Esq., James C. Jones.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**281-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Falah and Victor Falah, owners.

SUBJECT – Application December 12, 2007 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R2X (OP) zoning district.

PREMISES AFFECTED – 1960 East 4<sup>th</sup> Street, west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S, Block 6681, Lot 263, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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**13-08-BZ**

APPLICANT – Bryan Cave LLP/Robert Davis, for Little Red School House, Inc., owner.

SUBJECT – Application January 8, 2008 – Variance (§72-21) to permit an addition at the rear of the existing high school and adjacent buildings to meet the school's programmatic needs. The proposal is contrary to §§ 24-11 (lot coverage) and 24-36 (rear yard). R6/M1-6 districts.

PREMISES AFFECTED – 34-42 Charlton Street (a/k/a 34 Charlton), 40 Charlton, 40-42 Charlton Street) bounded by Varick and Charlton Streets, Avenue of the Americas and Vandam Street, Block 506, Lots 11 & 12, Borough of Manhattan.

**COMMUNITY BOARD # 2M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 1:30 P.M., for continued hearing.

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**14-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block

7291, Lot 108, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**36-08-BZ**

APPLICANT – Lewis Garfinkel, R.A., for Antoninette Mizrachi, owner.

SUBJECT – Application February 21, 2008 – 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)); side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1177 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street, 130' north of Avenue L, Block 7623, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lewis Garfinkel.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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**44-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 5:15 P.M.*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 93, Nos. 16-17

April 24, 2008

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## DIRECTORY

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**DARA OTTLEY-BROWN**

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**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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## CONTENTS

|                                 |         |
|---------------------------------|---------|
| DOCKET .....                    | 262     |
| <b>CALENDAR</b> of May 13, 2008 |         |
| Morning .....                   | 263     |
| Afternoon .....                 | 264     |
| <b>CALENDAR</b> of May 20, 2008 |         |
| Morning .....                   | 265     |
| Afternoon .....                 | 265-266 |



---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, April 15, 2008**

Morning Calendar .....267

**Affecting Calendar Numbers:**

546-70-BZ            1377-1391 York Avenue, Manhattan  
590-70-BZ            1596-1608 York Avenue, Manhattan  
141-96-BZ            638-40 Utica Avenue, Brooklyn  
207-07-A             48-20 57<sup>th</sup> Avenue, Queens  
208-07-BZY          74 Grand Avenue, Brooklyn  
64-08-A              74 Grand Avenue, Brooklyn  
39-07-A thru 40-07-A 3248, 3250 Wickham Avenue, Bronx  
192-07-A             3546 Decatur Avenue, Bronx  
288-07-BZY &      421 and 425 Burgher Avenue, Staten Island  
  289-07-BZY  
1-08-A thru 8-08-A   65, 69, 73, 77, 83, 87, 91, 93 Giegerich Avenue, Staten Island

Afternoon Calendar .....272

**Affecting Calendar Numbers:**

39-06-BZ            245 Varet Street, Brooklyn  
134-06-BZ            241-15 Northern Boulevard, Queens  
51-07-BZ            70-44 to 58 Kissena Boulevard, Queens  
74-07-BZ            6-10 West 70<sup>th</sup> Street, Manhattan  
114-07-BZ            7-05 152<sup>nd</sup> Street, Queens  
169-07-BZ            626 West 254<sup>th</sup> Street, Bronx  
171-07-BZ            167 Norfolk Street, Brooklyn  
205-07-BZ            53-20 72<sup>nd</sup> Place, Queens  
250-07-BZ            837 Belmont Avenue, Brooklyn  
269-07-BZ            378 Seaview Avenue, Staten Island  
272-07-BZ            344 Amsterdam Avenue, Manhattan  
23-08-BZ            182-69 80<sup>th</sup> Road, Queens  
54-08-BZ            3199 Bedford Avenue, Brooklyn

Correction .....275

**Affecting Calendar Number:**

46-07-BZ            1328 East 23<sup>rd</sup> Street, Brooklyn

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# DOCKET

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New Case Filed Up to April 15, 2008  
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**83-08-A**

3218 Emmons Avenue, Emmons Avenue between Brigham Street and Bragg Street., Block 8815, Lot(s) 590, Borough of **Brooklyn, Community Board: 15**. Appeal seeking to revoke Certificate of Occupancy for applicants's failure to provide waterfront certification as set forth in 62-711 of the Zoning Resolution.  
-----

**84-08-BZ**

67-24 Main Street, West side Street 315.5' north of 68th Drive., Block 6486, Lot(s) 38, Borough of **Queens, Community Board: 8**. Special Permit(11-411 & 73-01 (d) to reinstate the variance granted under cal# 410-48-BZ since it has lapsed.  
-----

**85-08-BZ**

222-89 Braddock Avenue, North west corner of Braddock Avenue and Ransom Street., Block 7968, Lot(s) 31, Borough of **Queens, Community Board: 13**. Special Permit (73-30) to allow a non-accessory radio tower on the rooftop of an existing building.  
-----

**86-08-BZ**

111-26 Corna Avenue, Approximately 200 feet east of Saultell Avenue., Block 1972, Lot(s) 38, Borough of **Queens, Community Board: 4**. Special Permit (73-30) to allow a non-accessory radio tower on rooftop of an existing building.  
-----

**87-08-A**

119 Johnson Avenue, Northside of Johnson Avenue-198-.41 feet east of Arthur Kill Road., Block 8025, Lot(s) 34, Borough of **Staten Island, Community Board: 3**. An appeal challenging Dob determination that the existing building does not comply with Section 27-291 of the NYC Buidling Code .  
-----

**88-08-BZ**

101-17 Lefferts Boulevard, East side, 150 ft. south of 101st Avenue, Block 9487, Lot(s) 68, Borough of **Queens, Community Board: 9**. Variance to allow the commercial office conversion of an existing three-family residential building; contrary to use regulations.  
-----

**89-08-BZ**

1101 Victory Boulevard, Northwest corner of Victory Boulevard and Melrose Avenue., Block 247, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Special Permit (73-125) to permit the conversion of existing one story office building.  
-----

**90-08-BZ**

104-36 196th Street, Northwest corner of Hollis Avenue and 196th Street., Block 10891, Lot(s) 21, Borough of **Queens, Community Board: 12**. Special Permit (73-30) to allow an non-accessory radio tower on the rooftop of an existing building.  
-----

**91-08-BZ**

37-68 97th Street, North west corner of 97th Street and 38th Avenue, Block 1759, Lot(s) 30, Borough of **Queens, Community Board: 3**. Special Permit (73-30) to allow a non-accessory radio tower  
-----

**92-08-BZ**

13 Crosby Street, Along the east side of Crosby Street between Grand and Howard Street., Block 233, Lot(s) 4, Borough of **Manhattan, Community Board: 4**. Variance to allow the conversion and enlargement of the upper five floors of an existing six story building and addition for the sixth floor mezzanine.  
-----

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

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# CALENDAR

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**MAY 13, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 13, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**718-56-BZ**

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation

SUBJECT – Application March 31, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil) which expired on July 2, 2002; an Extension of Time to obtain a Certificate of Occupancy which expired on July 27, 2000 and an Amendment to legalize the conversion of one restroom to office space and office/sales area to an accessory convenience store in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner of North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

**COMMUNITY BOARD #1SI**  
-----

**1334-66-BZ**

APPLICANT – Sheldon Lobel, PC, for ACP Lincoln Garages, LLC, owners.

SUBJECT – Application March 3, 2008 – Reopening for an extension of term for a variance, which was originally granted under Section 60(3) of the Multiple Dwelling Law, which permits the operation of a transient parking garage in the cellar and sub-cellar of a building. R8 zoning district.

PREMISES AFFECTED – 150 West End Avenue, east side of West End Avenue between West 66<sup>th</sup> and West 70<sup>th</sup> Streets, Block 1158, Lot 80, Borough of Manhattan.

**COMMUNITY BOARD #7M**  
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**1098-83-BZ**

APPLICANT – Walter T. Gorman, P.E., Joseph M. Mattone, Estate of James J. Mannix, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application March 21, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil), in C1-2/R5 zoning district, which expired on April 3, 2004 and an Amendment to legalize the conversion of the sales area to an accessory convenience store, the installation of planters, public telephone, chain link fencing atop a portion of a brick wall and the elimination of bollards on Northern Boulevard.

PREMISES AFFECTED – 147-10 Northern Boulevard, south east corner of 147<sup>th</sup> Street. Block 5016, Lot 18, Borough of Queens.

**COMMUNITY BOARD #7Q**  
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**340-03-BZ**

APPLICANT – Davidoff Malito & Hatcher, LLP, by Howard S. Weiss, Esq., for 408

SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #1M**  
-----

**80-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Clover Housing Development Fund Corp., owner.

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 wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), and the permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94<sup>th</sup> Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

**COMMUNITY BOARD # 7M**  
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**APPEALS CALENDAR**

**194-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, for Elite III Contractor's Inc., owner.

SUBJECT – Application August 8, 2007 – Appeal seeking 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. R5 Zoning District.

PREMISES AFFECTED – 1447 Rosedale Avenue, Cross Bronx Expressway Service Road N and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.

**COMMUNITY BOARD #9BX**  
-----

**230-07-BZY**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Alco Builders, Inc., owner.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R4-1

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# CALENDAR

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zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**28-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; TJ & Meaghan Healey, lessee.

SUBJECT – Application February 14, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and the upgrade of an existing non-conforming private disposal system partially in the bed of the service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 11 Devon Walk, east side Devon Walk, 44.84' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**MAY 13, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 13, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**268-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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**274-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Abdo Balikcioglu, owner.

SUBJECT – Application November 29, 2007 – Special Permit (§73-522) for the enlargement of an existing single family residence. This application seeks to vary floor area,

lot coverage and open space (§23-141) and side yards (§23-461) in an R3X zoning district.

PREMISES AFFECTED – 1157 83rd Street northern side of 83rd Street between 11th Avenue and 12th Avenue, Block 6301, Lot 54, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**24-08-BZ**

APPLICANT – Omnipoint Communications, Inc., for Village Greens Shopping Center, LLC., owner.

SUBJECT – Application February 5, 2008 – Special Permit (§73-30) seek approval for a proposed 90-foot non-accessory radio tower and related equipment at grade. C1-3 overlay within R3-2 and SRD district.

PREMISES AFFECTED – 230-262 Arden Avenue, south side Arden Avenue and Tarbes Avenue, Block 6025, Lot 35, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**31-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to allow a 110- foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**456-85-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR §73-30 and file under separate BSA application.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**37-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Catholic High School Association of N.Y., owner; Northop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 21, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower as part of the New York City

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# CALENDAR

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Department of Information Technology and Telecommunications / Wireless Network. R3X zoning district.

PREMISES AFFECTED – 100 Merrill Avenue, between Arlene Street and Richmond Avenue, Block 2236, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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## **38-08-BZ**

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 40 Broad LLC, owner; 40 Broad Commercial LLC, lessee. SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing 25-story commercial building. The proposal is contrary to §32-10. C5-5 within the Historic & Commercial Core Area of the Special Lower Manhattan District.

PREMISES AFFECTED – 40 Broad Street (a/k/a 34-40 New Street) lot fronting Broad Street and New Street, south of Exchange Place, north of Beaver Street, Block 24, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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*Jeff Mulligan, Executive Director*

**MAY 20, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 20, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **206-61-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC, owner.

SUBJECT – Application March 24, 2008 – Extension of Term/Waiver filed pursuant to §11-411 for an existing six story office building located in an R8-B zoning district. The term of the variance expired on July 11, 2006.

PREMISES AFFECTED – 30 East 39<sup>th</sup> Street, south side, 189' east of Madison Avenue, Block 868, Lot 49, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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### **788-89-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and

automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

**COMMUNITY BOARD #12Q**

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## **APPEALS CALENDAR**

### **266-07-A**

APPLICANT – Stuart A. Klein, for 1610 Ave S LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

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### **33-08-A**

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> lane, aka 209-213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane, 63.19'W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**MAY 20, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 20, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **282-07-BZ & 283-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for 774 Schenck Properties, LLC, owner.

SUBJECT – Application December 17, 2007 – Variance (§72-21) to allow two (2) two-family, two-story detached

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# CALENDAR

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homes; contrary to front yard requirements (§ 23-45). R5 district.

PREMISES AFFECTED – 774 Schenck Avenue, aka 764 Schenck Avenue and 825 Hendrix Street, Linden Boulevard and Hendrix Avenue, Block 4330, Lot 28C, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**  
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**27-08-BZ**

APPLICANT – Slater & Beckerman, LLP for JDK Hylan Properties, LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 13, 2008 – Special Permit (§73-30) to permit in an R3X district, a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4845 Hylan Boulevard, northwest corner of Barclay Avenue, Block 6401, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**29-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Hebrew Free Burial Association, owner; Northrop Grumman Info., Tech., Inc., lessee.

SUBJECT – Application February 14, 2008 – Special Permit (§73-30) to permit a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless. R3-2 zoning district.

PREMISES AFFECTED – 422 Clarke Avenue, south side of Clarke Avenue between St. Patricks Place and Tysen Court, Block 4467, Lot 23, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**30-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Special Permit (§73-30) to permit in an R3-1 district a 50 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**457-65-BZ**

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR 73-30 and file under separate BSA application.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**58-08-BZ**

APPLICANT – Fried, Frank Harris, Shriver & Jacobson LLP, Waldo Hutchins & J.P. Morgan Chasebank Trustee for Estate of Francis S. Appleby, owner; The Durst Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit (§73-19) to allow the development of a six-story school (U.G 3) on a vacant site. The proposal is contrary to section 42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58<sup>th</sup> Street, Twelfth Avenue, West 57<sup>th</sup> Street, West 58<sup>th</sup> Street, Eleventh Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of Manhattan.

**COMMUNITY BOARD #4M**  
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**66-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland, owner.

SUBJECT – Application March 28, 2008 – 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 less than the required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21<sup>st</sup> Street, east side of East 21<sup>st</sup> Street, between Avenue N and Avenue M, Block 7657, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**  
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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, APRIL 15, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**546-70-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, River York Stratford LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3)) of the MDL to permit transient parking for the unused and surplus parking spaces, not to exceed 50 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1377-1391 York Avenue, West side of York Avenue between East 73rd and East 74th Streets, Block 1458, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: James P. Power.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

**590-70-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 85th Realty LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3)) of the MDL to permit transient parking for the unused and surplus spaces not to exceed 23 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1596-1608 York Avenue East side of York Avenue, between East 84th and East 85th Streets, Block 1581, Lot 49, Borough of Manhattan.

**COMMUNITY BOARD # 8M**

APPEARANCES –

For Applicant: James P. Power.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

**141-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for Lloyd Coy, owner.  
SUBJECT – Application July 19, 2007 – Extension of term/Amendment/Waiver-permitting the operation of a motor vehicle repair shop (use group 16) in an R5/C2-2 zoning district and amend the previously approved variance allowing minor changes to the layout and legalization of existing non-complying signage. The Term of the variance expired May 20, 2007.

PREMISES AFFECTED – 638-40 Utica Avenue, located on the west side of Utica Avenue between Winthrop Street and Clarkson Avenue, Block 4617, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

**APPEALS CALENDAR**

**207-07-A**

APPLICANT – Agusta & Ross, for Davis & Warshow, Inc., owner.

SUBJECT – Application August 22, 2007 – Proposed construction of a four story commercial warehouse located within the bed of mapped street (48<sup>th</sup> St.) contrary to Section 35 of the General City Law Section 35. M3-1 Zoning District.

PREMISES AFFECTED – 48-20 57<sup>th</sup> Avenue, westerly side of 49<sup>th</sup> Street at 57<sup>th</sup> Avenue, Block 2564, Lot 1, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES –

For Applicant: Mitchell Ross.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 8, 2007, acting on Department of Buildings Application No. 402555427 reads in pertinent part:

“Proposed enlargement of building located in the bed of 48<sup>th</sup> Street (mapped but not open) requires approval of the NYC Board of Standards and Appeals pursuant to General City Law Section 35;” and

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# MINUTES

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WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in the *City Record*, and then to decision on April 15, 2008; and

WHEREAS, this application requests permission to build a four-story enlargement between two existing four-story buildings on Lot 1, which will replace the one-story brick structure now connecting the buildings; and

WHEREAS, the site is occupied by industrial uses in an M3-1 zoning district; and

WHEREAS, by letter dated December 19, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an Amended Drainage Plan No. 20AS(4), 20ASW(5), which calls for (1) a future 24-in. diameter storm sewer and a 12-in diameter sanitary sewer in the bed of 57<sup>th</sup> Avenue between 48<sup>th</sup> Street and 49<sup>th</sup> Street; (2) a future 12-in. diameter storm sewer and a 10-in. diameter sanitary sewer in the bed of 48<sup>th</sup> Street between 57<sup>th</sup> Avenue and Maspeth Creek, and (3) a future 10-in. diameter sanitary sewer and a 42-in. diameter storm sewer in 49<sup>th</sup> Street between 57<sup>th</sup> Avenue and Maspeth Creek; and

WHEREAS, therefore, DEP requests that the applicant provide a minimum 33-ft. corridor in the bed 57<sup>th</sup> Avenue between 48<sup>th</sup> Street and 49<sup>th</sup> Street for the purpose of installation, maintenance, and/or reconstruction of the future 24-in. diameter storm sewer, a 12-in. diameter sanitary sewer, and an existing 8-in. diameter city water main; and

WHEREAS, DEP also will require a 32-in. sewer corridor in the bed of 48<sup>th</sup> Street between 57<sup>th</sup> Avenue and Maspeth Creek for the purpose of installation, maintenance, and/or reconstruction of a future 10-in. diameter sanitary sewer and a 12-in. storm sewer, or to amend the drainage plan; and

WHEREAS, DEP also raised concerns that Lots 25 and 48 of Block 2564 and Lots 95 and 100 of Block 2554 are landlocked, so it requires the applicant to show the methods of ingress, egress, and sewer discharge for these lots; and

WHEREAS, in response, the applicant states that it has applied to merge the separate lots (1, 10, 25, 48, 95, & 100) on the site to one larger Lot 1 and has submitted a revised site plan reflecting the merger; the merged Lot 1 will provide better accessibility for DEP, and therefore will eliminate the need for a 10-in. diameter sanitary sewer and a 12-in. diameter storm sewer in the bed of the mapped 48<sup>th</sup> Street between 57<sup>th</sup> Avenue and Maspeth Creek; and

WHEREAS, the plan also provides a 34.46-ft. wide sewer corridor in the bed of 57<sup>th</sup> Avenue between 48<sup>th</sup> Street and 49<sup>th</sup> Street, which will be available for the installation, maintenance, and/or reconstruction of the future 12-in. diameter sanitary sewer, 24-in. diameter storm sewer, and an existing 8-in. diameter water main; and

WHEREAS, by letter dated April 7, 2008, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated December 21, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that the December 21, 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 December 21, 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 Queens Borough Commissioner, dated August 8, 2007, acting on Department of Buildings Application No. 402555427, is hereby 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, 2008" (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 DOB shall not issue any permit prior to its approval of the proposed lot merger;

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 15, 2008.

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## **208-07-BZY**

APPLICANT – Law Office of Fredrick Becker, for JN520, LLC/A Fishoff, owner.

SUBJECT – Application August 23, 2007 – 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.

PREMISES AFFECTED – 74 Grand Avenue (a/k/a 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lot 48, Borough of Brooklyn.

## **COMMUNITY BOARD #2BK**

### APPEARANCES –

For Applicant: Lyra Altman and Matthew Barnett.

**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, April



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# MINUTES

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15, 2008.

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**64-08-A**

APPLICANT – Law Office of Fredrick A. Becker, for JN520 LLC, owners.

SUBJECT – Application March 28, 2008 – an Appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior R6 Zoning District. R6B Zoning District.

PREMISES AFFECTED – 74 Grand Avenue, (a/k/a 72-96 Grand Avenue) Grand Avenue between Myrtle Avenue and Park Avenue, Block 1892, Lots 48 & 46, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**APPEARANCES –**

For Applicant: Lyra J. Altman and Matthew Barnett.

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

**THE VOTE TO GRANT –**

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a five-story residential building under the common law doctrine of vested rights; and

WHEREAS, this application was brought subsequent to a companion application under BSA Cal. No. 208-07-BZY, which was 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 applicant withdrew the application for the statutory vested rights case on April 15, 2008; the record is the same for both cases; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in *The City Record*, and then to decision on April 15, 2008; and

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

WHEREAS, Community Board 2, Brooklyn, recommends approval of the application; and

WHEREAS, City Council members David Yassky and Letitia James provided testimony in support of the application; and

WHEREAS, the site is located on the west side of Grand Avenue, between Myrtle Avenue and Park Avenue and has a lot area of 25,000 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building, with 55,000 sq. ft. of floor area (2.2 FAR), a total height of 55 feet, and a base height of 45 feet (the “Building”); and

WHEREAS, the subject premises is currently located within an R6B 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 floor area, FAR (2.2 FAR was the maximum permitted), and total height and base height (55 feet and 45 feet, respectively, were the maximum permitted); and

WHEREAS, however, on July 25, 2007 (the “Enactment Date”), the City Council voted to adopt the Fort Greene/Clinton Hill rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, the Building does not comply with the R6B 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 Board notes that New Building Permit No. 301943529 (the “Original Permit”), which authorized the development of a five-story residential building pursuant to R6 zoning district regulations was issued on June 13, 2007; and

WHEREAS, the Original Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R6B zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, on October 9, 2007, the applicant amended the building plans under a post approval amendment (PAA) to reflect a three-story building that complies with R6B zoning district regulations; and

WHEREAS, the applicant continued as of right construction at the site pursuant to the PAA; and

WHEREAS, when the companion application, under BSA Cal. No. 208-07-BZY was filed at the Board, DOB stated its opposition to the application because it determined that the Original Permit was superseded by the PAA and, accordingly, the Original Permit could not be renewed; and

WHEREAS, DOB stated its position that the applicant could not seek relief under the vested rights statute while it continues construction pursuant to an as of right permit; and

WHEREAS, the applicant asserted that it maintained a right to renew the Original Permit because (1) the plans associated with the Original Permit were valid under the prior zoning and (2) the plans associated with the PAA were valid under the new zoning; and

WHEREAS, additionally, the applicant noted that the foundation for the three-story building and the five-story building were identical and that other features of the three-story building under construction could ultimately be used for the five-story building if the Original Permit were to be renewed; and

WHEREAS, at the February 26, 2008 hearing for BSA Cal. No. 208-07-BZY, the Board asked DOB whether it would maintain its opposition to the vesting claim if the applicant were to withdraw the PAA and request that the

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# MINUTES

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Board consider whether a right to continue construction arose during the time when the Original Permit was in effect; and

WHEREAS, DOB responded that it would not object to the renewal of the Original Permit if the applicant withdrew the PAA; and

WHEREAS, accordingly, the applicant has agreed to withdraw the PAA under DOB's direction; and

WHEREAS, the validity of the Original Permit has not been challenged; and

WHEREAS, accordingly, for the purpose of the vesting application, only the Original Permit, and the work performed pursuant to it, are relevant and have been considered; and

WHEREAS, the Board agrees with DOB that any work performed after the Enactment Date (and pursuant to the PAA) cannot be considered for vesting purposes; 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 Enactment Date, the owner had completed the following: demolition, foundation work, underpinning 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, a work schedule, concrete pour tickets, a construction log, affidavits from the contractor and architect, and copies of cancelled checks; and

WHEREAS, the Board notes that construction continued after the date the PAA was issued, but it has not considered any of this work; and

WHEREAS, the applicant submitted records, which reflect the work completed between the issuance of the Original Permit and the Enactment Date; and

WHEREAS, the Board notes that the applicant initially sought to renew the permits pursuant to ZR § 11-331 and

provided documentation of the work performed at the site in support of the claim that prior to the Enactment Date: (1) excavation had been completed and (2) substantial progress had been made on the foundation; and

WHEREAS, the applicant asserted that any un-excavated portion of the site provided a necessary staging area and means for construction vehicle access; and

WHEREAS, although the Board rejected the applicant's assertion that excavation had been completed as required by ZR § 11-331 because it determined that the amount of the site that was un-excavated exceeded the customary amount required for staging and vehicle access, it recognized that the amount of excavation and foundation work was substantial; and

WHEREAS, as noted above, the applicant withdrew the application seeking the renewal of the Original Permit pursuant to ZR § 11-331, but the record for both cases is the same; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment 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, 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, prior to the Enactment Date, the owner expended or became obligated for the expenditure of \$1,285,874.41 out of \$12,781,619.00 budgeted for the entire project; and

WHEREAS, the Board notes that this includes \$1,070,733.70 for the foundation costs, which represents 82 percent of the total projected cost for the foundation; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately ten percent of the projected 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, concrete pours, underpinning, shoring, other construction

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# MINUTES

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work, engineering, and DOB fees; and

WHEREAS, the Board has not considered the cost for any expenditures, other than irrevocable financial commitments, for work performed after the Enactment Date, pursuant to the PAA; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of approximately \$1,285,874.41 associated with pre-Enactment 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 permitted floor area would decrease from 55,000 sq. ft. (2.2 FAR) to 50,000 sq. ft. (2.0 FAR); and

WHEREAS, the applicant notes that the 5,000 sq. ft. loss in floor area represents a loss of seven upper floor apartments and the reconfiguration of the remaining units; and

WHEREAS, the Board notes that upper floor apartments command a premium and that the loss of these and the associated revenue of \$2,677,600.00 (which includes a reduction for the construction associated with the top floor that could not be built); and

WHEREAS, the Board agrees that the need to redesign the building, coupled with \$1,285,874.41 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, 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, accordingly, based upon its consideration of the arguments made by the applicant 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 Original Permit, and all other related permits necessary to complete construction; and

WHEREAS, the Board notes that the applicant will withdraw the PAA and re-establish the Original Permit under DOB's direction.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a

reinstatement of the Original Permit associated with DOB Application No. 301943529, 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, April 15, 2008.

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**39-07-A thru 40-07-A**

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of two , 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED –3248, 3250, Wickham 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 June 24, 2008, at 10 A.M., for continued hearing.

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**192-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,

SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211th street) contrary to Section 35 of the General City Law. R7-1 Zoning District.

PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for continued hearing.

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**288-07-BZY & 289-07-BZY**

APPLICANT – Anthony J. Tucci, Esq., for LT and Development Corp., owner.

SUBJECT – Application December 21, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on December 2005. R3-X.

PREMISES AFFECTED – 421 and 425 Burgher Avenue, bound by Burgher and Mason Avenue, Block 3361, Lots 27 and 25, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Anthony Tucci.

THE VOTE TO CLOSE HEARING –

# MINUTES

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 10 A.M., for decision, hearing closed.

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## 1-08-A thru 8-08-A

APPLICANT – Rampulla Associates Architects, for Bay Properties, owner.

SUBJECT – Application January 3, 2008 – Proposed construction of eight, one- family homes not fronting a legally mapped street contrary to Section 36 of the General City Law. R1-2 SRD, SGMD.

PREMISES AFFECTED – 65, 69, 73, 77, 83, 87, 91, 93 Giegerich Avenue, west side 154.75’ to Minerva Avenue, Block 7792, Lot 242 (ten. 286), Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 6, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:10 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, APRIL 15, 2008 1:30 P.M.

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

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## 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 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 June 24, 2008, at 1:30 P.M., for deferred decision.

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### 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: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

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### 51-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§ 72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§ 22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for continued hearing.

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### 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 70<sup>th</sup> Street, south side of West 70<sup>th</sup> Street, west of the corner formed by the

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# MINUTES

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intersection of Central Park West and West 70<sup>th</sup> Street, Block 1122, Lots 36 & 37, Borough of Manhattan.

**COMMUNITY BOARD #7M**

**APPEARANCES –**

For Applicant: Jack Freeman.

For Opposition: Alan Sugarman, Martin Levine, Craig Morrisoin, Jared Chausow, T. Prince, Bruce Simon, Jay Greer, Kate Wood, Howard Lepow, Katherine Davis, Mark Lebow, Kathryn Cosentino, James E. Mulford and Michael Kaplan.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 1:30 P.M., for continued hearing.

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**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 – 7-05 152<sup>nd</sup> Street, 152<sup>nd</sup> Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

**COMMUNITY BOARD #7Q**

**APPEARANCES –**

For Applicant: Joe Morsellino.

For Opposition: Helen A. Paladino, James Raymond, Tony Magnostia, Marie S., Vince DiMaggio and Babar Borelli.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P. M., for continued hearing.

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**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 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

**COMMUNITY BOARD #8BX**

APPEARANCES – None.

**THE VOTE TO CLOSE HEARING –**

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for decision, hearing closed.

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**171-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED –167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**APPEARANCES –**

For Applicant: Richard Lobel.

For Opposition: Judith Barron and others.

For Administration: Virginia Sullivan, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

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**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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

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**250-07-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cornerstone Residence, LLC, owner.

SUBJECT – Application November 2, 2007 – Variance (§72-21) to allow a two-story, two-family dwelling; contrary to front yard (§23-45) and side yard (§23-461(a)) requirements. R5 district.

PREMISES AFFECTED – 837 Belmont Avenue, northeast corner of the intersection of Atkins Avenue and Belmont Avenue, Block 4023, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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# MINUTES

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## APPEARANCES –

For Applicant: Adam Rothkrug.

## THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for decision, hearing closed.

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## 269-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Seaside Enterprises, LLC, owner.

SUBJECT – Application November 26, 2007 – Special Permit (§73-125) to allow a cellar and two (2) story ambulatory diagnostic/treatment care facility (medical offices, UG 4). R3-1 district.

PREMISES AFFECTED – 378 Seaview Avenue, south side of Seaview Avenue, between Mason Avenue and Simpson Street, Block 3380, Lots 65, 68 and 70, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 272-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76<sup>th</sup> Associates, owner; Equinox 76<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar, ground, and second floors in a mixed-use building under construction. The proposal is contrary to section 32-10. C2-7A and C4-6A districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, aka 205 West 76<sup>th</sup> Street, west side of Amsterdam Avenue between West 76<sup>th</sup> and West 77<sup>th</sup> Streets, Block 1168, Lot 30, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for decision, hearing closed.

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## 23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Bokharian Communities Center, Inc., owner.

SUBJECT – Application February 1, 2008 – Variance (§72-21) to permit the construction of a community facility building (Use Group 4). The proposal is contrary to sections 24-10 and 25-30. R1-2 district.

PREMISES AFFECTED – 182-69 80<sup>th</sup> Road, located at the northwest corner of the intersection of 80<sup>th</sup> Road and Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Matthew Berk, Launa Schwartzberg, Carin Gardner, Margo Pangalos, Helene Pangalos, Pat Misrotanis and S. Basehorg.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 54-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Muller, owner.

SUBJECT – Application March 12, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); rear yard (§23-47) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 3199 Bedford Avenue, east side of Bedford Avenue, between Avenue J and K, Block 7607, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 5:15 P.M.*

# MINUTES

## \* CORRECTION \*

This resolution adopted on August 14, 2007, under Calendar No. 46-07-BZ and printed in Volume 92, Bulletin No. 32, is hereby corrected to read as follows:

### 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 23<sup>rd</sup> Street, located on the west side of East 23<sup>rd</sup> 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 June 6, 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;” 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 and rear yard, contrary to ZR §§ 23-141a, 23-461a, 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 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 23<sup>rd</sup> 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 and rear yard, contrary to ZR §§ 23-141a, 23-461a, 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 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 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;

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# MINUTES

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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;

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.

**\*The resolution has been corrected to reflect the elimination of a sky exposure plane waiver. Corrected in Bulletin Nos. 16-17, Vol. 93, dated April 24, 2008.**



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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 18-19

May 15, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

**CHRISTOPHER COLLINS**, *Vice-Chair*

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

**Roy Starrin**, *Deputy Director*

**Margaret P. Stix**, *Counsel*

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|                        |  |
|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

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| <b>TELEPHONE - (212) 788-8500</b> |
| <b>FAX - (212) 788-8769</b>       |

### CONTENTS

|                                 |         |
|---------------------------------|---------|
| DOCKET .....                    | 279-282 |
| <b>CALENDAR</b> of May 13, 2008 |         |
| Morning .....                   | 283     |
| Afternoon .....                 | 284     |
| <b>CALENDAR</b> of May 20, 2008 |         |
| Morning .....                   | 285     |
| Afternoon .....                 | 286-287 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, May 6, 2008**

Morning Calendar .....288

**Affecting Calendar Numbers:**

|                    |  |
|--------------------|--|
| 546-70-BZ          | 1377-1391 York Avenue, Manhattan                               |
| 590-70-BZ          | 1596-1608 York Avenue, Manhattan                               |
| 66-90-BZII         | 43-07 Astoria Boulevard, Queens                                |
| 141-96-BZ          | 638-40 Utica Avenue, Brooklyn                                  |
| 265-98-BZII        | 950 Glenmore Avenue, Brooklyn                                  |
| 370-02-BZII        | 56-14 Main Street, Queens                                      |
| 373-02-BZII        | 56-44 Main Street, Queens                                      |
| 774-55-BZ          | 2155-2159 Newbold Avenue, Bronx                                |
| 120-01-BZ          | 134-02 Cross Bay Boulevard, Queens                             |
| 85-02-BZII         | 850 East 181 <sup>st</sup> Street, Bronx                       |
| 164-94-BZII        | 84 Hugh Grant Circle, Bronx                                    |
| 184-94-BZ          | 336 East 61 <sup>st</sup> Street, Manhattan                    |
| 24-96-BZ           | 213 Madison Street, Manhattan                                  |
| 247-07-A           | 246 Spring Street, Manhattan                                   |
| 1-08-A thru 8-08-A | 65, 69, 73, 77, 83, 87, 91, 93 Giegerich Avenue, Staten Island |
| 306-05-BZY         | 206A Beach 3 <sup>rd</sup> Street, Queens                      |
| 162-06-A           | 2852 Faber Terrace, Queens                                     |
| 165-06-A           | 2848 Faber Terrace, Queens                                     |
| 163-07-A           | 11 Cliff Street, Staten Island                                 |
| 246-07-A           | 97 Victory Boulevard, Staten Island                            |
| 265-07-A           | 57 West 70 <sup>th</sup> Street, Manhattan                     |

Afternoon Calendar .....302

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 299-06-BZ | 1976 Crotona Parkway, Bronx                 |
| 68-07-BZ  | 102-48 65 <sup>th</sup> Road, Queens        |
| 218-07-BZ | 110-11 Astoria Boulevard, Queens            |
| 241-07-BZ | 2525 Victory Boulevard, Staten Island       |
| 11-08-BZ  | 3573 Bedford Avenue, Brooklyn               |
| 21-08-BZ  | 1601 Bronxdale Avenue, Bronx                |
| 197-05-BZ | 813/815 Broadway, Manhattan                 |
| 109-07-BZ | 33-57 59 <sup>th</sup> Street, Queens       |
| 119-07-BZ | 443 39 <sup>th</sup> Street, Brooklyn       |
| 173-07-BZ | 1061 East 21 <sup>st</sup> Street, Brooklyn |
| 189-07-BZ | 40-55 College Point Boulevard, Queens       |
| 248-07-BZ | 32-15 60 <sup>th</sup> Street, Queens       |
| 257-07-BZ | 3 East 101 <sup>st</sup> Street, Manhattan  |
| 258-07-BZ | 105-55 Horace Harding Expressway, Queens    |
| 281-07-BZ | 1960 East 4 <sup>th</sup> Street, Brooklyn  |
| 12-08-BZ  | 317 Lenox Avenue, Manhattan                 |
| 13-08-BZ  | 34-42 Charlton Street, Manhattan            |
| 25-08-BZ  | 444 Beach 6 <sup>th</sup> Street, Queens    |
| 52-08-BZ  | 3935 Bedford Avenue, Brooklyn               |

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# DOCKET

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New Case Filed Up to May 6, 2008  
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**93-08-BZ**

112-12 Astoria Boulevard, Southwest of the intersection of 112th Place and Astoria Boulevard., Block 1706, Lot(s) 5,9,11, Borough of **Queens, Community Board: 3**. Variance to allow a six-story hotel, contrary to use regulations.  
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**94-08-BZ**

1501 Pitkin Avenue, Between Legion and Saratoga Avenue., Block 3494, Lot(s) 1, Borough of **Brooklyn, Community Board: 16**. Variance to allow the conversion of a vacant theater into a mixe use building.  
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**95-08-A**

6701 Bay Parkway, Southeast corner of the intersection of Bay Parkway and West 8th Street., Block 6576, Lot(s) 10, Borough of **Brooklyn, Community Board: 11**. Commom law vested rights  
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**96-08-A**

208 Oceanside Avenue, North side of Oceanside Avenue 49.27' east of mapped Beach 203rd Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Article 3, Section 35 of the General City Law.  
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**97-08-BZ**

84 Sanford Street, Between Park Avenue and Myrtle Avenue., Block 1736, Lot(s) 14, Borough of **Brooklyn, Community Board: 3**. Special Permit (73-19) to allow legalization of existing (UG3) Yeshiva.  
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**98-08-BZ**

583 Franklin Avenue, 583 Franklin Avenue distant 160' of the corner of Atlantic Avenue and Franklin Avenue., Block 1199, Lot(s) 3, Borough of **Brooklyn, Community Board: 8**. Variance to permit the construction of four-family multiple dwelling, contrary to use regulations.  
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**99-08-BZ**

102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue., Block 5613, Lot(s) 221, Borough of **Staten Island, Community Board: 3**. Variance to allow constructiion of a celar and three-story, one-family residential building, contary to use regulations.  
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**100-08-BZ**

205 Wolverine Street, Northwest of intersection of Wolverine Street and Thomas Street., Block 4421, Lot(s) 167, Borough of **Staten Island, Community Board: 3**. Variance to allow non-compliance with a front yard requirement, contary to use regulations.  
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**101-08-A**

205 Wolverine Street, Northwest of the intersection of Wolverine Street and Thomas Street., Block 4421, Lot(s) 167, Borough of **Staten Island, Community Board: 3**. Construction within mapped street, contary to Section 35 of the General City Law.  
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**102-08-BZ**

103 Beachview Avenue, 40 feet west of the intersection of Beachview Avenue and Idlease Place., Block 3724, Lot(s) 30, Borough of **Staten Island, Community Board: 2**. Variance to allow non-compliance with side yard and parking requirements, contary to use regulations.  
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**103-08-BZY**

208 Grand Street, South side of Grand Street between Bedfoed Avenue and Driggs Avenue., Block 2393, Lot(s) 24, Borough of **Brooklyn, Community Board: 1**. Extension of Time (11-331) to complete construction under prior zoning district.  
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**104-08-BZY**

15 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.  
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**105-08-BZY**

17 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.  
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**106-08-BZY**

23 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.  
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# DOCKET

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**107-08-BZY**

25 Carmela Court, Block 4690, Lot(s) 129, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**108-08-BZY**

605 Mill Road, Block 4690, Lot(s) 120, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**109-08-BZY**

607 Mill Road, Block 4690, Lot(s) 121, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**110-08-BZY**

609 Mill Road, Block 4690, Lot(s) 122, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

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**111-08-BZY**

611 Mill Road, Block 4690, Lot(s) 123, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

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**112-08-BZY**

615 Mill Road, Block 4690, Lot(s) 124, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

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**113-08-BZY**

617 Mill Road, Block 4690, Lot(s) 125, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**114-08-BZY**

589 Mill Road, Block 4690, Lot(s) 110, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

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**115-08-BZY**

591 Mill Road, Block 4690, Lot(s) 111, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

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**116-08-BZY**

593 Mill Road, Block 4690, Lot(s) 112, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**117-08-BZY**

595 Mill Road, Block 4690, Lot(s) 113, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**118-08-BZY**

597 Mill Road, Block 4690, Lot(s) 114, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-322) to complete construction of a minor development commenced under the prior district.

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**119-08-BZY**

599 Mill Road, Block 4690, Lot(s) 115, Borough of **Staten Island, Community Board: 3**. Extension of Time (11-332) to complete construction of a minor development commenced under the prior zoning district.

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**120-08-A**

186 Grand Street, South side of Grand Street between Bedford Avenue and Driggs Avenue., Block 2393, Lot(s) 14, Borough of **Brooklyn, Community Board: 1**. Appeal for common law vested to continued development under the prior zoning.

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**121-08-A**

80 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 102, Borough of **Staten Island, Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning

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**122-08-A**

70 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 104, Borough of **Staten Island, Community Board: 3**. Appeal for common law vested

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# DOCKET

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rights to continue development under the prior zoning.  
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**123-08-A**

60 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 106, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**124-08-A**

59 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 108, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**125-08-A**

79 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 110, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**126-08-A**

15 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 112, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**127-08-A**

25 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 114, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**128-08-A**

39 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 116, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**129-08-A**

55, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue., Block 6517, Lot(s) 118, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue

development under the prior zoning  
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**130-08-A**

50 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 120, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**131-08-A**

40 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 122, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**135-08-BZ**

71-52 172nd Street, Located at the northwest corner of the intersection of 73rd Avenue and 172nd Avenue and 172nd Street, Block 6959, Lot(s) 1, Borough of **Queens**, **Community Board: 8**. Variance to allow proposed community facility use, contrary to bulk regulations  
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**132-08-A**

30 Gallant Loop, Northeast side of Arbutus Avenue, 1,659.01' southeast of Amboy Road and Arbutus Avenue, Block 6517, Lot(s) 124, Borough of **Staten Island**, **Community Board: 3**. Appeal for common law vested rights to continue development under the prior zoning  
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**133-08-BZ**

1601 Bronxdale Avenue, Northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues., Block 4042, Lot(s) 200, Borough of **Bronx**, **Community Board: 11**. Special Permit (73-48,73-49) to allow rooftop parking and waive limitation on number of vehicles in a group parking facility.  
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**134-08-BZ**

34 Lawrence Avenue, Lawrence Avenue, 80 feet west of McDonald Avenue., Block 5441, Lot(s) 17, Borough of **Brooklyn**, **Community Board: 12**. Variance to allow enlargement to an existing two-story building; contrary to bulk regulations.  
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**136-08-A**

846 70th Street, Between 8th Avenue and Fort Mamilton Parkway., Block 5896, Lot(s) 25, Borough of **Brooklyn**, **Community Board: 10**.

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# DOCKET

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**137-08-A**

50 Blackhorse Court, South side of Richmond Road, 176.26'  
South on Blackhorse Court., Block 4332, Lot(s) 34,  
Borough of **Staten Island, Community Board: 2.**  
Construction within mapped street, contrary to Section 35 of  
the General City Law.

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**138-08-A**

55 Richmond Road, South side of Richmond Road, 176.26'  
South on Blackhorse Court., Block 4332, Lot(s) 28,  
Borough of **Staten Island, Community Board: 2.**  
Construction within mapped street, contrary to Section 35 of  
the General City Law.

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**139-08-A**

60 Richmond Road, South side of Richmond Road, 176.26'  
South on Blackhorse Court., Block 4332, Lot(s) 30,  
Borough of **Staten Island, Community Board: 2.**  
Construction within mapped street, contrary to Section 35 of  
the General City Law.

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**140-08-BZY**

1016 East 13th Street, Between Avenue J and K., Block  
6714, Lot(s) 11, Borough of **Brooklyn, Community  
Board: 14.** Extension of Time (11-332) to complete  
construction under the prior district.

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

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# CALENDAR

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**MAY 13, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 13, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**718-56-BZ**

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation  
SUBJECT – Application March 31, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil) which expired on July 2, 2002; an Extension of Time to obtain a Certificate of Occupancy which expired on July 27, 2000 and an Amendment to legalize the conversion of one restroom to office space and office/sales area to an accessory convenience store in a C2-1/R3-2 zoning district.  
PREMISES AFFECTED – 741 Forest Avenue, northwest corner of North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**

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**1334-66-BZ**

APPLICANT – Sheldon Lobel, PC, for ACP Lincoln Garages, LLC, owners.  
SUBJECT – Application March 3, 2008 – Reopening for an extension of term for a variance, which was originally granted under Section 60(3) of the Multiple Dwelling Law, which permits the operation of a transient parking garage in the cellar and sub-cellar of a building. R8 zoning district.  
PREMISES AFFECTED – 150 West End Avenue, east side of West End Avenue between West 66<sup>th</sup> and West 70<sup>th</sup> Streets, Block 1158, Lot 80, Borough of Manhattan.  
**COMMUNITY BOARD #7M**

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**1098-83-BZ**

APPLICANT – Walter T. Gorman, P.E., Joseph M. Mattone, Estate of James J. Mannix, owner; Exxon Mobil Corporation, lessee.  
SUBJECT – Application March 21, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil), in C1-2/R5 zoning district, which expired on April 3, 2004 and an Amendment to legalize the conversion of the sales area to an accessory convenience store, the installation of planters, public telephone, chain link fencing atop a portion of a brick wall and the elimination of bollards on Northern Boulevard.  
PREMISES AFFECTED – 147-10 Northern Boulevard, south east corner of 147<sup>th</sup> Street. Block 5016, Lot 18,

Borough of Queens.

**COMMUNITY BOARD #7Q**

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**340-03-BZ**

APPLICANT – Davidoff Malito & Hutcher, LLP, by Howard S. Weiss, Esq., for 408  
SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).  
PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.  
**COMMUNITY BOARD #1M**

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**80-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Clover Housing Development Fund Corp., owner.  
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 wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), and the permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.  
PREMISES AFFECTED – 319 West 94<sup>th</sup> Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.  
**COMMUNITY BOARD # 7M**

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**APPEALS CALENDAR**

**194-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, for Elite III Contractor's Inc., owner.  
SUBJECT – Application August 8, 2007 – Appeal seeking 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. R5 Zoning District.  
PREMISES AFFECTED – 1447 Rosedale Avenue, Cross Bronx Expressway Service Road N and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.  
**COMMUNITY BOARD #9BX**

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**230-07-BZY**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Alco Builders, Inc., owner.  
SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the

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# CALENDAR

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zoning district regulations on September 10, 2007. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61, Borough of Queens.

**COMMUNITY BOARD #12Q**  
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**28-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; TJ & Meaghan Healey, lessee.

SUBJECT – Application February 14, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and the upgrade of an existing non-conforming private disposal system partially in the bed of the service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 11 Devon Walk, east side Devon Walk, 44.84' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**MAY 13, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 13, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
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## ZONING CALENDAR

**268-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**  
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**274-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Abdo Balikcioglu, owner.

SUBJECT – Application November 29, 2007 – Special Permit (§73-522) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141) and side yards (§23-461) in an R3X zoning district.

PREMISES AFFECTED – 1157 83rd Street northern side of 83rd Street between 11th Avenue and 12th Avenue, Block 6301, Lot 54, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**  
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**24-08-BZ**

APPLICANT – Omnipoint Communications, Inc., for Village Greens Shopping Center, LLC., owner.

SUBJECT – Application February 5, 2008 – Special Permit (§73-30) seek approval for a proposed 90-foot non-accessory radio tower and related equipment at grade. C1-3 overlay within R3-2 and SRD district.

PREMISES AFFECTED – 230-262 Arden Avenue, south side Arden Avenue and Tarbes Avenue, Block 6025, Lot 35, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**31-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to allow a 110- foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #2SI**  
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**456-85-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR §73-30 and file under separate BSA application.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #2SI**  
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# CALENDAR

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## **37-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Catholic High School Association of N.Y., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 21, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network. R3X zoning district.

PREMISES AFFECTED – 100 Merrill Avenue, between Arlene Street and Richmond Avenue, Block 2236, Lot 1, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

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## **38-08-BZ**

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 40 Broad LLC, owner; 40 Broad Commercial LLC, lessee.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing 25-story commercial building. The proposal is contrary to §32-10. C5-5 within the Historic & Commercial Core Area of the Special Lower Manhattan District.

PREMISES AFFECTED – 40 Broad Street (a/k/a 34-40 New Street) lot fronting Broad Street and New Street, south of Exchange Place, north of Beaver Street, Block 24, Lot 32, Borough of Manhattan.

### **COMMUNITY BOARD #1M**

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*Jeff Mulligan, Executive Director*

**MAY 20, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 20, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **206-61-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC, owner.

SUBJECT – Application March 24, 2008 – Extension of Term/Waiver filed pursuant to §11-411 for an existing six story office building located in an R8-B zoning district. The term of the variance expired on July 11, 2006.

PREMISES AFFECTED – 30 East 39<sup>th</sup> Street, south side, 189' east of Madison Avenue, Block 868, Lot 49, Borough of Manhattan.

### **COMMUNITY BOARD #6M**

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### **788-89-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

### **COMMUNITY BOARD #12Q**

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## **APPEALS CALENDAR**

### **266-07-A**

APPLICANT – Stuart A. Klein, for 1610 Ave S LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### **COMMUNITY BOARD # 15BK**

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# CALENDAR

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## **33-08-A**

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> lane, aka 209-213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane, 63.19'W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**MAY 20, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 20, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **282-07-BZ & 283-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for 774 Schenck Properties, LLC, owner.

SUBJECT – Application December 17, 2007 – Variance (§72-21) to allow two (2) two-family, two-story detached homes; contrary to front yard requirements (§ 23-45). R5 district.

PREMISES AFFECTED – 774 Schenck Avenue, a/k/a 764 Schenck Avenue and 825 Hendrix Street, Linden Boulevard and Hendrix Avenue, Block 4330, Lot 28C, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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### **27-08-BZ**

APPLICANT – Slater & Beckerman, LLP for JDK Hylan Properties, LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 13, 2008 – Special Permit (§73-30) to permit in an R3X district, a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4845 Hylan Boulevard, northwest corner of Barclay Avenue, Block 6401, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **29-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Hebrew Free Burial Association, owner; Northrop Grumman Info., Tech., Inc., lessee.

SUBJECT – Application February 14, 2008 – Special Permit (§73-30) to permit a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless. R3-2 zoning district.

PREMISES AFFECTED – 422 Clarke Avenue, south side of Clarke Avenue between St. Patricks Place and Tysen Court, Block 4467, Lot 23, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **30-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Special Permit (§73-30) to permit in an R3-1 district a 50 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **457-65-BZ**

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR 73-30 and file under separate BSA application.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **58-08-BZ**

APPLICANT – Fried, Frank Harris, Shriver & Jacobson LLP, Waldo Hutchins & J.P. Morgan Chasebank Trustee for Estate of Francis S. Appleby, owner; The Durst Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit (§73-19) to allow the development of a six-story school (U.G 3) on a vacant site. The proposal is contrary to section 42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58<sup>th</sup> Street, Twelfth Avenue, West 57<sup>th</sup> Street, West 58<sup>th</sup> Street, Eleventh Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of

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# CALENDAR

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Manhattan.

**COMMUNITY BOARD #4M**

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**66-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland, owner.

SUBJECT – Application March 28, 2008 – 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 less than the required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21<sup>st</sup> Street, east side of East 21<sup>st</sup> Street, between Avenue N and Avenue M, Block 7657, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 6, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**546-70-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP,  
River York Stratford LLC c/o Glenwood Management  
Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of  
Term (60(3)) of the MDL to permit transient parking for the  
unused and surplus parking spaces, not to exceed 50 cars,  
for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1377-1391 York Avenue, West  
side of York Avenue between East 73rd and East 74th  
Streets, Block 1458, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: James P. Power.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of the term for a previously granted variance for a  
transient parking garage, which expired on March 23, 2006;  
and

WHEREAS, a public hearing was held on this  
application on April 15, 2008, after due notice by  
publication in *The City Record*, and then to decision on May  
6, 2008; 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 west  
side of York Avenue between East 73<sup>rd</sup> Street and East 74<sup>th</sup>  
Street; and

WHEREAS, the site is located within an R10 zoning  
district and is occupied by a 22-story mixed-use building with  
medical offices on the ground floor and residential use on the  
upper floors; and

WHEREAS, the cellar and basement are occupied by a

77-space accessory garage, with 47 spaces in the cellar and 30  
spaces in the basement; and

WHEREAS, on March 23, 1971, the Board granted a  
variance, under the subject calendar number, to permit a  
maximum of 23 surplus parking spaces to be used for transient  
parking for a term of 15 years; and

WHEREAS, on July 1, 1986, under the subject calendar  
number, the Board granted a ten-year extension of term; and

WHEREAS, most recently, on October 16, 1996, the  
Board granted a ten-year extension of term, which expired on  
March 23, 2006; and

WHEREAS, the applicant submitted a photograph of the  
sign posted onsite, which states building residents' right to  
recapture the surplus 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 March 23,  
1971, 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 March 23, 2006, to expire on March  
23, 2016; *on condition* that that all work shall substantially  
conform to drawings filed with this application and marked  
'Received February 21, 2008'-(2) sheets; and *on further  
condition*:

THAT this term shall expire on March 23, 2016;

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. 104678092)

Adopted by the Board of Standards and Appeals, May 6,  
2008.

# MINUTES

## 590-70-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 85th Realty LLC c/o Glenwood Management Corporation, owners.

SUBJECT – Application February 21, 2008 – Extension of Term (60(3) of the MDL to permit transient parking for the unused and surplus spaces not to exceed 23 cars, for a term of 15 years, located in a R10 zoning district.

PREMISES AFFECTED – 1596-1608 York Avenue East side of York Avenue, between East 84th and East 85th Streets, Block 1581, Lot 49, Borough of Manhattan.

### COMMUNITY BOARD # 8M

APPEARANCES –

For Applicant: James P. Power.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 23, 2006; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, and then to decision on May 6, 2008; 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 east side of York Avenue between East 84<sup>th</sup> Street and East 85<sup>th</sup> Street; and

WHEREAS, the site is located within an R10 zoning district and is occupied by a 22-story mixed-use building with medical offices on the ground floor and residential use on the upper floors; and

WHEREAS, the cellar and basement are occupied by a 77-space accessory garage, with 47 spaces in the cellar and 30 spaces in the basement; and

WHEREAS, on March 23, 1971, the Board granted a variance, under the subject calendar number, to permit a maximum of 23 surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, on July 9, 1986, under the subject calendar number, the Board granted a ten-year extension of term; and

WHEREAS, most recently, on October 16, 1996, the Board granted a ten-year extension of term, which expired on March 23, 2006; and

WHEREAS, the applicant submitted a photograph of the

sign posted onsite, which states building residents' right to recapture the surplus 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 March 23, 1971, 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 March 23, 2006, to expire on March 23, 2016; *on condition* that that all work shall substantially conform to drawings filed with this application and marked 'Received February 21, 2008'-(2) sheets; and *on further condition*:

THAT this term shall expire on March 23, 2016;

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. 104637074)

Adopted by the Board of Standards and Appeals, May 6, 2008.

## 66-90-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H. G. Realty Corporation, owner.

SUBJECT – Application January 31, 2008 – Extension of Time to obtain a Certificate of Occupancy, which expired on November 14, 2002, for an Automotive Service Station (Mobil) in an R5 zoning district and a waiver of the rules. PREMISES AFFECTED – 43-07 Astoria Boulevard, northeast corner of 43<sup>rd</sup> Street, Block 780, Lot 18, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

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

**THE VOTE TO GRANT** –

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# MINUTES

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

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to reflect a change in signage, and an extension of the time to obtain a certificate of occupancy for an automotive service station, which expired on November 14, 2002; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, the site is located on the northeast corner of Astoria Boulevard and 43<sup>rd</sup> Street, within an R5 zoning district; and

WHEREAS, in 1959, under BSA Cal. No. 525-58-BZ, the Board granted a variance to permit the construction and modification of a gasoline service station at the site; and

WHEREAS, the grant was subsequently extended at various times under the subject calendar number, but ultimately expired; and

WHEREAS, on October 1, 1991, under the subject calendar number, the Board permitted the re-establishment of the variance for a term of ten years, to expire on October 1, 2001; and

WHEREAS, on November 14, 2000, under the subject calendar number, the Board granted an extension of the term of the variance, to expire on October 1, 2010, and permitted the renovation of the existing accessory building to include a convenience store and the construction of a new metal canopy; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed and a new certificate of occupancy obtained within two years from the date of the grant, by November 14, 2002; and

WHEREAS, the applicant represents that the owner was unable to complete the construction and obtain the new certificate of occupancy within the prescribed time frame; and

WHEREAS, however, the applicant represents that the construction is now complete; and

WHEREAS, the Board notes that the site is the subject of a padlock petition and closure action pursuant to Administrative Code § 26-127.2, and that the applicant executed a stipulation with DOB, dated January 14, 2008, which allows for operation of the site while the applicant pursues the subject application for an extension of time to secure a new certificate of occupancy; and

WHEREAS, the stipulation states that the applicant must either receive a positive final decision on the application from the Board by December 1, 2008 or agree to discontinue operations at the site by December 31, 2008; and

WHEREAS, the applicant has requested until December 31, 2008 to obtain a new certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to (1) remove storage trailers located on site and (2) eliminate excess signage that is not reflected on the Board-approved plans; and

WHEREAS, in response, the applicant provided photographs reflecting the removal of (1) the two storage sheds and (2) the sign, which had been located on top of the canopy; and

WHEREAS, the applicant seeks an amendment to reflect a change in signage and provided a signage analysis reflecting compliance with C1 zoning district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the proposed change in signage and extension of time to obtain a certificate of occupancy until December 31, 2008 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 14, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 31, 2008 and to permit the noted signage modifications; *on condition* that that all signage shall substantially conform to the drawing filed with this application and marked ‘Received March 17, 2008’–(1) sheet; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by December 31, 2008;

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 Nos. 400998444, 401096504, and 401114968)

Adopted by the Board of Standards and Appeals, May 6, 2008.

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## 141-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Lloyd Coy, owner.  
SUBJECT – Application July 19, 2007 – Extension of term/Amendment/Waiver-permitting the operation of a motor vehicle repair shop (use group 16) in an R5/C2-2 zoning district and amend the previously approved variance allowing minor changes to the layout and legalization of existing non-complying signage. The Term of the variance expired May 20, 2007.

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# MINUTES

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PREMISES AFFECTED – 638-40 Utica Avenue, located on the west side of Utica Avenue between Winthrop Street and Clarkson Avenue, Block 4617, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to permit certain site changes, and an extension of the term for a previously granted variance for an automotive repair station, which expired on May 20, 2007; and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 15, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Utica Avenue, between Winthrop Street and Clarkson Avenue; and

WHEREAS, the site is located within a C2-2(R5) zoning district and is occupied by a one-story automotive repair building with 2,965 sq. ft. of floor area; and

WHEREAS, on November 29, 1960, under BSA Cal. No. 267-60-BZ, the Board granted a variance to permit an automotive repair station at the site for a period of ten years; and

WHEREAS, on November 10, 1970, under BSA Cal. No. 267-60-BZ, the grant was extended for a term of ten years to expire on November 29, 1980; the grant was not renewed; and

WHEREAS, on May 20, 1997, under the subject calendar number, the Board reinstated the variance and permitted the legalization and enlargement of the existing automotive repair use for a term of ten years, to expire on May 20, 2007; and

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

WHEREAS, additionally, the applicant requests an amendment to allow for the following changes to the site: (1) the subdivision of the front office; (2) an increase in the width of the roll-down door; (3) a reduction in the size of the storage rooms; (4) the installation of a platform for the storage of tires; (5) the replacement of the brick rear yard wall with a steel

fence; and (6) an increase in the floor area by 12.5 sq. ft.; and

WHEREAS, as to the increase in floor area, the applicant represents that the 12.5 sq. ft. in question had formerly been considered a floor area deduction and that a survey revealed a minor difference in the distribution of the total floor area and the inclusion of the additional square feet; and

WHEREAS, the applicant submitted an architect's analysis detailing the appropriate floor area allocation; and

WHEREAS, at hearing, the Board asked the applicant if vehicle sales were conducted at the site, contrary to the grant; and

WHEREAS, in response, the applicant stated that any vehicle sales at the site had been terminated; and

WHEREAS, additionally, the Board directed the applicant to remove all graffiti and to revise signage so that it complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant removed the graffiti; one of the non-complying signs; and tires, which had been stored at the rear of the building; and

WHEREAS, the applicant submitted photographs reflecting these changes; and

WHEREAS, the applicant notes that the remaining signage does not comply with C1 zoning district regulations but is consistent with what was approved by the Board under prior grants; and

WHEREAS, finally, the applicant confirmed that the hours of operation of the site are Monday through Friday, 8:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 4:00 p.m., with no hours on Sunday; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 20, 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 prior grant, to expire on May 20, 2017, and to permit the noted site modifications; *on condition* that the use shall substantially conform to the drawings filed with the application marked "Received April 8, 2008"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 20, 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

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# MINUTES

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”  
(DOB App. No. 300519918)

Adopted by the Board of Standards and Appeals, May 6, 2008.

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**265-98-BZ, Vol. II**

**APPLICANT** – Sheldon Lobel, P.C., for Milford Tile, Incorporated, owner.

**SUBJECT** – Application November 19, 2007 – Extension of Term of a previously granted Variance (§72-21) to permit the operation of an existing contractor's yard for storage, sales and display of tiles with accessory parking (UG17) in an R5 zoning district which expired on November 29, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 22, 2000 and a waiver of rules.

**PREMISES AFFECTED** – 950 Glenmore Avenue, southwest corner of the intersection of Glenmore Avenue and Crystal Avenue, Block 4210, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

**APPEARANCES** –

For Applicant: Elizabeth Safian.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a variance for a contractor's yard and tile business, which expired on November 29, 2007, and for an extension of time to obtain a certificate of occupancy, which expired on June 22, 2000; and

WHEREAS, a public hearing was held on this application on March 11, 2008 after due notice by publication in *The City Record*, with a continued hearing on April 8, 2008, and then to decision on May 6, 2008; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of the application; 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, the subject premises is located on the southwest corner of Glenmore Avenue and Crystal Avenue; and

WHEREAS, the site is in an R5 zoning district and is occupied by a two-story commercial building, occupied by a contractor's yard and tile business, with accessory parking; and

WHEREAS, on July 12, 1966, under BSA Cal. No. 336-

66-BZ, the Board granted a variance to permit a business for the storage, sale, and display of tiles for a term of ten years; and

WHEREAS, the grant was subsequently extended and amended, under BSA Cal. No. 336-66-BZ, one two occasions; and

WHEREAS, on June 22, 1999, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the legalization of the existing contractor's yard at the site, for a term to expire on November 29, 2007; and

WHEREAS, one of the conditions of the grant was that a new certificate of occupancy be obtained by June 22, 2000; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional 15 years, to allow the continued operation of the existing contractor's yard and tile business at the site; and

WHEREAS, the applicant also seeks a period of one year to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that an updated certificate of occupancy was not obtained within the requisite time period due to financial constraints and administrative delay; and

WHEREAS, at hearing, the Board directed the applicant to (1) remove graffiti from the site, (2) remove barbed wire fencing, and (3) confirm that all signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant provided (1) photographs reflecting the removal of the graffiti, barbed wire, and excess signage and (2) a revised signage analysis reflecting the proposed signage in compliance with C1 zoning district regulations; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 22, 1999, so that as amended this portion of the resolution shall read: “to permit an extension of the variance for a term of fifteen years from the expiration of the last grant, and to grant an extension of 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 associated with the prior approval; *on condition* that that all work shall substantially conform to drawings filed with this application and marked ‘Received April 28, 2008’–(1) sheet; and *on further condition*:

THAT this grant shall be limited to a term of fifteen years, to expire on November 29, 2022;

THAT all signage shall comply with C1 zoning district regulations;

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



# MINUTES

THAT a certificate of occupancy shall be obtained by May 6, 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); and

THAT the Department of Buildings must 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. 310006409)

Adopted by the Board of Standards and Appeals, May 6, 2008.

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## **370-02-BZ, Vol. II**

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-14 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 40, Borough of Queens.

### **COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for deferred decision.

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## **373-02-BZ, Vol. II**

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-44 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 55, Borough of Queens.

### **COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for deferred decision.

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## **774-55-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of Term/Waiver of the rules for a previously granted variance

to permit the operation of a (UG8) parking lot, for more than five cars, for employees and customers of a bank (Citibank) on the adjoining lot which expired on January 31, 2003 in R-5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue between Olmstead and Castle Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

### **COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Elizabeth Larsen.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for continued hearing.

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## **120-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Anthony Ariola, owner.

SUBJECT – Application January 23, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the commercial use (UG6) in an existing two-story building, which expired on May 14, 2006, located in an R4 zoning district and a Waiver of the rules.

PREMISES AFFECTED – 134-02 Cross Bay Boulevard, western side of Cross Bay Boulevard, between Gold and Silver Roads, Block 11374, Lot 134, Borough of Queens.

### **COMMUNITY BOARD #10Q**

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.

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## **85-02-BZ, Vol. II**

APPLICANT – Mothiur Rahman, for Alan G. Markopoulos, owner; G H Parking, lessee.

SUBJECT – Application February 20, 2008 – Extension of Term of a previously granted variance (§72-21) for the operation of a (UG8) parking lot in an R-7 zoning district which expired on February 4, 2008.

PREMISES AFFECTED – 850 East 181<sup>st</sup> Street, south side of East 181<sup>st</sup> Street and east side of Crotona Parkway, Block 3119, Lot 16, Borough of Bronx.

### **COMMUNITY BOARD #16BX**

APPEARANCES –

For Applicant: Mothiur Rahman.

THE VOTE TO CLOSE HEARING –

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

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for decision, hearing closed.  
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**164-94-BZII**

APPLICANT – Jeffrey A. Chester, Esq., for Tuckahoe Realty, owner; LLC Lucille Roberts Health Club Parkchester, lessee.

SUBJECT – Application March 28, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a Physical Culture Establishment (Lucille Roberts), in a C1-2/R-6 zoning district, which expired on April 19, 2006.

PREMISES AFFECTED – 84 Hugh Grant Circle, south side of Hugh Grant Circle, 95.69’ west of Cross Bronx Expressway, Block 3794, Lot 109, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for continued hearing.  
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**184-94-BZ**

APPLICANT – Renanim Manhattan, Incorporated, for Vertical Properties, LLC, owner.

SUBJECT – Application March 20, 2007 – Extension of Term/Waiver to permit a (UG3) nursery school on the ground floor of a five story and cellar mixed use building in a C8-4 zoning district which expired on June 13, 2005.

PREMISES AFFECTED – 336 East 61<sup>st</sup> Street, south side of East 61<sup>st</sup> Street, between First and Second Avenues, Block 1435, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for decision, hearing closed.  
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**24-96-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§ 11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side

of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.  
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## APPEALS CALENDAR

**247-07-A**

APPLICANT – Soho Alliance Community Group, for Bayrock/Sapir Organization, LLC, owner.

SUBJECT – Application October 30, 2007 – Appeal seeking to revoke permits and approvals to construct a residential condominium hotel in an M1-6 zoning district. Applicant argues that the residential use of the premises violates the underlying M1-6 zoning district prohibitions.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, Block 491, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Stuart A. Klein, Council Member Tony Avella, Matthew Schnew, Carole DeSarm, Andy Neale, Leah Archibald, Phaedra Thomas, Cassandra Smith, Tobi Berman, Doris Duter, Andrew Berman, Sezu Sweeney, Kathleen Treat, Magda Aoufadi, Gary Tomei, Bill Borocer, Jennifer Barrett, Melissa Baldock, Gregg Levine, Katie Kendall, Zaen Winestne, Elizabeth Adam, Lora Tenenbaum, Lorraine Bourie.

For Opposition: Paul Selver.

For Administration: Mark Davis, Department of Buildings.

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

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated September 28, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings (DOB) (the “Final Determination”) addressed to Stuart Klein, Esq., with respect to New Building Application No. 104403334; and

WHEREAS, the Final Determination reads, in pertinent part:

“This letter is to confirm that the permits issued to date by the Department of Buildings to construct a proposed Use Group 5 transient hotel at the above-

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1 Headings are utilized only in the interests of clarity and organization.

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# MINUTES

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referenced premises which is located in an M1-6 zoning district are proper.

“The permits authorize a transient use, a use that is permitted as-of-right in the Manufacturing District.

This is my determination”; and

WHEREAS a public hearing was held on this application on February 27, 2008 after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

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

## PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of the SoHo Alliance, a membership organization of persons who live and work in the SoHo community (the “Appellant”); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 246 Spring Street (the “Sponsor”) have been represented by counsel throughout this Appeal; and

WHEREAS, Council Member Tony Avella provided testimony in support of the instant appeal; and

WHEREAS, representatives of Manhattan Community Boards 2 and 5 provided testimony in support of the instant appeal; and

WHEREAS, representatives of several civic and neighborhood associations and a number of neighborhood residents also testified at hearing in support of the instant appeal; and

## PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the construction of a 42-story building with 420 individual units in an M1-6 zoning district (the “Building”); and

WHEREAS, on May 17, 2007, DOB issued New Building Permit No. 104403334 (the “building permit”) for a proposed transient hotel (J-1 occupancy) at the subject site; and

WHEREAS, counsel for the Appellant wrote (by undated letter) to the Manhattan Borough Commissioner requesting reconsideration of DOB’s approval; and

WHEREAS, on September 28, 2007, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal, which was delivered to the Appellant on October 4, 2007; and

WHEREAS, on October 30, 2007, the Appellant filed the instant appeal at the BSA; and

## PROPOSED BUILDING

WHEREAS, the premises is located at 246 Spring Street and is proposed to be occupied by a 42-story Use Group 5 building; and

WHEREAS, the owner proposes the Building to be a condominium hotel, pursuant to an offering plan filed with the New York State Attorney General (the “Offering Plan”); and

WHEREAS, the Sponsor proposes for the Building to be occupied by 413 transient hotel units and seven commercial units; and

WHEREAS, of the Building’s 413 transient hotel units, the plans reflect 407 furnished units with baths and six furnished units with baths, ranges and dishwashers; and

WHEREAS, the Building is proposed to have a large lobby area with a front desk for registration by unit owners and guests, eating and drinking areas, function and conference facilities and daily maid service; and

WHEREAS, the subject site is within an M1-6 zoning district which permits a Use Group 5 transient hotel as of right and prohibits residential use; and

## RESTRICTIVE DECLARATION

WHEREAS, a Restrictive Declaration was executed by the Sponsor as of April 26, 2007 and recorded against the subject site restricting its use as a transient hotel Class B multiple dwelling as defined by the New York State Multiple Dwelling Law (the “MDL”) classified within Occupancy Group J-1 under the New York City Building Code (the “Restrictive Declaration” or “Declaration”); and

WHEREAS, the Restrictive Declaration sets forth restrictions on the occupancy of individual units by unit owners (the “Occupancy Restrictions”); and

WHEREAS, the Occupancy Restrictions state that “[n]o Unit may be occupied by its Unit Owner or by any other individual: (i) for a continuous period of more than 29 days in any 36 day period; or (ii) for a total of more than 120 days in any calendar year” (Declaration ¶ 2.02(a)); and

WHEREAS, the Occupancy Restrictions further provide that when a unit is not occupied by the unit owner, it shall be made available for rental by or on behalf of the management of the Building (Declaration ¶ 2.02(b)); and

WHEREAS, the Restrictive Declaration also sets forth a series of enforcement measures intended to ensure compliance with the Occupancy Restrictions; and

WHEREAS, the Declaration specifically authorizes the levy of financial penalties on unit owners who violate the Occupancy Restrictions, one-half of which must be paid to the City of New York; the financial penalties are added to common charges and become a lien on the unit if unpaid (Declaration ¶¶ 2.07(b) and (c), 2.08); and

WHEREAS, the Declaration also requires the Building to file with DOB annually an occupancy report certified by an independent certified public accountant indicating exceedence of the length of stay restrictions (Declaration ¶ 2.04); and

WHEREAS, these occupancy reports, together with supporting documentation, are to be kept for no less than three years and to be made available for review by DOB or the City on request (Declaration ¶ 2.05); and

WHEREAS, DOB is also authorized by the Restrictive Declaration to conduct audits of the occupancy records of the Building (Declaration ¶ 2.05); and

WHEREAS, DOB or the City may bring an enforcement action for default in the performance of

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# MINUTES

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obligations required by the Restrictive Declaration (Declaration ¶ 4.02(a)); and

WHEREAS, if DOB or the City finds that violations in the Occupancy Restrictions meet a certain specified threshold, or if DOB or the City have a reasonable basis to suspect that information in an occupancy report is false or fraudulent, an independent private sector inspector general may be appointed at the Condominium's expense to conduct an investigation (Declaration ¶ 4.10); and

## ISSUES PRESENTED

WHEREAS, the Appellant makes the following primary arguments in support of its position that DOB should revoke the permit for the Building: (i) the length of stay permitted to unit owners violates the Zoning Resolution and the New York City Administrative Code (the "Administrative Code"); (ii) individual ownership of units violates the Zoning Resolution; (iii) DOB and the City cannot enforce against illegal residential use of the condominium hotel units; and (iv) that DOB acted inconsistently in approving the permit for the Building; and

WHEREAS, these four arguments are addressed below; and

### *Length of stay by unit owners*

WHEREAS, the Appellant argues that the ability of individuals to regularly occupy their units for as many as 29 consecutive days and up to 120 days within a calendar year is a residential use in violation of the Zoning Resolution; and

WHEREAS, Section 12-10 of the Zoning Resolution defines a transient hotel as a building or part of a building in which: (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis; (b) one or more common entrances serve all such living or sleeping units; and (c) twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens; and

WHEREAS, the Appellant does not dispute that the Building satisfies the requirements of Section 12-10 (b) and (c) of the Zoning Resolution, but contends that DOB erred in issuing the building permit because the phrase "may be rented on a daily basis" in Section 12-10 (a) requires that transient hotels shall be rented only on a daily basis and cannot be occupied for 29 consecutive days; and

WHEREAS, DOB argues, and the Board agrees, that such a construction is contradicted by the ordinary legal construction of the word "may," which "is employed to imply permissive, optional or discretionary, and not mandatory action or conduct," (citing Black's Law Dictionary 676 (6<sup>th</sup> ed. 1991); and GE Capital Corp. v. NYS Div. of Tax Appeals, 2 N.Y.3d 249, 255 (2004) ("[w]e will not presume that the Legislature meant 'shall' when it said 'may'")); and

WHEREAS, the Appellant also argues that the length of stay provisions of the Restrictive Declaration violate the Administrative Code; and

WHEREAS, the DOB permit application lists the occupancy group of the Building as J-1, which is defined by Section 27-264 of the Administrative Code as including "buildings and spaces that are primarily occupied for the shelter and sleeping accommodations of individuals on a day-to-day or week-to-week basis;" and

WHEREAS, the Appellant states that the ability of owners to remain in their units for 29 consecutive days allows them to live in them in excess of one month, because they could occupy their units from February 1 until March 1, thereby constituting a month-to-month occupancy which is inconsistent with the J-1 classification of the Building; and

WHEREAS, DOB contends, and the Board agrees, that the ability of an occupant to stay for an entire month is due merely to the calendar system that makes February a uniquely short month and that this fact alone cannot convert a transient occupancy to a month-to-month occupancy when, for the other eleven months of the year, the occupant cannot even remain for a full month at a time; and

WHEREAS, the Appellant also contends that an owner can in fact occupy its unit for 240 days within a 12-month period, because the Restrictive Declaration imposes a 120-day limit on occupancy on a calendar year basis, rather than a 365 day basis; and

WHEREAS, DOB states that measurement by calendar year is the common standard among statutes that measure and determine residency, such as the New York State Rent Stabilization Code ("Rent Stabilization Code") (9 NYCRR § 2520(u)); and

WHEREAS, DOB further states that that the requirement of the Restrictive Declaration that an owner vacate its unit for at least one week during each 36-day period would be unaffected by the fact that the 120-day limit were on a calendar basis, and would operate to ensure that all occupancy were transient; and

WHEREAS, DOB further states that the Occupancy Restrictions are consistent with the common legal meaning of the term "transient," as well as with laws regulating hotel occupancy and construction that define transient versus "permanent occupancy" or "residence;" and

WHEREAS, the Board agrees with DOB that the Restrictive Declaration requires an owner to vacate its unit for at least one week during each 36-day period, irregardless of whether the 120-day limit were on a calendar basis or a 365-day basis, and would operate to ensure that all occupancy was transient; and

WHEREAS, further, the Board agrees that the Occupancy Restrictions are consistent with the common legal meaning of the term "transient," as well as with laws regulating hotel occupancy and construction that define transient versus "permanent occupancy" or "residence" and, therefore, is not persuaded by the Appellant's arguments; and

WHEREAS, in support of its contention that the Building is a transient hotel, DOB cites to the distinction between transient and permanent hotel occupancy in the

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# MINUTES

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New York City hotel room occupancy tax law (“hotel occupancy tax law,” 19 RCNY §12 *et. seq.*); and

WHEREAS, the hotel occupancy tax law defines a “permanent resident” who is exempt from the tax as a person who has occupied a hotel room for 180 consecutive days or more (19 RCNY § 12.01); and

WHEREAS, persons who occupy a room for less than 180 consecutive days are referred to by the hotel occupancy tax law as “transient” occupants; and

WHEREAS, DOB notes that under the hotel occupancy tax law, the Building’s unit owners, whose continuous occupancy cannot exceed 29 days, would be construed to be transient occupants; and

WHEREAS, DOB also cites to the definition of “transient” in the New York State Multiple Dwelling Law (“MDL”) in further support of its claim that the unit owners would qualify as transient occupants of the Building; and

WHEREAS, the MDL groups hotels among class B multiple dwellings, which are defined to be “occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, colleges and school dormitories . . .” (MDL § 4(9)); and

WHEREAS, DOB notes that dormitories, though defined as transient, are generally occupied for months without a break for the greater portion of a year, a period far in excess of the 29 consecutive days permitted by the Occupancy Restrictions; and

WHEREAS, in further support of its argument that occupancy of the Building would be transient in character, DOB also cites to the definitions of “primary residence” and “permanent [hotel] resident” used in determining the types of occupancies that are subject to rent stabilization laws; and

WHEREAS, according to the Rent Stabilization Code, an occupancy of less than 183 days per calendar year is construed as evidence that a housing accommodation is not a “primary residence” and an individual who occupies a hotel, or has the right to occupy a hotel, for less than six months is not a “permanent tenant” as defined by the code (9 NYCRR §§ 2520.6(j) and 2520(u)); and

WHEREAS, in further support of its interpretation that occupancy of the Building would be transient, DOB also cites to residency definitions in the federal and New York State tax codes; and

WHEREAS, the Appellant argues that reliance on State and federal law to interpret the limit to a “transient” occupancy is “misplaced” and that the Board should look instead only to the “four corners” of the Zoning Resolution for help interpreting the term; and

WHEREAS, the Appellant further argues that Section 11-22 of the Zoning Resolution, concerning selection among overlapping or contradictory regulations, “demands a restrictive interpretation of the word ‘transient;’” and

WHEREAS, the Board finds that Section 11-22 is

unhelpful and irrelevant to the instant case, in which the Zoning Resolution is silent concerning the specific parameters of a transient occupancy, while a range of other regulations are not; and

WHEREAS, the Appellant further states that the Board’s decision in BSA Cal. No. 67-07-A (relying on Raritan Dev. Corp. v. Silva, 91 N.Y.2d (1997)) stands for the proposition that when a provision in the Zoning Resolution is ambiguous, reliance on external statutes or sources is erroneous; and

WHEREAS, the Board notes that BSA Cal. No. 67-07-A, involving a penthouse built in violation of the “sliver law,” instead concerns whether ambiguous provisions of the Administrative Code can supersede specific provisions of the Zoning Resolution, while Raritan involved a challenged interpretation of the Zoning Resolution which was contrary to its plain meaning; and

WHEREAS, neither case is applicable to an instance in which the Zoning Resolution lacks a definition of a contested term (i.e., “transient”); and

WHEREAS, however, the Board notes that where the meaning of a statutory term is undefined, “resort may be had to any authoritative source of information” to interpret its meaning (McKinney’s Statutes § 120); and

WHEREAS, the Board concludes that DOB’s determination that the proposed use of the Building is transient is supported by the definition of “transient hotel” in the Zoning Resolution, by the definitions of “transient” found in the NYC hotel occupancy tax law and the MDL, and by the definitions of “residency” in the Rent Stabilization Code, and New York and federal tax codes; and

WHEREAS, the Board further concludes that the length of stay provisions in the Restrictive Declaration violate neither the Zoning Resolution nor the Administrative Code; and

### *Individual ownership of transient hotel units*

WHEREAS, the Appellant argues that the ability of individuals to own their units means that the units are not “used primarily for transient occupancy” and violates the Zoning Resolution; and

WHEREAS, DOB contends, however, that the Zoning Resolution contains neither explicit nor implicit support for this position, and further contends that such a position would be contrary to the fundamental common law principle that “zoning deals basically with land use and not with the person who owns or occupies it” (FGL & L Prop. Corp. v. City of Rye, 66 N.Y.2d 111, 116 (1985)); and

WHEREAS, DOB also states that if ownership alone were sufficient to make a unit residential, the unit would be considered residential even if it were occupied by other transient guests 365 days per year, an outcome that would be illogical; and

WHEREAS, the Board concludes that individual ownership of the Building’s units is not, in and of itself, evidence of illegal residential occupancy; and

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# MINUTES

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WHEREAS, in the alternative, the Appellant argues that individual ownership, while perhaps not illegal, may induce illegal residential occupancy of the units and discourage their legal transient use; and

WHEREAS, the Appellant contends that the Sponsor's marketing of the Building evidences its intent to permit residential use; and

WHEREAS, in dispute of the Appellant's claims, the Sponsor submitted materials supporting its claimed transient use of the Building, including a disclaimer from the Building's website indicating its transient nature, and a "Special Risks" section from the Offering Plan highlighting the Occupancy Restrictions; and

WHEREAS, the Sponsor further stated that the Appellant submitted no current materials showing allegedly misleading sales promotions; and

WHEREAS, the Appellant failed to rebut the Sponsor's assertions; and

WHEREAS, the Appellant argues that the Building's permit can be revoked based on a presumption of future illegal use, citing the recent decision in Matter of 9<sup>th</sup> and 10<sup>th</sup> St. LLC v. Bd. of Stds. and Appeals, 10 N.Y. 3d 264 (2008); 2008 NY Slip Op. 02678 (upholding DOB's denial of a building permit for a proposed dormitory that lacked an established connection to a school based on reasonable doubt that the building would be used lawfully); and

WHEREAS, at hearing, DOB contended that the agency is prohibited from denying a permit based on a speculative future illegal use (citing Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep't 1989) ("[t]he standard to be applied herein is the actual use of the building in question, not its possible future use"); and

WHEREAS, the Board finds that the Appellant's reliance on 9<sup>th</sup> and 10<sup>th</sup> St. LLC is misplaced, because in that case, the denial of a permit by DOB was upheld based on the applicant's failure to proffer evidence to DOB establishing an intent to use the building in a manner consistent with the permitted use; and

WHEREAS, in the instant case, the Board agrees that the marketing materials and Offering Plan excerpt submitted by the Sponsor evidence an intent by the Sponsor to use the Building in a manner consistent with the zoning; and

WHEREAS, the Appellant also argues that an "owner's secure closet" shown in the building plans in which owners may store personal items in their units when they are not in occupancy is a "hallmark of residential use" evidencing an intent to contravene the Zoning Resolution; and

WHEREAS, DOB counters that the presence of a locked storage closet in a unit is instead evidence of the transient nature of the unit, contending that no need for a secure storage closet would exist if the unit were indeed used as a permanent residence, because a unit owner who had unrestricted access and control of the unit's occupancy would not require a secure place to store personal effects; and

WHEREAS, according to DOB and the Sponsor, the intent to develop a transient hotel is further demonstrated by the proposed building plans, which include: (i) common areas not found in a typical residence, such as a front desk for check in and check out, eating and drinking areas, function and conference facilities; (ii) a Class J fire safety system; and (iii) the absence of kitchens, individual mailboxes, or rubbish chutes; and

WHEREAS, DOB additionally asserts that the lack of cooking facilities in all but six of the units makes it impossible to legally use the units for Class A/J-2 residential occupancies and limits their use to Class B/J-1 occupancy; and

WHEREAS, the Sponsor states that additional indicia of transient use is demonstrated by the proposed Building operations set forth in the Restrictive Declaration which include: (1) requirements that unit owners check in and check out at the front desk at the beginning and end of each stay; (2) prohibitions on personal keys and on the installation of personal furnishings and decorations in individual units; and (3) compliance mechanisms and sanctions for violations of the Ownership Restrictions; and

WHEREAS, in the instant case, the Board agrees with DOB that the marketing materials, building plans and proposed mode of operation evidence an intent to use the Building as a transient hotel; and

*Enforceability of the Occupancy Restrictions*

WHEREAS, the Appellant additionally argues that DOB cannot enforce the Occupancy Restrictions either because: (i) the Restrictive Declaration is invalid; or (ii) the agency's enforcement powers are limited by the Restrictive Declaration; and

WHEREAS, the Appellant contends that the Restrictive Declaration is invalid because it omits language conditioning the certificate of occupancy on its compliance, as required by Legal Policy and Procedure Notice ("LPPN") #1/05, governing the execution of restrictive declarations by DOB; and

WHEREAS, because approval of the permit was purportedly conditioned on the Sponsor's execution of an invalid restrictive declaration, the Appellant asserts that the approval is consequently invalid and must be revoked; and

WHEREAS, DOB, as a threshold matter, disagrees that the Restrictive Declaration was required and disputes that the permit was conditioned on its execution; and

WHEREAS, DOB asserts that because the Building complies with the Zoning Resolution and its proposed occupancy is lawful, the Restrictive Declaration was not required to legalize its occupancy; and

WHEREAS, DOB states that, by its terms, LPPN #1/05 applies only to restrictive declarations that are required "for alternate means of compliance with code requirements when such development would otherwise be foreclosed by various statutory restrictions or requirements;" and

WHEREAS, DOB contends and the Board agrees that

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# MINUTES

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the Restrictive Declaration simply provides additional assurances by the Sponsor, not required by law, that the Building will be occupied as a transient use and conform to the requirements of the Zoning Resolution; and

WHEREAS, DOB states that because the Restrictive Declaration was not required, its validity has no bearing on the ability of DOB to enforce the Occupancy Restrictions using its existing enforcement powers under the Building Code; and

WHEREAS, the Appellant also asserts that the Restrictive Declaration is invalid because DOB was not granted the authority to enter into it by either Section 643 or Section 645 of the New York City Charter, which enumerate DOB's powers and duties; and

WHEREAS, DOB states that the Restrictive Declaration was executed unilaterally by the Sponsor and, as the agency has no written agreement with the Sponsor, the question of whether it had the power to execute one is irrelevant; and

WHEREAS, the Appellant argues that the Restrictive Declaration constrains DOB's enforcement powers by calling for monetary penalties to the exclusion of other penalties; and

WHEREAS, in response, DOB asserts, as evidence to the contrary, that the Restrictive Declaration categorically states that "nothing in this Declaration precludes DOB or the City from prosecuting an action or proceeding to enforce this Declaration under any law, rule or regulation giving DOB or the City authority to bring such an action or proceeding" (Declaration, section 4.02(c) as evidence that the agency's enforcement powers are unaffected by the Declaration; and

WHEREAS, DOB further states that since the Sponsor executed the Restrictive Declaration unilaterally and DOB is not a signatory, it would therefore be legally impossible for the document to bind the agency or limit its enforcement powers over the Building, even if the Restrictive Declaration were interpreted to contain such language; and

WHEREAS, DOB contends that the Building is therefore subject to the enforcement applicable to all buildings, including revocation of the certificate of occupancy, as well as to the penalty provisions of the Restrictive Declaration, and that any putative limitations on the enforceability of the Restrictive Declaration would therefore have no bearing on the ability of DOB to use the full range of its enforcement powers under the Building Code; and

WHEREAS, the Board concludes that DOB's enforcement powers have not been curtailed by the Restrictive Declaration; and

#### *Consistency with DOB precedent*

WHEREAS, the Appellant contends that DOB's approval of the permit for the Building is inconsistent with the agency's prior withdrawal of its approval of 848 Washington Avenue, a proposed mixed-use building in an M1-5 zoning district in which 49 percent of the floor area

was proposed for residential use and 51 percent of the floor area was proposed for transient hotel use; and

WHEREAS, because the plans for 848 Washington indicated that more than half the floor area would be devoted to transient hotel use and the Zoning Resolution defines a "transient hotel", in pertinent part, as a "building or part of a building in which living or sleeping accommodations are used primarily for transient occupancy" (Section 12-10), DOB had initially ruled that the plans complied with the definition of a transient hotel; and

WHEREAS, DOB subsequently concluded that to qualify as a transient use, all units had to be available on a transient basis and issued a determination, dated April 19, 2004, stating that "in order to develop a transient hotel in an M1-5 zoning district, units may not be made subject to lease, sale or other arrangements under which they would not be available for transient occupancy," thereby reversing its prior approval; and

WHEREAS, the Appellant contends that DOB's decision to revoke approval of 848 Washington Avenue was based instead on the proposed sale of individual units in a transient hotel, in violation of the Zoning Resolution; and

WHEREAS, as discussed above, DOB contends that the determination as to whether a building is transient, pursuant to the Zoning Resolution, is based on the use of the units in question, rather than on their proposed ownership, and states that the permit for 848 Washington Avenue was revoked, not because units were to be sold but, instead, because 49 percent of the units were proposed for impermissible residential use; and

WHEREAS, the Appellant contends that the instant case similarly involves a proposed residential use which would not be permitted as of right in the subject zoning district, and that DOB should therefore follow its decision in 848 Washington Avenue and revoke the permit for the Building; and

WHEREAS, however, DOB states instead that the permit for 848 Washington Avenue was properly revoked because a portion of the units in that building were to be operated as residential use with no limitation for occupancy; and

WHEREAS, DOB distinguishes the subject building in which all units are proposed to be used for transient occupancy; and

WHEREAS, the Board notes that DOB revoked the permit for 848 Washington Avenue because a percentage of the proposed units were residential, without any restriction on occupancy duration; and

WHEREAS, the Board notes that the facts in 848 Washington Avenue can be clearly distinguished from those respecting the Building, in which the only occupancy permitted by the Occupancy Restrictions is transient; and

WHEREAS, the Board finds DOB's determinations concerning these two buildings to be consistent; and

WHEREAS, the Board notes that the Appellant raised additional issues, but failed to provide case law or Board

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# MINUTES

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precedent to support them, so they are not addressed within this resolution; and

WHEREAS, the Board agrees with DOB that the Building, as proposed, complies with all legal requirements for the issuance of a building permit for a transient hotel in an M1-6 zoning district and there is therefore no basis for the revocation of the permit; and

*Therefore it is resolved* that the instant appeal is denied.

Adopted by the Board of Standards and Appeals, May 6, 2008.

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## 1-08-A thru 8-08-A

APPLICANT – Rampulla Associates Architects, for Bay Properties, owner.

SUBJECT – Application January 3, 2008 – Proposed construction of eight, one- family homes not fronting a legally mapped street contrary to Section 36 of the General City Law. R1-2 SRD, SGMD.

PREMISES AFFECTED – 65, 69, 73, 77, 83, 87, 91, 93 Giegerich Avenue, west side 154.75’ to Minerva Avenue, Block 7792, Lot 242 (ten. 286), Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 13, 2007, acting on Department of Buildings Application Nos. 510021673, 510021664, 510021682, 510021655, 510021646, 510021628, 510021637, and 510021619, 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. Therefore, Board of Standards and Appeals approval is required;” and

WHEREAS, the applicant requests to build eight single-family detached homes which do not front on a mapped street; and

WHEREAS, this portion of the site is part of a larger 33-unit residential development located within the Special South Richmond District and the Lower Density Growth Management Area within an R1-2 zoning district; and

WHEREAS, a public hearing was held on this application on April 15 2008, after due notice by publication in the *City Record*, and then to decision on May 6, 2008; and

WHEREAS, by letter dated, March 27, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated December 13, 2007, acting on Department of Buildings Application Nos. 510021673, 510021664, 510021682, 510021655, 510021646, 510021628, 510021637, and 510021619, 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 February 25, 2008” - two (2) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT 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 proposed lot subdivisions shall be reviewed and approved by DOB;

THAT the Department of Buildings shall review and approve the application for compliance with all relevant Special South Richmond District and Lower Density Growth Management Area provisions, prior to the issuance of any permits;

THAT the City Planning Commission shall review and approve any required applications for compliance with all relevant Special South Richmond District and Lower Density Growth Management Area provisions under its jurisdiction, and issue required approvals prior to the issuance of any permits;

THAT any revisions to the BSA-approved site plan shall be submitted to the Board for review; and

THAT the Department of Buildings must 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 6, 2008.

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## 306-05-BZY

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED –206A Beach 3<sup>rd</sup> Street, Block 15604, Lot 34, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant:



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**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.  
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**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 –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.  
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**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 June 24, 2008, at 10 A.M., for continued hearing.  
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**163-07-A**

APPLICANT – Rothkrug, Rothkrug and Spector, for Sea Cliff Towers Owners Corp., owner.

SUBJECT – Application June 14, 2007 – Proposed construction of an accessory parking lot located within a portion of the bed of a mapped street (Cliff Street ) contrary to General City Law Section 35 . R3-2 Zoning District.

PREMISES AFFECTED – 11 Cliff Street, northeast corner of Cliff Street and Cliff Court, Block 2833, tent. Lot 65, Borough of Staten Island

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.  
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**246-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Stacey Farrelly, owner; Dominick Desimone, lessee.

SUBJECT – Application October 30, 2007 – 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.

PREMISES AFFECTED – 97 Victory Boulevard (aka no number Corson Avenue), west side of Victory Boulevard, 180' south of Corson Avenue, Block 23, Lot 55, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for continued hearing.  
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**265-07-A**

APPLICANT – Abigail Patterson, for West 70<sup>th</sup> Associates, owner.

SUBJECT – Application November 19, 2007 – 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.

PREMISES AFFECTED – 57 West 70<sup>th</sup> Street, north side of 70<sup>th</sup> Street, 160' east of corner formed by 70<sup>th</sup> Street and Columbus Avenue, Block 1123, Lot 7, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant:

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for continued hearing.  
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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:10 A.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, MAY 6, 2008  
1:30 P.M.**

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

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**ZONING 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**

APPEARANCE – None.

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

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, May 6, 2008.

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**68-07-BZ**

**CEQR #07-BSA-069Q**

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 65<sup>th</sup> Road, southwest corner Yellowstone Boulevard and 65<sup>th</sup> Road, Block 2130, Lot 37, Borough of Queens.

**COMMUNITY BOARD #6Q**

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough

Commissioner, dated March 13, 2008, acting on Department of Buildings Application No. 402199973, reads, in pertinent part:

“Community facility (synagogue/daycare) Use Group 4 in R5 zone requires front and side yards for existing building and proposed enlargement as per Section 23-24 and Section 24-35 of the NYC Zoning Resolution.

In addition, proposed plans exceed lot coverage requirements as per ZR 24-11 and as such must be referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, a proposed enlargement and conversion of an existing two-story two-family home into a three-story and cellar building to be occupied by a synagogue and a daycare, which does not comply with front and side yards and lot coverage requirements for community facilities, contrary to ZR §§ 23-24, 24-11, and 24-35; and

WHEREAS, a public hearing was held on this application on November 20, 2007, after due notice by publication in *The City Record*, with continued hearings on January 29, 2008, March 4, 2008, and April 1, 2008 and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 6, Queens, recommends disapproval of the application, citing concerns about (1) the absence of a pre-existing congregation, (2) whether the application meets all of the findings of ZR § 72-21, (3) the absence of a clearly defined program, (4) ambiguous space needs, (5) lack of parking, (6) the site’s ownership, and (7) a potential negative impact on the adjacent property; and

WHEREAS, certain members of the community provided testimony and forms of objection in opposition to the proposal, and reiterate the concerns of the Community Board and added that the proposed building is not compatible with the neighborhood context (collectively, “the Opposition”); and

WHEREAS, an adjacent neighbor raised specific concerns about the proposed building’s potential impact on access to light and air for the adjacent home and the elimination of an informal access way across the subject site to Yellowstone Boulevard; and

WHEREAS, certain members of the community provided written and oral testimony in support of the proposal and the synagogue and daycare center’s services; and

WHEREAS, this application is being brought on behalf of Rubin Ben Issac Haim Synagogue, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the southwest corner of Yellowstone Boulevard and 65<sup>th</sup> Road, and is occupied by a semi-detached two-family home; and

WHEREAS, the proposal provides for the following

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# MINUTES

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uses: (1) a synagogue on the first floor and cellar level, and (2) a daycare, operated by the Synagogue, on the second and third floors, with a rooftop play area; 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 height of 35 feet, with 4,884 sq. ft. of floor area (4,994 sq. ft. is the maximum permitted for a community facility in the subject zoning district); and an FAR of 1.95 (2.0 FAR is the maximum permitted for a community facility); and

WHEREAS, additionally, the applicant proposes 62.3 percent lot coverage (a maximum of 60 percent is permitted); one front yard with a depth of 10'-0" on 65<sup>th</sup> Road and one front yard with a depth ranging from 0'-11" to 5'-0" on (two front yards of 10'-0" each are the minimum required), one side yard with a width of 8'-0" on the southern lot line, and one partial side yard with a width of 4'-0" on the western lot line (two side yards with minimum widths of 10'-0" each are the minimum required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to accommodate the congregation of approximately 80 adults; (2) to provide space for small meetings and gatherings including those for religious education and social services; and (3) to provide a free non-profit daycare center for approximately 40 students; and

WHEREAS, the applicant states that the proposed amount of space would accommodate a maximum total of approximately 140 adults; and

WHEREAS, the applicant represents that there will not be any formal catering space and that no significant catering events are proposed to take place at the site; 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, in response to certain concerns raised by the Opposition, 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, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, similarly, the Board notes that under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit educational and religious

institutions, are entitled to significant deference (see e.g. Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the applicant represents that the proposed classroom space is required to meet standards to accommodate the projected enrollment; and

WHEREAS, the applicant notes that a rooftop play area is required to accommodate outdoor space since there is insufficient yard space, and that it will be built in strict compliance with the Building Code and any other relevant regulations; and

WHEREAS, however, in addition to the programmatic need, the applicant 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 trapezoidal shape with a width ranging from 20'-5" to 31'-11" and if the required side yard of 10'-0" along the western lot line and the required front yard of 10'-0" on Yellowstone Boulevard were provided, only a triangular sliver would remain, with a maximum width of 10'-0" ranging to a width of 0'-0"; and

WHEREAS, the Board agrees that no feasible building could be built on such a small footprint; and

WHEREAS, the Board notes that the existing home at the site is semi-detached and does not provide any side yard for the majority of its western lot line, which is a permitted condition for a residential use, but not a community facility use, in the subject zoning district; 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 and lot coverage 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

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# MINUTES

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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 homes, but that there are a significant number of other community facilities and multiple dwelling buildings of greater height; and

WHEREAS, the applicant initially proposed a building with a complying lot coverage of 59 percent, no 4'-0" setback and partial side yard and a greater height along the western lot line, and a 5'-0" side yard at the rear of the site; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent buildings; and

WHEREAS, specifically, the Board suggested that the applicant (1) increase the side yard at the rear to 8'-0", (2) suppress the elevation of the platform at the entrance and limit the encroachment into the front yard on 65<sup>th</sup> Road, (3) shift the bulk of the building away from the 65<sup>th</sup> Road frontage where there is a residential context, (4) eliminate any windows from the lot line façade, and (5) reduce the height of the one-story portion on the western lot line from 19'-0" to 15'-0"; and

WHEREAS, in response, the applicant re-designed the building, which resulted in an increase in lot coverage, but provided an increased side yard of 8'-0" at the rear and a 10'-0" front yard along 65<sup>th</sup> Road where there is a context for front yards; and

WHEREAS, additionally, the applicant shifted the proposed setbacks from the rear of the building to the front and agreed to reduce the height of a portion of the building at the rear to one-story and 15'-0" so as to be more compatible with the adjacent home while also providing a 4'-0" setback above the first floor along the western property line; 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, throughout the hearing process, the applicant revised the proposal to increase the size of the yards and shift the bulk across the site; 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, as to the Community Board and Opposition's concerns, the Board notes that: (1) the applicant represents that there is a large Bukharian population within walking distance of the site which is expected to form the congregation; (2) as discussed, 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; (3) the applicant has described a program and a use which are permitted as-of-right in the subject zoning district; (4) the applicant represents that the majority of the congregants will walk and that it plans to provide transportation for majority of the students; (5) the site's ownership is irrelevant to the Board's findings; and (6) the applicant has modified the proposal to provide for a building with a bulk and yards that are compatible with neighborhood context; and

WHEREAS, as to the specific concerns of the adjacent neighbor, the Board notes that the applicant reduced the height of the building and provided a setback along the common lot line to minimize any impact on access to light and air for the adjacent home; and

WHEREAS, as to the informal access way across the subject site to Yellowstone Boulevard, the Board notes that it did not receive any evidence that a legal easement exists and that making a determination as to the validity of this claim is not within its jurisdiction; 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(ak) 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. 07BSA069Q, dated March 21, 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

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# MINUTES

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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 4 synagogue and accessory daycare, which does not comply with lot coverage, front yard, and side yard regulations for community facilities, contrary to ZR §§ 23-24, 24-11, and 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 April 21, 2008”–Thirteen (13) 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 4,884 sq. ft. (1.95 FAR), three stories, a total height of 35 feet, a lot coverage of 62.3 percent, one front yard of 10’-0” on 65<sup>th</sup> Road, and one side yard of 8’-0” at the rear/south lot line;

THAT the use shall be limited to a house of worship and daycare (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT sound attenuation measures shall be installed and maintained to limit the maximum interior noise level from the Synagogue to the adjacent residential use to 45 dBA;

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

THAT DOB shall review and approve the rooftop play area;

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, May 6, 2008.

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## 218-07-BZ

### CEQR #08-BSA-019Q

APPLICANT – Sheldon Lobel, P.C., for Matthew Foglia, owner.

SUBJECT – Application September 24, 2007 – Variance (§72-21) to allow the conversion and enlargement of an existing building to office use; contrary to use regulations (§22-00). R3-2 district.

PREMISES AFFECTED – 110-11 Astoria Boulevard, located at the intersection of Astoria Boulevard and Ditmars Boulevard, Block 1679, Lot 34, Borough of Queens.

### COMMUNITY BOARD #3Q

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated February 4, 2008, acting on Department of Buildings Application No. 402630765, reads in pertinent part:

“Proposed Use Group 6 in R3-2 District is contrary to ZR 22-00;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the conversion of a two-story and cellar home to commercial office use (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, the Board notes that that the application as originally filed also contemplated a two-story enlargement to the existing building, which was eliminated subsequent to meetings with the local Community Board; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, Council Member Monserrate testified in favor of this application; and

WHEREAS, Community Board 3, Queens, recommended disapproval of this application, citing concerns with its potential impact on neighborhood character; and

WHEREAS, local residents provided testimony in support and in opposition to this application; and

WHEREAS, the converted building will have two stories and a cellar with a total floor area of 1,868 sq. ft., an FAR of 0.31, a rear yard of 30’-0”, a front yard ranging from 10’-1” to 15’-1”, a total height of 30’-6”, and six parking

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# MINUTES

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spaces; and

WHEREAS, the subject premises is located within an R3-2 zoning district at the intersection of Astoria Boulevard and Ditmars Boulevard; and

WHEREAS, the site has an irregular bowtie-shape, with approximately 195 feet of frontage on Astoria Boulevard and approximately 59 feet of frontage on Ditmars Boulevard, extending approximately 66'-0" in depth at its longest point and approximately 4'-0" in depth at its shortest point within a lot area of approximately 5,200 sq. ft.; and

WHEREAS, the site is currently occupied with a two-story and cellar home; and

WHEREAS, the applicant states that the proposed building will be occupied by commercial office use; and

WHEREAS, as noted above, the proposed building requires a use waiver; 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 development: (1) the site's shape; and (2) the site's location at the intersection of two heavily-traveled arterial roads; and

WHEREAS, as to the site's shape, the applicant states that the site is an irregular bowtie shape, with two triangular portions that cannot be developed due to its narrowness and irregularity; and

WHEREAS, the applicant represents that, as a consequence of its irregular shape, the buildable area is especially small in relation to the total lot area, resulting in an existing building footprint of only 843 sq. ft., despite a total lot area of approximately 5,200 sq. ft.; and

WHEREAS, as to the site's location, the applicant states that it is located at the intersection of Astoria Boulevard and Ditmars Boulevard, two heavily-trafficked thoroughfares; and

WHEREAS, the applicant states that the site is additionally impacted by traffic exiting from the Grand Central Parkway adjacent to the premises, and by its proximity to Shea Stadium; and

WHEREAS, the applicant represents that the heavy incidence of traffic on these arteries constrains demand for residential development; and

WHEREAS, as to the historic use of the site, the applicant has submitted evidence establishing that the subject building has been in existence since 1985 and has been used in recent years as an architectural office; and

WHEREAS, the applicant submitted letters from local realtors stating that their efforts to market the site for conforming use had been unsuccessful because of its small building footprint and location; 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 two as-of-right residential alternatives: a single-family home, and a two-family home; and

WHEREAS, the study concluded that neither complying scenario would realize a reasonable return; and

WHEREAS, at hearing the Board asked the applicant to explain why the construction costs for the lesser variance scenario were estimated to cost less than the estimated expense for the proposed use; and

WHEREAS, the applicant responded that the costs presented for the proposed use were based on actual contracted costs, while the two conforming scenarios were extrapolated from industry estimates of the cost to develop a building of the proposed size and use; 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 Astoria Boulevard fronting the subject site is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, more than two-thirds of the frontage along the south side of Astoria Boulevard has been developed for commercial uses; and

WHEREAS, further, photographs submitted by the applicant depict a large one-story commercial building occupied by an auto rental company and a gasoline service station both located at Astoria Boulevard across from the site; and

WHEREAS, the applicant represented that the proposed building will have an estimated 12 to 15 occupants and generate limited customer traffic, thereby resulting in minimal traffic impact; and

WHEREAS, the Board notes that the current proposal complies with height and yard regulations of the subject zoning district; and

WHEREAS, the Board notes that the original plans did not provide for buffering landscaping or a privacy wall surrounding the parking area, as would now be required by ZR § 36-56 if the proposed building were in a commercial district; and

WHEREAS, at the Board's request, the applicant submitted revised plans which indicate that landscaping, including shrubbery and plantings, and a privacy wall will screen the open parking area from the adjoining residential properties and from Astoria Boulevard; 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

# MINUTES

of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's pre-existing shape and location; and

WHEREAS, the Board notes that the application as originally filed contemplated a building with a floor area of 3,876 sq. ft. (0.75 FAR), no rear yard or side yard, and two parking spaces; and

WHEREAS, because the applicant reduced the size of the proposed building, increased the number of parking spaces, and will provide yards which comply with those required for a residential use in the zoning district, 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 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. 08BSA019Q, dated February 1, 2008; 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 R3-2 zoning district, the proposed conversion of a two-story and cellar commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 1, 2008"—five (5) sheets and "Received April 29, 2008"—one (1) sheets; and *on further condition*:

THAT the following are the bulk parameters of the

proposed building: a total floor area of 1,868 sq. ft. and an FAR of 0.31, a rear yard of 30'-0", a front yard ranging from 10'-1" to 15'-1", a total height of 30'-6", and six parking spaces, as indicated on the BSA-approved plans;

THAT the use be limited to a Use Group 6 office use;

THAT landscaping, including shrubbery and plantings, and a privacy wall screening the adjacent open parking area, shall be provided and maintained as per the BSA-approved plans;

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, May 6, 2008.

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## 241-07-BZ

APPLICANT – Eric Palatnik, P.C., for Exxon Mobil Oil Corporation, owner.

SUBJECT – Application October 26, 2007 – Special Permit filed pursuant to §73-211 to allow an automotive service station with an accessory convenience store (use group 16) in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Victory Boulevard and Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO WITHDRAW** –

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

Adopted by the Board of Standards and Appeals, May 6, 2008.

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## 11-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Audrey Grazi and Ezra Grazi, owners.

SUBJECT – Application January 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

# MINUTES

PREMISES AFFECTED – 3573 Bedford Avenue, Bedford Avenue between Avenue N and Avenue O, Block 7679, Lot 23, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 27, 2007, acting on Department of Buildings Application No. 302312959, reads in pertinent part:

“The proposed enlargement is contrary to:

ZR 23-141 in that the proposed building exceeds

the maximum permitted floor area ratio of 0.50;

ZR 23-141 in that the proposed open space ratio is

less than the minimum required open space of

150.00;

ZR 23-47 in that the proposed rear yard is less than

the minimum required rear yard of 30’-0”;

ZR 23-461 in the proposed side yard is less than

the minimum required side yard of 5’-0”;

” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for 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 4, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2008, and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue N and Avenue O; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,134.97 sq. ft. (0.52 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 3,134.97 sq. ft. (0.52 FAR), to 4,396.67 sq. ft. (0.73 FAR); the maximum floor area permitted is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 85.62 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain a non-complying side yard of 4’-10 ¼” (a minimum width of 5’-0” is required) and a complying side yard of 10’-5 ¼” (side yards with a minimum total width of 13’-0” are required); and

WHEREAS, the proposed enlargement will maintain the rear yard with a depth of 20’-0” (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 revise the plans to reflect that there would not be any increase in the degree of non-compliance of the existing side yard; and

WHEREAS, in response, the applicant revised the drawings to reflect a straight line extension of the building at the rear; 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 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 March 18, 2008”–(12) sheets; and *on further condition*:

THAT the floor area in the attic shall be limited to 809.39 sq. ft.;

THAT there shall be no habitable room in the cellar;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the



# MINUTES

building: a total floor area of 4,396.67 sq. ft. (0.73 FAR), a minimum open space ratio of 85.62 percent, side yards with minimum widths of 4' -10 ¼" and 10' -5 ¼", and a rear yard with a minimum depth of 20' -0", as illustrated on the BSA-approved plans;

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

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

THAT the Department of Buildings must 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 6, 2008.

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## 21-08-BZ

### CEQR #08-BSA-047X

APPLICANT – Law Office of Fredrick A. Becker, for Pilot Realty Co. c/o Sackman Enterprises, owner; TSI Morris Park LLC dba New York Sports Club, lessee.

SUBJECT – Application January 30, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of a two-story commercial building. The proposal is contrary to section 42-10. M1-1 district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, westerly side of Bronxdale Avenue, 675' southerly of Van Nest Avenue, Block 4042, Lot 200, Borough of Bronx.

### COMMUNITY BOARD #11BX

APPEARANCES –

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 23, 2008, acting on Department of Buildings Application No. 201111082, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted pursuant to ZR Section 42-00;” 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 a portion of the first floor of a two-story

commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in *The City Record*, and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Bronxdale Avenue, 675 feet south of Van Nest Avenue; and

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

WHEREAS, the PCE occupies approximately 31,949 sq. ft. of floor area on the first floor; and

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

WHEREAS, the Board notes that the PCE has operated at the site since approximately November 1, 2007; accordingly, the term will be reduced for the amount of time between November 1, 2007 and the date of this grant; and

WHEREAS, the applicant represents that the PCE provides facilities for cardiovascular exercise and weight-training; and

WHEREAS, the hours of operation are: Monday through Thursday 5:00 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, at hearing, the Board asked the applicant to explain any outstanding violations; and

WHEREAS, in response, the applicant stated that all violations pre-date the PCE's occupancy of the site and are not relevant to its use and occupancy; 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

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# MINUTES

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action pursuant to 6 NYCRR Part 617.2(ak); 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. 08BSA047X, dated January 25, 2008; 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 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 a portion of the first floor of a two-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 30, 2008"-(1) sheet and "Received April 3, 2008"-(1) sheet and *on further condition*:

THAT the term of this grant shall expire on November 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 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 all sound attenuation measures shall be installed and maintained as per 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 6, 2008.

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**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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Marvin Mitzner.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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**109-07-BZ**

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Jeffrey Chester.

For Opposition: Mary Walsh, Howard Nathan and Tom Ryan.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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**119-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§ 72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§ 42-10), rear yard (§

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# MINUTES

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43-26) and parking (§ 44-21). M1-2 district.  
PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

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## 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 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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## 189-07-BZ

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.

SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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## 248-07-BZ

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

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## 257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections 24-522 (height, setbacks, and sky exposure plane for community facility), 24-11 (community facility lot coverage), and 24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

## COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Gordon Davis.

In Favor: Costas Machlouzarids, Mustata K. Abadan, Dr. Kenneth Davis, Stephen Holley, C. Shelton, Angela Calderon, Derrick Taitt, Alluta Slappy, Vincent Torres, Joseph F. Brown and others.

For Opposition: Danish Perez of Community Board #11, Gorman Reslly, Raymond Promey, Beverley Birks, Melissa Mark Viverito, Joanne Seminari, Nicholas Sander, Seri Worden, Betto-Jane Raphae, Fred R. Cohen and Lo Van der Valk.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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## 258-07-BZ

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

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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# MINUTES

## 281-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Falah and Victor Falah, owners.

SUBJECT – Application December 12, 2007 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R2X (OP) zoning district.

PREMISES AFFECTED – 1960 East 4<sup>th</sup> Street, west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S, Block 6681, Lot 263, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for continued hearing.

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## 12-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Empire State Development Corp., owner; Harlem Center, LLC, lessee.

SUBJECT – Application January 3, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on a portion of the cellar and ground floor in a ten-story commercial building. The proposal is contrary to §32-10. C4-7 district.

PREMISES AFFECTED – 317 Lenox Avenue, a/k/a 105 W. 125<sup>th</sup> Street, west side of Lenox Avenue, between 125<sup>th</sup> Street and 126<sup>th</sup> Street, Block 1910, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

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## 13-08-BZ

APPLICANT – Bryan Cave LLP/Robert Davis, for Little Red School House, Inc., owner.

SUBJECT – Application January 8, 2008 – Variance (§72-21) to permit an addition at the rear of the existing high school and adjacent buildings to meet the school's programmatic needs. The proposal is contrary to §§ 24-11 (lot coverage) and 24-36 (rear yard). R6/M1-6 districts.

PREMISES AFFECTED – 34-42 Charlton Street (a/k/a 34 Charlton, 40 Charlton, 40-42 Charlton Street) bounded by Varick and Charlton Streets, Avenue of the Americas and Vandam Street, Block 506, Lots 11 & 12, Borough of Manhattan.

### COMMUNITY BOARD # 2M

APPEARANCES –

For Applicant: Robert Davis.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 13, 2008, at 1:30 P.M., for decision, hearing closed.

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## 25-08-BZ

APPLICANT – Eric Palatnik, P.C., for Torah Academy For Girls, owner.

SUBJECT – Application March 25, 2006 – Variance (§72-21) to permit the enlargement of the existing school approved by BSA in a prior grant in 2002 (158-02-BZ). The proposal is contrary to sections 24-11 (lot coverage), 24-34 (minimum front yard), 24-382 (minimum rear yard), and 24-521 (height, setback and sky exposure plane). R4-1 district.

PREMISES AFFECTED – 444 Beach 6<sup>th</sup> Street, between Jarvis and Meehan Avenues, Block 1559, Lot 1, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 1:30 P.M., for decision, hearing closed.

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## 52-08-BZ

APPLICANT – Dennis D. Dell' Angelo, for Yossi Amar, owner.

SUBJECT – Application March 7, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and lot coverage (§23-141); side yards (§23-461) and rear yard requirement (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3935 Bedford Avenue, east side of Bedford Avenue, Block 6811, Lot 72, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Dennis Dell' Angelo.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 5:15 P.M.*

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# BULLETIN

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

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

|                                   |
|-----------------------------------|
| <b>TELEPHONE - (212) 788-8500</b> |
| <b>FAX - (212) 788-8769</b>       |

### CONTENTS

|                                 |         |
|---------------------------------|---------|
| DOCKET .....                    | 315     |
| <b>CALENDAR</b> of June 3, 2008 |         |
| Morning .....                   | 316     |
| Afternoon .....                 | 317/318 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, May 13, 2008**

Morning Calendar .....319

**Affecting Calendar Numbers:**

|                            |   |
|----------------------------|---|
| 718-56-BZ                  | 741 Forest Avenue, Staten Island            |
| 1334-66-BZ                 | 150 West End Avenue, Manhattan              |
| 841-76-BZ                  | 651 Fountain Avenue, Brooklyn               |
| 78-79-BZ                   | 671 Fountain Avenue, Brooklyn               |
| 1098-83-BZ                 | 147-10 Northern Boulevard, Queens           |
| 340-03-BZ                  | 408 Greenwich Street, Manhattan             |
| 127-05-BZII                | 9216 Church Avenue, Brooklyn                |
| 80-07-BZ                   | 319 West 94 <sup>th</sup> Street, Manhattan |
| 123-07-A                   | 723R Driggs Avenue, Brooklyn                |
| 288-07-BZY &<br>289-07-BZY | 421 & 425 Burgher Avenue, Staten Island     |
| 28-08-A                    | 11 Devon Walk, Queens                       |
| 194-07-A                   | 1447 Rosedale Avenue, Bronx                 |
| 228-07-A &<br>234-07-A     | 29 Colon Avenue, Staten Island              |
| 230-07-BZY                 | 90-22 176 <sup>th</sup> Street, Queens      |
| 255-07-A                   | 40-54 Francis Lewis Boulevard, Queens       |
| 259-07-A                   | 41-97 Parsons Boulevard, Queens             |

Afternoon Calendar .....324

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 250-07-BZ | 837 Belmont Avenue, Brooklyn                    |
| 272-07-BZ | 344 Amsterdam Avenue, Manhattan                 |
| 13-08-BZ  | 34-42 Charlton Street, Manhattan                |
| 100-07-BZ | 642 Barclay Avenue, Staten Island               |
| 219-07-BZ | 11 West 36 <sup>th</sup> Street, Manhattan      |
| 227-07-BZ | 1595 Canarsie Road, Brooklyn                    |
| 242-07-BZ | 1760 Gleason Avenue, Bronx                      |
| 268-07-BZ | 1644 48 <sup>th</sup> Street, Brooklyn          |
| 271-07-BZ | 213-219 West 23 <sup>rd</sup> Street, Manhattan |
| 274-07-BZ | 1157 83 <sup>rd</sup> Street, Brooklyn          |
| 9-08-BZ   | 555 Foster Road, Staten Island                  |
| 14-08-BZ  | 1958 East 13 <sup>th</sup> Street, Brooklyn     |
| 24-08-BZ  | 230-262 Arden Avenue, Staten Island             |
| 31-08-BZ  | 2043 Richmond Avenue, Staten Island             |
| 456-85-BZ | 2043 Richmond Avenue, Staten Island             |
| 36-08-BZ  | 1177 East 23 <sup>rd</sup> Street, Brooklyn     |
| 37-08-BZ  | 100 Merrill Avenue, Staten Island               |
| 38-08-BZ  | 40 Broad Street, Manhattan                      |
| 44-08-BZ  | 1015 East 23 <sup>rd</sup> Street, Brooklyn     |

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# DOCKET

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New Case Filed Up to May 13, 2008  
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**141-08-BZ**

46-48 Third Avenue, Northeast corner of the intersection of Third Avenue and Atlantic Avenue., Block 185, Lot(s) 25,26, Borough of **Brooklyn**, **Community Board: 2**. Variance to allow a mixed use building, contrary to use bulk regulations.  
-----

**142-08-A**

225 Brighton 2nd Lane, Corner of Brighton 2nd Lane and Brighton 2nd Place., Block 8662, Lot(s) 153, Borough of **Brooklyn**, **Community Board: 13**. Construction in front of mapped stret, contrary to Section 36, Article 3 of the General City Law.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JUNE 3, 2008, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 3, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **467-58-BZ**

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application April 16, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Exxon Mobil) in an R3-2 zoning district which expired on May 21, 1999.

PREMISES AFFECTED – 172-11 Northern Boulevard, north side blockfront between 172<sup>nd</sup> Street and Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### **546-82-BZIII**

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

**COMMUNITY BOARD #12Q**

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### **151-90-BZ**

APPLICANT – Mitchell S. Ross, for Mega Real Estate Management, Incorporated, owner.

SUBJECT – Application March 13, 2008 – Amendment to allow legalization of existing conventional office use by amending resolution to remove condition limiting occupancy to governmental office use only previously granted by the Board. Located in a R3-2 zoning district.

PREMISES AFFECTED – 115-49 118th Street, 115-70 Lefferts Boulevard, East side of 118th Street, 240' north of Sutter Avenue, Block 11711, Lot 18, Borough of Queens.

**COMMUNITY BOARD #10Q**

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### **26-08-A**

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Michael & Theresa Flanigan, lessees.

SUBJECT – Application January 13, 2008 – Reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district. PREMISES AFFECTED – 35 Bedford Avenue, north side 475.70' west of 12<sup>th</sup> Avenue, Block 16350 Lot p/o 300. Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **47-08-A**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50' west of intersection with Beach 72<sup>nd</sup> Street, Block 16066, Lot 46, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **48-08-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Kathleen Brunton, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to GCL Section 36 and partially located within the bed of a mapped street contrary to GCL Section 35. R4 Zoning District.

PREMISES AFFECTED – 126 Oceanside Avenue, north side Oceanside Avenue, 220.50' east of Beach 207<sup>th</sup> Street, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **49-08-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Charles & Kim Thompson, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and located within mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 305 Hillside Avenue, east side Newport Walk, 110/19' south of Oceanside Avenue, Block 16340, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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**JUNE 3, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 3, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**243-07-BZ/244-07-A**

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

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (23-141); less than the minimum front yards (23-45) and less than the required amount of parking (23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, Borough of Staten Island.

**COMMUNITY BOARD #1SI**  
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**291-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to sections 24-35 (side yards), 24-391 (rear yard), 24-34 (front yard), and 24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**  
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**32-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Baron Hirsch Cemetery Assn. Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 1126 Richmond Avenue, intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street, Block 1668, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**  
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**50-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for St. Sylvester's R.C. Church, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 6, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network.

PREMISES AFFECTED – 265McKinley Avenue, between Grant Avenue and Eldert Lane, Block 4175, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**  
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**53-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2000 – Special Permit (§73-30), to permit a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**  
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**731-68-BZ**

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owners; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2008 – Amendment (§73-30) to allow the site showing removal of gas tanks and proposed change for a non-accessory radio tower.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**  
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# CALENDAR

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**55-08-BZ**

APPLICANT – Walter T. Gorman, P.E., for Eileen & Benjamin Seiden, owner; ExxonMobil Corporation, lessee.  
SUBJECT – Application March 13, 2008 – Special Permit filed pursuant to §§11-411 & 73-01(d) to reinstate a variance previously granted under BSA calendar number 381-60-BZ, which expired on November 1, 1995, allowing the operation of an Automotive Service Station with accessory uses in a R7-2 zoning district.

PREMISES AFFECTED – 350/58 East Houston Street, North west corner of Avenue C, Block 384, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 13, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**718-56-BZ**

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation

SUBJECT – Application March 31, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil) which expired on July 2, 2002; an Extension of Time to obtain a Certificate of Occupancy which expired on July 27, 2000 and an Amendment to legalize the conversion of one restroom to office space and office/sales area to an accessory convenience store in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner of North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: John Ronan and Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for continued hearing.

**1334-66-BZ**

APPLICANT – Sheldon Lobel, PC, for ACP Lincoln Garages, LLC, owners.

SUBJECT – Application March 3, 2008 – Reopening for an extension of term for a variance, which was originally granted under Section 60(3) of the Multiple Dwelling Law, which permits the operation of a transient parking garage in the cellar and sub-cellar of a building. R8 zoning district.

PREMISES AFFECTED – 150 West End Avenue, east side of West End Avenue between West 66<sup>th</sup> and West 70<sup>th</sup> Streets, Block 1158, Lot 80, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Josh Rinesmith.

**THE VOTE TO CLOSE HEARING** –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.

**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 Application: Peter Hirshman and Francis R. Angelino.

For Opposition: Ronald J. Dillon.

**THE VOTE TO CLOSE HEARING** –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

**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**

APPEARANCES –

For Application: Peter Hirshman and Frank Angelino.

For Opposition: Ronald J. Dillon.

**THE VOTE TO CLOSE HEARING** –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

# MINUTES

## 1098-83-BZ

APPLICANT – Walter T. Gorman, P.E., Joseph M. Mattone, Estate of James J. Mannix, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application March 21, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil), in C1-2/R5 zoning district, which expired on April 3, 2004 and an Amendment to legalize the conversion of the sales area to an accessory convenience store, the installation of planters, public telephone, chain link fencing atop a portion of a brick wall and the elimination of bollards on Northern Boulevard.

PREMISES AFFECTED – 147-10 Northern Boulevard, south east corner of 147<sup>th</sup> Street. Block 5016, Lot 18, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: John Ronan and Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for continued hearing.

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## 340-03-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, by Howard S. Weiss, Esq., for 408

SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

### COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Howard Weiss, Ron Mandel and Robert Pauls.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

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## 127-05-BZII

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

SUBJECT – Application January 30, 2008 – Extension of Term/Extension of Time to obtain C of O (§73-243) to reopen and extend the term for an accessory drive-thru facility at an existing eating and drinking establishment located in a C1-1/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, aka 9220 Church Avenue and 526 East 93<sup>rd</sup> Avenue, southeast side of Church Avenue between East 92<sup>nd</sup> Street and the intersection of East 93<sup>rd</sup> Street and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for decision, hearing closed.

-----

## 80-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Clover Housing Development Fund Corp., owner.

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 wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), and the permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94<sup>th</sup> Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

### COMMUNITY BOARD # 7M

APPEARANCES –

For Applicant: Richard Lobel, Harret Eden, Wendy Brennan, Jay Mezqbokeu, Jolin McConnelo, Deborah Finn, Cynthia Stuart and Harvey Newman.

For Opposition: Michael Hiller, Robert Weigel, Haz Hinkle, Paula Bassoff, Ronald Edelstein, Rolande Cutner, Mary O’Bradley, C. Hoffman, Chris Angelini, Aaron Biller, Jonanna Guttmann, Benjamin Wolinsky, Y.L. Wiksenhassen, David Chutter, Len Belzer, Jay Shiland, Rhoda Shaitelman, Lauren Rudick.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

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## 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

APPEARANCES –

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# MINUTES

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For Applicant: Eric Palatnik.

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

**THE VOTE TO WITHDRAW** –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, May  
13, 2008.

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## **288-07-BZY & 289-07-BZY**

**APPLICANT** – Anthony J. Tucci, Esq., for LT and  
Development Corp., owner.

**SUBJECT** – Application December 21, 2007 – Extension of  
time (§11-332) to complete construction of a minor  
development commenced prior to the amendment of the  
zoning district regulations on December 2005. R3-X.

**PREMISES AFFECTED** – 421 and 425 Burgher Avenue,  
bound by Burgher and Mason Avenue, Block 3361, Lots 27  
and 25, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

**APPEARANCES** –

For Applicant: Anthony Tucci.

**ACTION OF THE BOARD** – Appeal granted.

**THE VOTE TO GRANT** –

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

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 April 15, 2008, after due notice by publication  
in *The City Record*, and then to decision on May 13, 2008;  
and

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

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

WHEREAS, the subject premises is located at the  
southeast corner of Burgher Avenue and Mason Avenue; and

WHEREAS, the premises is located within an R3X  
zoning district; and

WHEREAS, the development complies with all relevant  
prior zoning district regulations; and

WHEREAS, however, on December 8, 2005  
(hereinafter, the “Enactment Date”), the City Council voted to  
adopt additional amendments associated with the Lower  
Density Growth Management Area (LDGMA) text  
amendments; 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, the new LDGMA text increased the  
required minimum lot size with which the subject development  
does not comply; 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 on each of two  
contiguous lots which are 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

# MINUTES

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 Nos. 500806247-01- NB and 500805649-01-NB, (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 were 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 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 all of the foundation and superstructure work, including all of the windows, the roofs and gutters, at least 80 percent of the plumbing, electrical, and HVAC work, and the majority of the interior finishes; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site, which reflect that both buildings are almost entirely complete with regard to exterior and interior construction; a construction log; copies of concrete pour tickets; financial records; and copies of cancelled checks; 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 approximately \$289,725, or 94 percent, of the \$308,000 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, based upon its review of all the submitted evidence and its observations made at visits to the site, 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 sites 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 Nos. 500806247-01-NB and 500805649-01-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 13, 2010.

Adopted by the Board of Standards and Appeals, May 13, 2008.

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## 28-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; TJ & Meaghan Healey, lessee.

SUBJECT – Application February 14, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and the upgrade of an existing non-conforming private disposal system partially in the bed of the service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 11 Devon Walk, east side Devon Walk, 44.84’ north of Breezy Point Boulevard, Block 16350, Lot 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 Hinkson, Commissioner Montanez and Commissioner Ottley-Brown.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 8, 2008, acting on Department of Buildings Application No. 410014265, reads in pertinent part:

# MINUTES

“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 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 and is contrary to Section 27-291 of the Administrative Code.

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

WHEREAS, a public hearing was held on this application on May 13, 2008, 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 31, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated February 8, 2008, acting on Department of Buildings Application No. 410014265, 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 February 14, 2008”-(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 13, 2008.

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## 194-07-A

APPLICANT – Rothkrug Rothkrug & Spector, for Elite III Contractor’s Inc., owner.

SUBJECT – Application August 8, 2007 – Appeal seeking 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. R5 Zoning District.

PREMISES AFFECTED – 1447 Rosedale Avenue, Cross Bronx Expressway Service Road N and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Community Board 9.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for continued hearing.

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## 228-07-A & 234-07-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Donald Bischoff, owner.

SUBJECT – Application October 9, 2007 – Proposed construction of two- two family dwellings located within the bed of a mapped street (property street) contrary to Section 35 of the General City Law. R3-2 Zoning District.

PREMISES AFFECTED – 29 Colon Avenue, 20 Lindenwood Road, between Colon Avenue and Lindenwood, south of Baltimore Street, Block 5433, Lots 75 & 98, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 20, 2008, at 10 A.M., for decision, hearing closed.

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## 230-07-BZY

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Alco Builders, Inc., owner.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam W. Rothkrug and Marc Issacs.

**ACTION OF THE BOARD** – Laid over to June 24,

# MINUTES

2008, at 10 A.M., for continued hearing.  
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## 255-07-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon LLC, owner.

SUBJECT – Application April 8, 2008 – Proposed construction of a daycare center located within the bed of mapped street (Francis Lewis Boulevard contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard (aka 196-23 42<sup>nd</sup> Ave.) corner of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lots 10 & 12, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Henry Euler, Terri Pouymari and Dennis Devoti.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for continued hearing.  
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## 259-07-A

APPLICANT – George N. Mihalios, Esq., for Hikmat Sultan, owner.

SUBJECT – Application November 8, 2007 – Proposed construction of an eight story mixed use building 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.

PREMISES AFFECTED – 41-97 Parsons Boulevard, Block 5374, Lot 11, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: George N. Mihalios.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.  
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*Jeffrey Mulligan, Executive Director*

Adjourned: 1:30 P.M.

## REGULAR MEETING TUESDAY AFTERNOON, MAY 13, 2008 1:30 P.M.

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

### 250-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cornerstone Residence, LLC, owner.

SUBJECT – Application November 2, 2007 – Variance (§72-21) to allow a two-story, two-family dwelling; contrary to front yard (§23-45) and side yard (§23-461(a)) requirements. R5 district.

PREMISES AFFECTED – 837 Belmont Avenue, northeast corner of the intersection of Atkins Avenue and Belmont Avenue, Block 4023, Lot 45, 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 Hinkson, Commissioner Montanez and Commissioner Ottley-Brown .....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 24, 2007, acting on Department of Buildings Application No. 302350033, reads in pertinent part:

- “1. Proposed front yard is contrary to Section 23-45 of the Zoning resolution and requires a variance from the Board of Standards and Appeals.
2. Proposed side yard is contrary to Section 23-461 of the Zoning Resolution and requires a variance from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the construction of a two-story two-family home on a lot that does not comply with front and side yard requirements, contrary to ZR §§ 23-45 and 23-461(a); and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in *The City Record*, with a continued hearing on April 15, 2008, and then to decision on May 13, 2008; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner



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# MINUTES

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Montanez; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the proposed building will have the following non-complying parameters: a single side yard with a depth of 10'-0" on the southern portion of the lot (two front yards with depths of 10'-0" are the minimum required); and

WHEREAS, further, the proposed building will provide one complying side yard along the northern lot line with a width of 21'-9 1/2" and one non-complying side yard along the eastern lot line with a width of 3'-0" (side yards must have a total minimum width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, the site is a vacant lot located on the northeast corner of Belmont Avenue and Atkins Avenue; and

WHEREAS, the current proposal reflects a floor area of 1,978.80 sq. ft., 1.09 FAR, a wall height of 24'-3", a total height of 29'-2", and two parking spaces; all of these parameters comply with zoning district regulations; and

WHEREAS, the applicant states that the site cannot be developed without a variance, due to its narrow width, 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 site in compliance with underlying district regulations: the corner lot's narrow width of 20 feet; and

WHEREAS, as to the lot's width, the applicant notes that without front and side yard waivers, the site could not feasibly be developed; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot has been in existence since at least 1928 when it was occupied by a three-story home; records reflect that, subsequent to the 1967 demolition of the home, the lot has been vacant; and

WHEREAS, the applicant notes that, given the narrow width and position as a corner lot, the provision of two front yards and two side yards would result in an uninhabitable home with a width of 5'-0"; and

WHEREAS, the applicant notes that the surrounding area is characterized by lots with widths comparable to that of the subject site, but that the majority of them are occupied by homes built prior to December 15, 1961 or are interior lots with different yard requirements; and

WHEREAS, the applicant notes that many of the existing homes in the area have pre-existing non-complying yards, including the three other corner lots on the subject block; and

WHEREAS, the applicant states that other nearby corner lots are occupied by buildings which extend to or near to the lot lines; and

WHEREAS, the Board notes that the site is one of two comparably-sized vacant corner lots within a 400-ft. radius; and

WHEREAS, the Board agrees that the side and front yard waivers are 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 home complies with all R5 zoning district regulations aside from the front and side yard requirements, and that the proposed bulk and height is compatible with the other residential buildings in the immediate vicinity; and

WHEREAS, the applicant originally proposed a home with a width of 20'-0" situated directly at the western lot line, not allowing for any side yard there; and

WHEREAS, the original proposal also provided for one front yard with a depth of 20'-0" along the southern lot line and one side yard of 20'-6" along the northern lot line; and

WHEREAS, the FAR, wall height, total height, lot coverage, and open space ratio were almost identical to what is currently proposed and similarly, all complied with zoning district regulations; and

WHEREAS, at hearing, the Board directed the applicant to re-distribute the bulk of the building on the site to be more compatible with the adjacent development to the east; and

WHEREAS, specifically, the Board suggested that the applicant revise the plans to reflect a side yard on the shared eastern lot line; and

WHEREAS, in response, the applicant reduced the size of the front yard from a depth of 20'-0" to a depth of 10'-0" and added a side yard with a width of 3'-0" along the eastern lot line to be more compatible with the adjacent property; and

WHEREAS, based 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 develop the site without a second side yard; and

WHEREAS, at the Board's direction, the applicant modified the plans to reflect a side yard with a width of 3'-0"; and

WHEREAS, the Board notes that the inclusion of a

# MINUTES

second side yard, although non-complying, reduced the degree of the waiver and that it and the remaining front yard waiver reflect 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 R5 zoning district, the construction of a two-story two-family home on a lot that does not comply with front and side yard requirements, contrary to ZR §§ 23-45 and 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 April 1, 2008" – three (3) sheets; and *on further condition*:

THAT the parameters of the proposed home are as follows: one side yard of 3'-0" along the eastern lot line, one side yard of 20'-9 1/2" along the northern lot line, and one front yard of 10'-0" along the southern lot line; 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, May 13, 2008.

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## 272-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76<sup>th</sup> Associates, owner; Equinox 76<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar, ground, and second floors in a mixed-use building under construction. The proposal is contrary to section 32-10. C2-7A and C4-6A districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, a/k/a 205 West 76<sup>th</sup> Street, west side of Amsterdam Avenue between West 76<sup>th</sup> and West 77<sup>th</sup> Streets, Block 1168, Lot 30, 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 Hinkson, Commissioner Montanez and Commissioner Ottley-Brown.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 20, 2007, acting on Department of Buildings Application No. 110021146, reads in pertinent part:

“Proposed physical culture establishment ‘PCE’ is not permitted as of right in C2-7A and C4-6A zoning districts. This use is contrary to section 32-10 ZR and requires a special permit from the BSA under Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment (PCE) on portions of the cellar and first and second floors of a proposed mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, and then to decision on May 13, 2008; and

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

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

WHEREAS, the subject site is located on the west side of Amsterdam Avenue, between West 76<sup>th</sup> Street and West 77<sup>th</sup> Street; and

WHEREAS, a 13- and 18-story mixed-use commercial/residential building is currently under construction at the site; and

WHEREAS, the PCE will occupy a total of approximately 33,209 sq. ft. of floor area; and

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

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the hours of operation will be: 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, at hearing, the Board asked the applicant to confirm that the floor area proposed to be occupied by the

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# MINUTES

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PCE was calculated as commercial floor area for zoning purposes and complies with the amount of such floor area permitted under the relevant zoning district regulations; and

WHEREAS, in response, the applicant submitted zoning calculations, which reflect that the space associated with the PCE was calculated as commercial floor area and complies with the zoning district parameters as to floor area and FAR; and

WHEREAS, the building plans reflect that noise abatement shall be provided between the PCE space and the residential portions of the building to maintain a maximum interior noise level of 45 dBA; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 ak); 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. 08BSA038M, dated November 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 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 C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment on portions of the cellar and first and second floors of a proposed mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 18, 2008"-(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 13, 2018;

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

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

THAT a maximum interior noise level of 45 dBA shall be maintained between the PCE and adjacent residential use;

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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

THAT sound attenuation measures shall be installed and maintained in accordance with 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);

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 13, 2008.

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# MINUTES

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## 13-08-BZ

APPLICANT – Bryan Cave LLP/Robert Davis, for Little Red School House, Inc., owner.

SUBJECT – Application January 8, 2008 – Variance (§72-21) to permit an addition at the rear of the existing high school and adjacent buildings to meet the school's programmatic needs. The proposal is contrary to §§ 24-11 (lot coverage) and 24-36 (rear yard). R6/M1-6 districts.

PREMISES AFFECTED – 34-42 Charlton Street (a/k/a 34 Charlton, 40 Charlton, 40-42 Charlton Street) bounded by Varick and Charlton Streets, Avenue of the Americas and Vandam Street, Block 506, Lots 11 & 12, Borough of Manhattan.

## COMMUNITY BOARD # 2M

APPEARANCES –

For Applicant: Robert Davis.

**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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 12, 2007, acting on Department of Buildings Application No. 110041749, reads, in pertinent part:

“The proposed enlargement does not comply with rear yard regulations outlined in Zoning Resolution 24-36.

The proposed enlargement does not comply with the lot coverage regulations outlined in Zoning Resolution 24-11”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R6 zoning district and partially within an M1-6 zoning district within the Charlton-King-Vandam Historic District, the enlargement of a four-story and cellar educational facility (Use Group 3), which is contrary to ZR §§ 24-11 and 24-36; and

WHEREAS, the applicant proposes to enlarge and maintain the use of an existing school; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in the *City Record*, with a continued hearing on May 6, 2008, and then to decision on May 13, 2008; and

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

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

WHEREAS, this application is brought on behalf of The Little Red School House/ Elisabeth Irwin High School (the “School”), a nonprofit high school; and

WHEREAS, the site is located on the northern side of

Charlton Street between Varick Street and Avenue of the Americas; and

WHEREAS, the site has a rectangular shape with approximately 116 feet of frontage on Charlton Street and a depth of approximately 100 feet; and

WHEREAS, the site is partially within an R6 zoning district and partially within an M1-6 zoning district and has a total lot area of 11,600 sq. ft.; and

WHEREAS, the site is also located within the Charlton-King-Vandam Historic District and the proposed development has received a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”), dated April 21, 2008; and

WHEREAS, the subject site is occupied by a four-story and cellar school building and a vacant three-story with basement and cellar brownstone; and

WHEREAS, a Department of Buildings pre-consideration pursuant to Zoning Resolution § 77-11, dated November 10, 2007, approves school use on the portion of the site located within the M1-6 zoning district in which such use is not permitted as of right; and

WHEREAS, the School proposes to construct the following: (1) a three-story enlargement to the existing double-height auditorium; (2) a five-story and basement enlargement at the rear of the brownstone; (3) a two-story enlargement to the top of the brownstone; and (4) a one-story enlargement to its existing four-story school building; and

WHEREAS, the brownstone building will be integrated within the School; and

WHEREAS, the current floor area totals 25,193 sq. ft.; the proposed expansion will add 14,015 sq. ft. of floor area for a total floor area of 39,208 sq. ft.; and

WHEREAS, the enlargement will be occupied by (1) an expanded auditorium; (2) 18 additional classrooms and studios; (3) after-school tutorial rooms; (4) media labs; and (5) administrative facilities; and

WHEREAS, the applicant proposes a lot coverage of 82.3 percent (65 percent is the maximum permitted), and to increase the non-compliance of a portion of the rear yard (30'-0" is the minimum required rear yard); and

WHEREAS, the addition to the rear of the brownstone creates a new non-compliance as to the required rear yard at the second floor (the proposed community facility use within the required rear yard is a permitted obstruction only for the first floor); and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) relieving overcrowded classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) offering a varied and expanded curriculum to its students; (4) enhancing the efficiency of its operations; and (5) competing with other area independent schools; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the lot coverage and rear yard waivers are necessary to provide the

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# MINUTES

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program space necessary to adequately serve its current student body and to prepare for a projected 33 percent increase in enrollment; and

WHEREAS, the applicant represents that without the waivers, the School would continue to have only 12 substandard-sized classrooms and outdated laboratories for its 181 students, and to lack space for elective classes, music practice, performances, and faculty and staff offices; and

WHEREAS, the Board acknowledges that the School, as an 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational 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 represents that the configuration of the existing site and its location within a historic district create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant further represents that because a lengthy search was unsuccessful in identifying a suitable alternative site, an expansion of the School was required on its existing site; and

WHEREAS, as to the configuration of the existing site, the applicant states that the existing school and brownstone buildings are currently non-compliant with respect to lot coverage and rear yards; and

WHEREAS, the applicant states that lot coverage of the site is limited to a maximum of 65 percent, while the existing site has 72 percent lot coverage; and

WHEREAS, the applicant further states that a 30-ft. rear yard is required in the subject district, while the school has an existing non-complying 15-ft. rear yard; and

WHEREAS, the applicant represents that no viable as of right alternative exists for the enlargement of the buildings, and their enlargement was deemed to be most compatible with the surrounding area, thus necessitating an increase in the degree of non-compliance as to lot coverage and rear yard; and

WHEREAS, the applicant also states that the existing layout necessitates the enlargement into the rear yard, to allow the existing floorplates to easily incorporate the additional floor area; and

WHEREAS, as to the site's location, the applicant states that the location of the buildings within the Charlton-King-Vandam Historic District requires review by the LPC of any proposed expansion to ensure that the historic context and visual character of the historic district are not impaired; and

WHEREAS, the applicant further states that an as of right design would have been visible from the street, thereby impacting the district's visual character, and would have been

unlikely to have been approved by the LPC; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed enlargement is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the 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, the applicant represents that the land uses surrounding the site are characterized by a mix of residential commercial, light manufacturing and institutional uses; and

WHEREAS, the applicant states that the enlargement has been designed to make it virtually invisible from the street and to maintain a height that is consistent with that found within the surrounding neighborhood; and

WHEREAS, the applicant further states that the incorporation of a screen at the rear of the School's rooftop addition has been designed to function as a visual and acoustical buffer benefiting neighboring residential properties; and

WHEREAS, the applicant represents that the site's maximum front wall height would remain at 57 feet, which is below the maximum permitted wall height of the district; and

WHEREAS, the applicant further represents that the required rear yards are provided over much of the site above the first floor; and

WHEREAS, the applicant also states that its encroachment into a rear corner of the site will permit the creation of a courtyard, thereby still maintaining open space on the site; 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 given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for lot coverage and rear yard are the minimum

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# MINUTES

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necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School 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 I action pursuant to Sections 617.12(ai) and 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. 08BSA045M, dated February 2008; 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: February 2008 Revised EAS, the February 2007 ASTM E-1527-05 compliant Phase I Environmental Site Assessment Report, the January 2008 Phase II Subsurface Investigation Report, March 2008 Phase II Sampling Protocol for Subsurface Investigation (Work Plan), April 18, 2008 Air Quality and Noise Analysis Memorandum, May 2, 2008 Remedial Action Plan (RAP), and May 2, 2008 Construction Health and Safety Plan (CHASP); and

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

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on May 7, 2008 and submitted for recording on May 8, 2008 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP in its May 9, 2008 Notice to Proceed letter finds the May 2008 RAP and CHASP to be acceptable. Based on review of these two documents, DEP determined that the applicant may proceed with the proposed project, provided that a Remedial Closure Report, certified by a Professional Engineer, is submitted by the applicant to DEP for review and approval once all DEP remedial requirements have been properly implemented; 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

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 I 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 an R6 zoning district and partially within an M1-6 zoning district within the Charlton-King-Vandam Historic District, the enlargement of a four-story and cellar educational facility (Use Group 3), which is contrary to ZR §§ 24-11 and 24-36, *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 6, 2008,"-(9) sheets and "Received April 29, 2008,"-(7) sheets; and *on further condition*:

THAT the lot coverage shall not exceed 82.3 percent and that an open space at the rear and an interior courtyard is provided, as illustrated on the BSA-approved plans;

THAT a rear yard with a depth of 15'-0" shall be provided for a portion of the site, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any DOB permit for any work that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor shall obtain a Notice to Proceed from DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or its successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the RAP and CHASP have been completed to the satisfaction of DEP and the P.E.-certified Remedial Closure Report has been approved by 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, May 13, 2008.

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# MINUTES

## 100-07-BZ

APPLICANT – David L. Businelli, for Ekram Tadros, owner.

SUBJECT – Application April 26, 2007 – Variance (§72-21) to allow a one-story and cellar community facility building (medical offices - UG4) to violate front yard (§24-34) and side yard (§107-464) requirements. R3X district (SRD).

PREMISES AFFECTED – 642 Barclay Avenue, west side Barclay Avenue, south of Hylan Boulevard, Block 6398, Lot 9, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 1:30 P.M., for continued hearing.

## 219-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Eternal Sino Int. Dev. Condo., LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application September 24, 2001 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the second floor of an existing building. Proposal contrary to section 42-13. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36<sup>th</sup> Street, located on the north side of West 36<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 838, Lot 35, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for decision, hearing closed.

## 227-07-BZ

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications Inc., for Mikhail Arabov, owner.

SUBJECT – Application October 1, 2007 – Special Permit (§73-30) to permit approval for a proposed 52 foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 1595 Canarsie Road, Block 8277, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Robert Gaudio.

For Opposition: Elias J. Weir.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for decision, hearing closed.

## 242-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 1760 Gleason Properties, LLC, owner.

SUBJECT – Application October 26, 2007 – Variance (§72-21) to construct a two story, two family detached residence with an accessory one car garage and one accessory open parking space on a vacant corner lot which encroaches into a required front yard (§23-45) in an R5 zoning district.

PREMISES AFFECTED – 1760 Gleason Avenue, Commonwealth Avenue and Saint Lawrence Avenue, Block 3752, Lot 41, Borough of Bronx.

### COMMUNITY BOARD # 9BX

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for decision, hearing closed.

## 268-07-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Perlow, Councilman Felda, Abraham Biderman, Stanley Rieder, Israel Lefkowitz, Jerry Bleier and other.

For Opposition: Randy Mustro.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for continued hearing.

## 271-07-BZ

APPLICANT – The Rizzo Group, for Mitchell Marks, owner; Club Ventures II, LLC., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (PCE) in the C2-7A portion of the zoning district. A variance is also requested to allow the

# MINUTES

PCE use in the 22'3" portion of the site in the R8A zoning district. The proposal is contrary to §§ 22-10 and 32-18.

PREMISES AFFECTED – 213-219 West 23<sup>rd</sup> Street, north side of 23<sup>rd</sup> Street between Seventh and Eighth Avenues, Block 773, Lot 34, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Kenneth Barbina

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 1:30 P.M., for continued hearing.

## 274-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Abdo Balikcioglu, owner.

SUBJECT – Application November 29, 2007 – Special Permit (§73-522) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141) and side yards (§23-461) in an R3X zoning district.

PREMISES AFFECTED – 1157 83<sup>rd</sup> Street northern side of 83<sup>rd</sup> Street between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue, Block 6301, Lot 54, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

## 9-08-BZ

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§107-42); to vary side yards (§23-462) and front yards (§23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for continued hearing.

## 14-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side

of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for decision, hearing closed.

## 24-08-BZ

APPLICANT – Omnipoint Communications, Inc., for Village Greens Shopping Center, LLC., owner.

SUBJECT – Application February 5, 2008 – Special Permit (§73-30) seek approval for a proposed 90-foot non-accessory radio tower and related equipment at grade. C1-3 overlay within R3-2 and SRD district.

PREMISES AFFECTED – 230-262 Arden Avenue, south side Arden Avenue and Tarbes Avenue, Block 6025, Lot 35, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Gaudio.

For Opposition: Sherwin Berman and David Codner.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for decision, hearing closed.

## 31-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to allow a 110- foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert Gaudio.

THE VOTE TO CLOSE HEARING –

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



# MINUTES

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for decision, hearing closed.

**456-85-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR §73-30 and file under separate BSA application.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Robert Gaudio.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for decision, hearing closed.

**36-08-BZ**

APPLICANT – Lewis Garfinkel, R.A., for Antoninette Mizrachi, owner.

SUBJECT – Application February 21, 2008 – 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)); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1177 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street, 130’ north of Avenue L, Block 7623, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lewis Garfinkel.

For Opposition: Samuel M. Rotenberg.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 1:30 P.M., for continued hearing.

**37-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Catholic High School Association of N.Y., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 21, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3X zoning district.

PREMISES AFFECTED – 100 Merrill Avenue, between

Arlene Street and Richmond Avenue, Block 2236, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Robert Gaudio.

For Opposition: John Grassadonio and Walter Steinhandler.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 1:30 P.M., for continued hearing.

**38-08-BZ**

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 40 Broad LLC, owner; 40 Broad Commercial LLC, lessee.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing 25-story commercial building. The proposal is contrary to §32-10. C5-5 within the Historic & Commercial Core Area of the Special Lower Manhattan District.

PREMISES AFFECTED – 40 Broad Street (a/k/a 34-40 New Street) lot fronting Broad Street and New Street, south of Exchange Place, north of Beaver Street, Block 24, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES –

For Applicant: Sidney N. Hockens.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 1:30 P.M., for decision, hearing closed.

**44-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 1:30 P.M., for continued hearing.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

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Volume 93, No. 21

May 29, 2008

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### DIRECTORY

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### CONTENTS

DOCKET .....336

**CALENDAR** of June 17, 2008

Morning .....337

Afternoon .....338

**CALENDAR** of June 24, 2008

Morning .....338/339

Afternoon .....340

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, May 20, 2008**

Morning Calendar .....341

**Affecting Calendar Numbers:**

184-94-BZ 336 East 61<sup>st</sup> Street, Manhattan  
85-02-BZ 850 East 181<sup>st</sup> Street, Bronx  
774-55-BZ 2155-2159 Newbold Avenue, Bronx  
206-61-BZ 30 East 39<sup>th</sup> Street, Manhattan  
18-78-BZII 111-113 East 38<sup>th</sup> Street, Manhattan  
788-89-BZ 187-17 Jamaica Avenue, Queens  
228-07-A &  
234-07-A 29 Colon Avenue, Staten Island  
246-07-A 97 Victory Boulevard, Staten Island  
168-07-A 1479 Rosedale Avenue, Bronx  
192-07-A 3546 Decatur Avenue, Bronx  
265-07-A 57 West 70<sup>th</sup> Street, Manhattan  
266-07-A 1610 Avenue S, Brooklyn  
33-08-A 67 Brighton 1<sup>st</sup> Lane, Brooklyn

Afternoon Calendar .....347

**Affecting Calendar Numbers:**

281-07-BZ 1960 East 4<sup>th</sup> Street, Brooklyn  
25-08-BZ 444 Beach 6<sup>th</sup> Street, Queens  
111-07-BZ 155 Norfolk Street, Brooklyn  
114-07-BZ 7-05 152<sup>nd</sup> Street, Queens  
143-07-BZ 6404 Strickland Avenue, Brooklyn  
174-07-BZ 1925 Coney Island Avenue, Brooklyn  
200-07-BZ 3333 Hylan Boulevard, Staten Island  
201-07-BZ 2317 Ralph Avenue, Brooklyn  
238-07-BZ 5-11 47<sup>th</sup> Avenue, Queens  
269-07-BZ 378 Seaview Avenue, Staten Island  
282-07-BZ &  
283-07-BZ 774 Schenk Avenue aka 764 Schenck Avenue, Brooklyn  
23-08-BZ 182-69 80<sup>th</sup> Road, Queens  
27-08-BZ 4845 Hylan Boulevard, Staten Island  
29-08-BZ 422 Clarke Avenue, Staten Island  
30-08-BZ 4360 Hylan Boulevard, Staten Island  
457-65-BZ 4360 Hylan Boulevard, Staten Island  
54-08-BZ 3199 Bedford Avenue, Brooklyn  
58-08-BZ 614-632 West 58<sup>th</sup> Street, Manhattan  
66-08-BZ 1497 East 21<sup>st</sup> Street, Brooklyn

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# DOCKET

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New Case Filed Up to May 20, 2008  
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**143-08-A**

43 Beach 221 Street, East side of Beach 221 Street 100' north of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of the private disposal system contrary to DOB policy. R4 Zoning district .  
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**144-08-BZ**

225 5th Avenue, Easterly side of 5th Avenue between 26th Street and 27th Street., Block 856, Lot(s) 7502, Borough of **Manhattan, Community Board: 5.** Special Permit (73-36) to permit the proposed Physical Culture Establishment on portions of the first and cellar floors. The proposal is contrary to ZR Section 32-10. C5-2 district.  
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**145-08-BZ**

1121 East 28th Street, East side of East 28th Street between Avenue K and Avenue L., Block 7628, Lot(s) 37, Borough of **Brooklyn, Community Board: 14.** Special Permit (73-622) for the enlargement of a single family residence.  
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**146-08-A**

1618-1620 Broadway, Hopkinson Avenue, Block 144, Lot(s) 4, Borough of **Brooklyn, Community Board: 16.** Application seeking to modify Certificate of Occupancy No. 84836 to require additional fire protection in the form of an automatic wet sprinkler system for the entire building under the authority under Section 27-4265 . C8-2 Zoning District .  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JUNE 17, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 17, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **1149-62-BZ**

APPLICANT – Bryan Cave LLP, for College of Saint Francis Xavier/Clothing Workers Center, Incorporated.

SUBJECT – Application May 8 2008 – Amendment to a previously approved UG3 parochial school (Xavier High School) for the increase of the zoning lot in a C6-2 zoning district.

PREMISES AFFECTED – 24-40 West 16<sup>th</sup> Street & 31-35 West 15<sup>th</sup> Street, irregularly shaped lot with frontage on W. 15<sup>th</sup> & 16<sup>th</sup>, between 5<sup>th</sup> and Avenue of the Americas. Block 817, Lot 72, 21. Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **84-91-BZ**

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.  
SUBJECT – Application March 13, 2008 – Extension of Term/waiver of a previously granted variance (72-21) for the continued UG6 use (Professional Offices) in a residential building in an R4A zoning district and an Amendment to allow storage use in the attic.

PREMISES AFFECTED – 2344 Eastchester Road, east side, south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

**COMMUNITY BOARD #11BX**

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### **200-00-BZIII**

APPLICANT – Eric Palatnik, P.C., for Plans 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 37<sup>th</sup> Avenue aka 37-16 108<sup>th</sup> Street, southwest corner of 108<sup>th</sup> Street and 37<sup>th</sup> Avenue, Block 1773, Lot 10, Borough of Queens.

**COMMUNITY BOARD #3Q**

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### **33-06-BZII**

APPLICANT – Rampulla Associates Architects, owner; Carroll's Garden Florist Corp., lessee.

SUBJECT – Application March 5, 2008 – Amendment to a previously-approved variance to allow the relocation of the approved commercial building to a different portion of the zoning lot. R1-2 district.

PREMISES AFFECTED – 1457 Richmond Road, north side Richmond Road from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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## **APPEALS CALENDAR**

### **141-07-A**

APPLICANT – Hakime Altine, for Charles Macena, owner.  
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

**COMMUNITY BOARD #13Q**

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### **68-08-A**

APPLICANT – Sheldon Lobel, P.C., for N.J.A. Ventures, LLC, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior R6A zoning. R5D Zoning District.

PREMISES AFFECTED – 135-23 82<sup>nd</sup> Avenue, between 135<sup>th</sup> Street and 138<sup>th</sup> Street (aka Hoffman Avenue), Block 9669, Lot 30, Borough of Queens.

**COMMUNITY BOARD #8Q**

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# CALENDAR

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**JUNE 17, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 17, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**245-07-BZ**

APPLICANT – Law Offices of Howard Goldman, LLC, for Hawthorne Village, LLC, owner.

SUBJECT – Application October 30, 2007 – Variance (§ 72-21) to allow the residential conversion of an existing five-story industrial building. Proposed project will contain 147 dwelling units, ground floor retail space and 59 accessory parking spaces. Proposal is contrary to use regulations (§ 42-00). M1-2 district.

PREMISES AFFECTED – 220 Water Street, between Water and Bridge Streets, Block 41, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**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**

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**65-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for MBU Bridge Home, Inc., n/k/a Community Bridge Home, Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 28, 2008 – Special Permit (§73-30) to permit, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R3A zoning district.

PREMISES AFFECTED – 120-50 Springfield Boulevard, northwest corner of 121<sup>st</sup> Avenue and Springfield Boulevard, Block 12694, Lot 56, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**69-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for United States Columbarium Company, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application March 31, 2008 – Special Permit (§73-30) to permit in an R4 district, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R4 zoning district.

PREMISES AFFECTED – 61-40 Mt. Olivet Crescent, northwest corner of 62<sup>nd</sup> Avenue and Mt. Olivet Crescent, Block 2767, Lot 1, Borough of Queens.

**COMMUNITY BOARD #5Q**

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**85-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Braddock Avenue Owners, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R4 zoning district.

PREMISES AFFECTED – 222-89 Braddock Avenue, northwest corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

**COMMUNITY BOARD #13Q**

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*Jeff Mulligan, Executive Director*

**JUNE 24, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 24, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**709-55-BZIII**

APPLICANT – Walter T. Gorman, P.E., for L M T Realty Company, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application May 27, 2008 – Extension of Time to obtain a Certificate of Occupancy, in a C1-2/R4 zoning district, for a gasoline service station (Mobil) which expired on January 9, 2003; waiver of the rules and an Amendment to legalize existing condition contrary to previous approved plans.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lot 68,

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# CALENDAR

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Borough of Brooklyn.

**COMMUNITY BOARD #18BK**  
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**615-57-BZII**

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

SUBJECT – Application June 24, 2008 – Extension of Time to obtain a Certificate of Occupancy and waiver of the rules for a Gasoline Service Station (Exxon) which expired on October 9, 2007 in an C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, north side of Horace Harding Expressway between Kissena Boulevard and 154<sup>th</sup> Place, Block 6731, Lot 1, Borough of Queens.

**COMMUNITY BOARD #7Q**  
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**286-86-BZ**

APPLICANT – Sheldon Lobel, P.C., for 808 Union Street, LLC, owner.

SUBJECT – Application April 14, 2008 – Extension of Term filed pursuant to §§72-01 & 72-22 to allow the continued use of a Physical Cultural Establishment previously granted pursuant to §72-21 of the zoning resolution. The site is located in a R6A/C1-3 zoning district.

PREMISES AFFECTED – 100 7<sup>th</sup> Avenue, southwest corner of the intersection formed by Seventh Avenue and Union Street, Block 957, Lot 33, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**  
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**826-86-BZII**

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to legalize additional transmitting equipment on the roof and to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**  
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**827-86-BZII**

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 270-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**  
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**828-86-BZII**

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 271-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**  
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## APPEALS CALENDAR

**143-08-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Nora Cahill, lessee.

SUBJECT – Application May 13, 2008 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of the private disposal system contrary to DOB policy. R4 Zoning district. PREMISES AFFECTED – 43 Beach 221<sup>st</sup> Street, east side of Beach 221<sup>st</sup> Street, 100' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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# CALENDAR

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**JUNE 24, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 24, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**281-06-BZ & 282-06-A**

APPLICANT – Eric Palatnik, P.C., for Yuri Frayman, owner.

SUBJECT – Application October 20, 2006 – Special Permit (§73-622) for the In-Part Legalization of the existing floor area which exceeds the district requirement (§23-141) in an R3-1 zoning district. This application also proposes to reduce the overall height which exceeds the district requirement.

Appeal of DOB determination that the proposed street wall eaves, slope roof projection and trussed rafters were not permitted obstruction as stated in §27-335 (A)(2) of the Building Code.

PREMISES AFFECTED – 232 Beaumont Street, west side of Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 50, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**80-08-BZ**

APPLICANT – Dennis D. Dell’Angelo, for Joseph Leshkowitz, owner.

SUBJECT – Application April 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary the open space ratio and floor area (§23-141); side yards (§23-46) and rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1073 East 24<sup>th</sup> Street, east side of East 24<sup>th</sup> Street, 175’ north of Avenue K, Block 7606, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**86-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Tuchman Associates II, LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”). R6 zoning district.

PREMISES AFFECTED – 111-26 Corona Avenue, apx. 200’ east of Saultell Avenue, Block 1972, Lot 38, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**90-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for BNS Properties LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit (§73-30) to permit a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”). R3X zoning district.

PREMISES AFFECTED – 104-36 196<sup>th</sup> Street, northwest corner of Hollis Avenue and 196<sup>th</sup> Street, Block 10891, Lot 21, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**91-08-BZ**

APPLICANT – Slater & Becker, LLP, for NAND Limited Partnership, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”). R6A zoning district.

PREMISES AFFECTED – 37-68 97<sup>th</sup> Street, northwest corner of 97<sup>th</sup> Street and 38<sup>th</sup> Avenue, Block 1759, Lot 30 Borough of Queens.

**COMMUNITY BOARD #3Q**

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**102-08-BZ**

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

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a one family residence on a vacant undersized lot that does not provide sufficient side yards (§23-461) and does not provide one of the required parking spaces (§25-22) within a R 3-1 zoning Low Density Growth Management district.

PREMISES AFFECTED – 103 Beachview Avenue, 40’ west of intersection of Beachview Avenue and Idlease Place, Block 3724, Lot 30, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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*Jeff Mulligan, Executive Director*



# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 20, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**184-94-BZ**

APPLICANT – Renanim Manhattan, Incorporated, for Vertical Properties, LLC, owner.

SUBJECT – Application March 20, 2007 – Extension of Term/Waiver to permit a (UG3) nursery school on the ground floor of a five story and cellar mixed use building in a C8-4 zoning district which expired on June 13, 2005.

PREMISES AFFECTED – 336 East 61<sup>st</sup> Street, south side of East 61<sup>st</sup> Street, between First and Second Avenues, Block 1435, Lot 33, 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 Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

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 special permit for a nursery school, which expired on June 13, 2005; and

WHEREAS, a public hearing was held on this application on May 6, 2008 after due notice by publication in *The City Record*, and then to decision on May 20, 2008; and

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

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

WHEREAS, the subject premises is located on the south side of East 61<sup>st</sup> Street, between First Avenue and Second Avenue; and

WHEREAS, the site is occupied by a five-story and cellar mixed-use building and is located in a C8-4 zoning district; and

WHEREAS, the nursery school currently occupies a total of 1,824 sq. ft. on the ground floor of the subject building; and

WHEREAS, on June 13, 1995, the Board granted a special permit pursuant to ZR § 73-19, to permit the operation of the nursery school for a term of ten years, to expire on June 13, 2005; and

WHEREAS, the instant application seeks to extend the term of the special permit for an additional ten years from June 13, 2005; and

WHEREAS, additionally, the applicant seeks an extension of time to secure a certificate of occupancy; and

WHEREAS, the applicant represents that the application was not filed timely due to administrative delay; and

WHEREAS, the secondary means of egress from the site is from an emergency door; and

WHEREAS, at hearing the Board directed the applicant to modify the plans to reflect that the emergency egress door must remain unlocked during operation of the nursery school; and

WHEREAS, as egress from the emergency door is through adjacent Lot 16, which is under separate ownership from the subject site, the Board further asked the applicant to provide an easement agreement indicating that ingress to Lot 16 would be maintained during the term of the extension of the special permit; and

WHEREAS, in response the applicant submitted: (i) revised plans which include a note requiring that the emergency egress door remain unlocked during operation of the nursery school; and (ii) copies of a recorded easement agreement in effect until April 3, 2010, and an amendment extending the easement until June 13, 2017 which has been recorded against adjacent Lot 16 permitting ingress from the subject site; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 13, 2005, so that as amended this portion of the resolution shall read: “to permit 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 nursery school shall substantially conform to BSA-approved plans; *on condition* that that all work shall substantially conform to drawings filed with this application and marked ‘Received March 20, 2007’-(3) sheets and ‘May 14, 2008’-(1) sheet; and *on further condition*:

THAT there shall be no change in the hours of the nursery school without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from June 13, 2005, expiring June 13, 2015;

THAT an easement be recorded against the property located at Block 1435, Lot 16 permitting ingress from the nursery school during the extended term of the special permit;

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

THAT a certificate of occupancy shall be obtained

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# MINUTES

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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); and

THAT the Department of Buildings must 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. 103459687)

Adopted by the Board of Standards and Appeals, May 20, 2008.

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## 85-02-BZ, Vol. II

APPLICANT – Mothiur Rahman, for Alan G. Markopoulos, owner; G H Parking, lessee.

SUBJECT – Application February 20, 2008 – Extension of Term of a previously granted variance (§72-21) for the operation of a (UG8) parking lot in an R-7 zoning district which expired on February 4, 2008.

PREMISES AFFECTED – 850 East 181<sup>st</sup> Street, south side of East 181<sup>st</sup> Street and east side of Crotona Parkway, Block 3119, Lot 16, Borough of Bronx.

### COMMUNITY BOARD #16BX

APPEARANCES –

For Applicant: Mothiur Rahman.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

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 February 4, 2008; and

WHEREAS, a public hearing was held on this application on April 1, 2008 after due notice by publication in *The City Record*, with a continued hearing on May 6, 2008 and then to decision on May 20, 2008; and

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

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

WHEREAS, the subject premises is located at the intersection of the south side of East 181<sup>st</sup> Street and the east side of Crotona Parkway; and

WHEREAS, the site is located within an R7-1 zoning district and is occupied by a 7,573 sq. ft. (UG 8) parking lot; and

WHEREAS, on February 4, 2003, under the subject calendar number, the Board granted a variance to allow parking and storage of motor vehicles at the site for a term of five years, to expire February 4, 2008; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional five years; and

WHEREAS, at hearing, the Board directed the applicant to ensure that the site was maintained and the surrounding fencing was repaired; and

WHEREAS, the applicant submitted photographs indicating that the site was free of debris and the fencing had been repaired; 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 4, 2003, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of five years from the expiration of the prior grant on February 4, 2003; *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 five years from February 4, 2008, expiring February 4, 2013;

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

THAT a certificate of occupancy shall be obtained within six 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) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 210030161)

Adopted by the Board of Standards and Appeals, May 20, 2008.

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## 774-55-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of Term/Waiver of the rules for a previously granted variance to permit the operation of a (UG8) parking lot, for more than five cars, for employees and customers of a bank (Citibank) on the adjoining lot which expired on January 31, 2003 in R-5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue between Olmstead and Castle Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

# MINUTES

## COMMUNITY BOARD #9BX

### APPEARANCES –

For Applicant: Elizabeth Larsen.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.

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## 206-61-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC, owner.

SUBJECT – Application March 24, 2008 – Extension of Term/Waiver filed pursuant to §11-411 for an existing six story office building located in an R8-B zoning district. The term of the variance expired on July 11, 2006.

PREMISES AFFECTED – 30 East 39<sup>th</sup> Street, south side, 189' east of Madison Avenue, Block 868, Lot 49, Borough of Manhattan.

## COMMUNITY BOARD #6M

### APPEARANCES –

For Applicant: Carl A. Sulfaro.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for decision, hearing closed.

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## 18-78-BZII

APPLICANT – Slater & Beckerman, LLP, for Kiitano Construction Corporation, owner.

SUBJECT – Application April 23, 2008 – Extension of Term for a variance (§72-21) to allow UG6 commercial use in the basement of a residential building, in an R8B zoning district, which expires on May 23, 2008.

PREMISES AFFECTED – 111-113 East 38<sup>th</sup> Street, between Park Avenue and Lexington Avenue, Block 894, Lots 10 and 11, Borough of Manhattan.

## COMMUNITY BOARD #6M

### APPEARANCES –

For Applicant: Joshua Trauner.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for decision, hearing closed.

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## 788-89-BZ

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

## COMMUNITY BOARD #12Q

### APPEARANCES –

For Applicant: Mark McArthy.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 228-07-A & 234-07-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Donald Bischoff, owner.

SUBJECT – Application October 9, 2007 – Proposed construction of two- two family dwellings located within the bed of a mapped street (property street) contrary to Section 35 of the General City Law. R3-2 Zoning District.

PREMISES AFFECTED – 29 Colon Avenue, 20 Lindenwood Road, between Colon Avenue and Lindenwood, south of Baltimore Street, Block 5433, Lots 75 & 98, Borough of Staten Island.

## COMMUNITY BOARD #3SI

### APPEARANCES –

For Applicant: Stuart Klein.

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

### THE RESOLUTION:

WHEREAS, decisions of the Staten Island Borough Commissioner, dated September 14, and 21, 2007, acting on Department of Buildings Application Nos. 510015573 and 510015582 reads in pertinent part:

“The proposed construction of new residential building Use Group 2 in R3-2 Zoning District, within the bed of a mapped street is contrary General City Law, and therefore be referred to the BSA for approval;” and

\WHEREAS, this application requests permission to build two two-story, two-family homes located within the bed of a mapped but unbuilt street, Property Street, in Staten

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# MINUTES

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Island; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in the *City Record*, with a continued hearing on May 13, 2008, and then to decision on May 20, 2008; and

WHEREAS, by letter dated November 19, 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 D-2 (R13), which calls for a future 98" diameter interceptor, a 10" diameter sanitary sewer and a 12" diameter storm sewer in Colon Avenue between Property Street and Baltimore Street and for a 10" diameter sanitary sewer and an 18" diameter storm sewer in Property Street between Colon Avenue and Lindenwood Road; and

WHEREAS, DEP also notes that there is an existing 98" diameter interceptor sewer and 10" diameter sanitary sewer in the bed of Colon Avenue between Property Street and Baltimore Street; the existing 20" diameter and 8" diameter City Water main in Colon Avenue do not extend to Property Street and there are no existing sewers nor existing water mains in Property Street between Colon Avenue and Lindenwood Road; and

WHEREAS, accordingly, DEP requested a survey reflecting the width of the widening portion of Colon Avenue and the distance between the proposed development and the existing sewers in Colon Avenue between Property Street and Baltimore Street and the total width of the mapped Property Street between Colon Avenue and Lindenwood Road, and stated that it requires a minimum 32-ft. corridor in the bed of Property Street between Colon Avenue and Lindenwood Road for the purpose of installation, maintenance, and/or reconstruction of the future sewers; and

WHEREAS, in response to DEP's request, the applicant has provided a revised plan, which reflects that 80-ft. of the total width of Colon Avenue and the remaining 65-ft. of Colon Avenue between Property Street and Baltimore Street will be available for the installation, maintenance, and or/reconstruction of the existing 98" diameter interceptor sewer, a 10" diameter sanitary sewer and a future 12" diameter storm sewer; and

WHEREAS, the revised site plan also shows a proposed 20-ft. Sewer Corridor in the bed of Property Street between Colon Avenue and Lindenwood Road which will be available for the purpose of installation, maintenance, and/or reconstruction of the future 12"/18" diameter sewer; and

WHEREAS, by letter dated January 8, 2008, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated January 30, 2008, the Department of Transportation (DOT) states that it has reviewed the above application and advises the Board that the proposed construction plan does not reflect any provisions for a cul de sac/turnaround, at the dead end of Lindenwood Road which should be developed in accordance with all applicable standards; and

WHEREAS, DOT also requires the curbs and sidewalks

abutting the proposed development to conform to the existing width and alignment as currently exists in Colon Avenue and Lindenwood Road; 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 March 4, 2008, the Fire Department states that it has reviewed the proposed project and has no objections; and

WHEREAS, the applicant has submitted a revised plan reflecting that the proposed curbs and sidewalks would conform to the existing curbs and sidewalks and the letter of no objection from the Fire Department on this case; and

HEREAS, by letter dated May 12, 2008, DOT has stated that they have reviewed the revised site plan and the Fire Department letter of no objection and will defer to the Fire Department decision on this matter; and

WHEREAS, based upon its review of the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated September 14 and 21, 2007, acting on Department of Buildings Application Nos. 510015573 and 510015582, 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 December 11, 2007"-one(1) sheet and 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 a Sewer Corridor Easement with a minimum width of 20 feet is to be provided in the bed of Property Street between Colon Avenue and Lindenwood Road;

THAT the Department of Buildings must 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 20, 2008.

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## 246-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Stacey Farrelly, owner; Dominick Desimone, lessee.

SUBJECT – Application October 30, 2007 – Proposed construction of a mixed use building located within the bed of a mapped street contrary to General City Law Section 35.

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# MINUTES

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C2-1 Zoning district.

PREMISES AFFECTED – 97 Victory Boulevard (aka no number Corson Avenue), west side of Victory Boulevard, 180' south of Corson Avenue, Block 23, Lot 55, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Stuart Klein.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 16, 2007 acting on Department of Buildings Application No. 500597366 reads in pertinent part:

“The Proposed construction of 3-story mixed building in C1-2 Zoning District is located within the bed of a mapped street contrary to Section 35 of the General City Law and therefore referred to the Board of Standards and Appeals for Approval;” and

WHEREAS, this application requests permission to build a three-story mixed-use building located within the bed of a mapped widening line of Victory Boulevard; and

WHEREAS, this site is located within the Special Hillside Preservation District; and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in the City Record, with a continued hearing on May 20, 2008, and then to decision on that same date; and

WHEREAS, by letter dated November 19, 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-2, which calls for a future 90” diameter storm sewer, an 18” diameter sanitary sewer and a 10” diameter sanitary sewer in the bed of Victory Boulevard between Monroe Avenue and Fremont Street; and

WHEREAS, DEP also notes that there is an existing 3’-10” by 5’-9” diameter combined sewer in Victory Boulevard between Monroe Avenue and Fremont Street; there are existing 12” diameter and 48” diameter City water mains at the above location; and

WHEREAS, accordingly, DEP requested a survey reflecting the existing 12” and 48” diameter City water mains in Victory Boulevard between Monroe Avenue and Fremont Street, the distance between the proposed development, mapped lines and existing water mains, and the width of the widening portion of Victory Boulevard at the above location; and

WHEREAS, in response to DEP’s request, the applicant has provided a revised plan, which reflects that 100-ft. of the

total width of Victory Boulevard and the remaining 66-ft. of Victory Boulevard between Monroe Avenue and Fremont Street will be available for the installation, maintenance, and/or reconstruction of the future 90” diameter storm sewer, 10” diameter sanitary sewer, 18” diameter sanitary sewer and for the existing 3’-10” by 5’-9” diameter combined sewer, and 12” diameter and 48” diameter City water mains; and

WHEREAS, by letter dated April 25, 2008, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated February 5, 2008, the Department of Transportation (DOT) states that it has reviewed the above application and advises the Board that it requires the curbs and sidewalks abutting the proposed development to conform to the maximum existing sidewalk widths and curb alignments as currently exist in both Victory Boulevard and Corson 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 March 4, 2008, the Fire Department states that it has reviewed the proposed project and has no objections; and

WHEREAS, the applicant has submitted a revised plan showing the proposed curbs and sidewalks would conform to the existing curbs and sidewalks and the letter of no objection from the Fire Department on this case; and

WHEREAS, by letter dated May 15, 2008 DOT has stated that they have reviewed the revised site plan and the Fire Department letter of no objection and will defer to the Fire Department’s decision on this matter; and

WHEREAS, based upon its review of the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated October 16, 2007, acting on Department of Buildings Application No. 500597366, 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 29, 2008”-one (1) sheet and 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 City Planning Commission shall review and approve any required applications for compliance with all relevant Special Hillside Preservation District provisions under its jurisdiction, and issue required approvals prior to the

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# MINUTES

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issuance of any permits;

THAT any revisions to the BSA-approved site plan shall be submitted to the Board for review; and

THAT the Department of Buildings must 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 20, 2008.

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## 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 3, 2008, at 10 A.M., for an adjourned hearing.

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## 192-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,

SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211<sup>th</sup> Street) contrary to Section 35 of the General City Law. R7-1 Zoning District.

PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.

### COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Stuart Klein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for decision, hearing closed.

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## 265-07-A

APPLICANT – Abigail Patterson, for West 70<sup>th</sup> Associates, owner.

SUBJECT – Application November 19, 2007 – 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.

PREMISES AFFECTED – 57 West 70<sup>th</sup> Street, north side of 70<sup>th</sup> Street, 160' east of corner formed by 70<sup>th</sup> Street and Columbus Avenue, Block 1123, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Stuart Klein.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

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## 266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Stuart A. Klein, Deirdre Carson, Jay Goldstein, Stuart Klein.

For Opposition: Council Member Tony Avella, Liya Norofastovsky, Assemblyman Steven Lynbrowitz Office, Susan Regan, Liam O'Hanlon, Budd Heyman, Waddih J. Pharoah, Barry Brothers, Rivka Fleisher, Pietro Fiorica, Peter N. Pearl, Bruno Seliste, Rosanne Macrinam, Blanche Frank, Mindy Spiewak, Marsha Daleek, Martini Rothstani, Sherry Booster, Joseph Frank, Helga Gregory, Ed Jaworski, Pauline Vizzini, Beny Levi, Frieda Resnick.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.

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## 33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> Lane, a/k/a 209-213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane, 63.19'W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Yury Menzak and Robert Scarano.

For Administration: Anthony Scaduto.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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# MINUTES

Jeffrey Mulligan, Executive Director

Adjourned: 12:45 P.M.

**REGULAR MEETING  
TUESDAY AFTERNOON, MAY 20, 2008  
1:30 P.M.**

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

Absent: Commissioner Ottley-Brown.

**ZONING CALENDAR**

**281-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Falah and Victor Falah, owners.

SUBJECT – Application December 12, 2007 – Special Permit (§73-622) for the enlargement of an existing single family dwelling. This application seeks to vary floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R2X (OP) zoning district.

PREMISES AFFECTED – 1960 East 4<sup>th</sup> Street, west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S, Block 6681, Lot 263, 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 Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 21, 2007, acting on Department of Buildings Application No. 310053134, reads in pertinent part:

- “1. Proposed floor area is contrary to ZR 23-141
  - 2. 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 R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, with continued hearings on March 11, 2008, April 8, 2008 and May 6, 2008, and then to

decision on May 20, 2008; and

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

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

WHEREAS, the subject site is located on the west side of East 4<sup>th</sup> Street, between Kings Highway and Avenue S; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 2,126 sq. ft. (0.53 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 2,126 sq. ft. (0.53 FAR), to approximately 4,809 sq. ft. (1.2 FAR); the maximum floor area permitted is 3,400 sq. ft. (0.85 FAR); and

WHEREAS, the proposed enlargement will provide a floor area ratio of 1.2 (0.85 is the maximum permitted); and

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

WHEREAS, the enlargement of the home is not located within 20’-0” of the rear lot line; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained; and

WHEREAS, in response, the applicant identified which portions of the existing home would be retained; and

WHEREAS, at hearing, the Board also raised concerns about the compliance of a proposed greenhouse and porch with the zoning regulations; and

WHEREAS, in response, the applicant removed the proposed greenhouse and rear porch from the plans; and

WHEREAS, at hearing, the Board questioned the applicant concerning the prevalence of homes in the surrounding community with FARs in excess of 1.2; and

WHEREAS, the applicant identified four properties with FARs ranging from 1.0 to 1.4 and provided photographs into the record; 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

# MINUTES

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 R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area 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 23, 2008”–(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 913 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 4,809 sq. ft. (1.2 FAR) and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

THAT the Department of Buildings must 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 20, 2008.

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## **25-08-BZ CEQR #08-BSA-051Q**

APPLICANT – Eric Palatnik, P.C., for Torah Academy For Girls, owner.

SUBJECT – Application March 25, 2006 – Variance (§72-21) to permit the enlargement of the existing school approved by BSA in a prior grant in 2002 (158-02-BZ). The proposal is contrary to §24-11 (lot coverage), §24-34 (minimum front yard), §24-382 (minimum rear yard), and §24-521 (height, setback and sky exposure plane). R-4-1 district.

PREMISES AFFECTED – 444 Beach 6<sup>th</sup> Street, between Jarvis and Meehan Avenues, Block 1559, Lot 1, 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 Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION

WHEREAS, the decision of the Queens Borough Superintendent dated February 20, 2008, acting on Department of Buildings Application No. 401403076, reads in pertinent part;

“The instant application is contrary to BSA Calendar Number 158-02-BZ and seeks to amend same so as to vary the following provisions of the ZR:

- 1) Lot coverage is contrary to 24-11 and 24-12
- 2) Front yard is contrary to 24-34
- 3) Rear Yard is contrary to 24-382
- 4) Perimeter wall height and setback is contrary to ZR 24-521 and ZR 24-34
- 5) Sky exposure plane is contrary to 24-521”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site within an R-4-1 zoning district, the enlargement of a three-story yeshiva building which does not comply with regulations for lot coverage, front yard, rear yard, perimeter wall height, setback, and sky exposure plane, contrary to ZR §§ 24-11, 24-12, 24-34, 24-382, and 24-521; and

WHEREAS, the application is brought on behalf of Torah Academy for Girls (the “Yeshiva”), a nonprofit religious educational institution; and

WHEREAS, a public hearing was held on this application on May 6, 2008, after due notice by publication in The City Record, and then to decision May 20, 2008; 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, waived comment on this application; and

WHEREAS, the site is a slightly irregular-shaped parcel on the western half of Block 15591 with approximately 239 feet of frontage on Meehan Avenue, 190 feet of frontage on Beach 6<sup>th</sup> Street, and approximately 289 feet of frontage on Jarvis Avenue; and

WHEREAS, the subject site has a lot area of approximately 50,003 sq. ft.; and

WHEREAS, the site is occupied by a U- shaped structure housing a Yeshiva with four discrete portions ranging from one to four stories in height with approximately 57,023 sq. ft. of floor area; and



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# MINUTES

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WHEREAS, the site is the subject of a prior Board action, under BSA Cal. No. 158-02-BZ, which permitted the enlargement of an existing two-story Yeshiva (Use Group 3) contrary to R3-1 zoning district requirements for floor area, side yards, front yard, rear yard, height and setback; and

WHEREAS, the approved development was partially constructed; 63,695 sq. ft. of floor area was approved and approximately 57,023 sq. ft. of floor area was built; and

WHEREAS, subsequent to the Board grant, the site was rezoned to R4-1 under the Far Rockaway rezoning and the FAR permitted as of right was increased from 1.0 to 2.0; and

WHEREAS, the Yeshiva now proposes to construct the following: (1) a three-story enlargement to the southeast corner of the building fronting Jarvis Avenue; (2) a double-height one-story enlargement within an open courtyard in the center of the existing building; (3) a one-story enlargement to the northeast corner of the existing building fronting Meehan Avenue; and (4) a one-story enlargement to its existing three-story school building fronting Beach 6<sup>th</sup> Street; and

WHEREAS, the current floor area totals 57,023 sq. ft.; the proposed expansion will add 27,366 sq. ft. of floor area for a total floor area of 84,389 sq. ft. (FAR of 1.69); and

WHEREAS, the enlargement will be occupied by (1) a gymnasium; (2) 16 additional classrooms; (3) a swimming pool; (4) a rooftop play area; and (5) administrative facilities; and

WHEREAS, the applicant now proposes to create a new non-compliance as to lot coverage (63 percent is proposed, 58 percent is the maximum permitted), and to increase the degree of non-compliance of the front yard along Jarvis Avenue (1'-8" is proposed, 15'-0" is required) and proposes a perimeter wall height of 46'-2" (35'-0" is the maximum permitted); and

WHEREAS, the earlier grant approved a non-compliant rear yard of 12'-0" (30'-0" is the minimum required), the applicant now proposes to increase the yard to 20'-0" thus reducing the degree of non-compliance; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the following are the programmatic needs of the Yeshiva: (1) relieving overcrowded classroom conditions; (2) accommodating current enrollment while allowing for future growth; and (3) providing physical education and recreational space; and

WHEREAS, the applicant represents that the lot coverage, front yard, rear yard, perimeter wall height, setback and sky exposure plane waivers are necessary to provide the program space necessary to adequately serve its current student body and to prepare for a projected increase in enrollment; and

WHEREAS, the subject building is currently occupied by 46 classrooms, a cafeteria, auditorium, computer rooms, a science lab and offices; and

WHEREAS, the instant application seeks to add an additional 16 classrooms, to increase the average classroom space from 29 sq. ft. per student to 35 sq. ft. per student, and to add a gymnasium; and

WHEREAS, the applicant represents that without the waivers, the Yeshiva would continue to have substandard-sized classrooms for its 820 students, and to lack a gymnasium and outdoor recreational space, and faculty and staff offices; and

WHEREAS, the applicant further represents that without the waivers it will be unable to accommodate an enrollment which is projected to increase to 922 students based on the development of 200 to 300 new homes in the surrounding area; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious and 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, 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, however, the applicant represents that the configuration of the existing site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant further represents that strict compliance with the R4-1 bulk regulations would result in a 12.6 percent reduction in the amount of necessary classroom space; and

WHEREAS, the applicant submitted building plans indicating that only 54 classrooms could be built as of right, eight fewer than are proposed; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the Yeshiva's current 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, 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, the applicant states that the surrounding area is characterized predominately by two and three-story residential uses; and

WHEREAS, the applicant represents that the enlargement has been designed to be consistent with the style and scale of community facilities in the surrounding

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# MINUTES

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area and to maintain the building height permitted by the previous grant; and

WHEREAS, the applicant states that to accommodate additional classrooms and to create a uniform facade, the existing four-story building height will be maintained and continued along the perimeter of the site; and

WHEREAS, the applicant further states that it is maintaining the existing non-compliant front yard on three sides; and

WHEREAS, the applicant represents that the building's additional lot coverage is attributable to the location of the gymnasium within the courtyard of the U-shaped building, which will be visible only from one side of the site; and

WHEREAS, the applicant further represents that the placement of the gymnasium within the inner court shifts the additional bulk associated with the enlargement away from the street in a way that results in minimal visibility from the surrounding area; and

WHEREAS, the applicant states that "No Parking" zones are provided on both sides of the existing school building and that an additional drop off and pick up car pool area will be provided on the premises to enhance the safety of students entering and leaving the school and to reduce traffic impacts on the surrounding area; 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 hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that a floor area of approximately 100,006 sq. ft. (2.0 FAR) would be permitted under the existing zoning, while the applicant proposes 84,389 sq. ft. of floor area (1.69 FAR), but the waivers are required to accommodate the required floor area given the constraints of the existing building and the programmatic needs of the Yeshiva; and

WHEREAS, evidence in the record demonstrates that this proposal is the minimum necessary to meet the programmatic needs of the Yeshiva; 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 617.2 ak); 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. 08BSA051Q, dated January 29, 2008; 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 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 R4-1 zoning district, the enlargement of a three-story yeshiva building which does not comply with regulations for lot coverage, front yard, rear yard, perimeter wall height, setback, and sky exposure plane, contrary to ZR §§ 24-11, 24-12, 24-34, 24-382, and 24-521, on condition that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received April 11, 2008"- (1) sheet and "Received March 25, 2008"- (9) sheets and on further condition;

THAT the building parameters shall be: a lot coverage of 63 percent; a 1'-8" front yard along Jarvis Avenue; a rear yard of 20'-0" along the eastern lot line; and a perimeter wall height of 46'-2";

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 20, 2008.

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**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

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# MINUTES

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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 – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.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 – 7-05 152<sup>nd</sup> Street, 152<sup>nd</sup> Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Joseph Morsellino.

For Opposition: Helen A. Paladino and Maria H. Stoehn.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.

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**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 §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 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for continued hearing.

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**174-07-BZ**

APPLICANT – Carl A. Sulfaro, Esquire, for David Oil Corporation, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application June 28, 2007 – Special Permit (§73-211). Proposed reconstruction of an existing Auto Service Station with new metal canopy, new fuel tanks, pumps, new accessory convenience store, located in a C2-3/R7-A zoning district.

PREMISES AFFECTED – 1925 Coney Island Avenue, a/k/a 1935 Coney Island Avenue, Northeast corner of Avenue P. Block 6758, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.

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**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.

For Opposition: James Slattery, Carole Timko, John Timko, Keith Torro, William Komar, Linda Nigro and Rosemarie Trotta.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 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 §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.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for decision, hearing closed.

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## 238-07-BZ

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O'Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

SUBJECT – Application October 23, 2007 – Variance (§72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§117-21 & §23-145), lot coverage (§117-21 & §23-145), minimum distance between windows (§117-21 & §23-711(b)) and height and setback (§117-21, §23-633 & §23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180' west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

### COMMUNITY BOARD # 2Q

APPEARANCES –

For Applicant: Howard Goldman, Arnold Fleming, Brent Carrier and Jay Valgora.

For Opposition: Thomas Paino, Doug Otto, Karen Eggleston, LA. Long, Kenneth Greenberg, William Garrett, Sheila Lewandowski, Bernard Callegari, Dan Jacoby, Robert Wilkanouski, Anna Finn and Diane Hendry.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for continued hearing.

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## 269-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Seaside Enterprises, LLC, owner.

SUBJECT – Application November 26, 2007 – Special Permit (§73-125) to allow a cellar and two (2) story

ambulatory diagnostic/treatment care facility (medical offices, UG 4). R3-1 district.

PREMISES AFFECTED – 378 Seaview Avenue, south side of Seaview Avenue, between Mason Avenue and Simpson Street, Block 3380, Lots 65, 68 and 70, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3, 2008, at 10 A.M., for decision, hearing closed.

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## 282-07-BZ & 283-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 774 Schenck Properties, LLC, owner.

SUBJECT – Application December 17, 2007 – Variance (§72-21) to allow two (2) two-family, two-story detached homes; contrary to front yard requirements (§23-45). R5 district.

PREMISES AFFECTED – 774 Schenck Avenue, a/k/a 764 Schenck Avenue and 825 Hendrix Street, Linden Boulevard and Hendrix Avenue, Block 4330, Lot 28C, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Gary Brown.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

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## 23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Bokharian Communities Center, Inc., owner.

SUBJECT – Application February 1, 2008 – Variance (§72-21) to permit the construction of a community facility building (Use Group 4). The proposal is contrary to sections 24-10 and 25-30. R1-2 district.

PREMISES AFFECTED – 182-69 80<sup>th</sup> Road, located at the northwest corner of the intersection of 80<sup>th</sup> Road and Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Helene Pangalos, Laura Schmitt Schwartzberg, Pat Mitrofanis and SB Ferrier.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

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# MINUTES

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Negative:.....0  
**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.  
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## 27-08-BZ

APPLICANT – Slater & Beckerman, LLP for JDK Hylan Properties, LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 13, 2008 – Special Permit (§73-30) to permit in an R3X district, a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4845 Hylan Boulevard, northwest corner of Barclay Avenue, Block 6401, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Burdioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.  
-----

## 29-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Hebrew Free Burial Association, owner; Northrop Grumman Info., Tech., Inc., lessee.

SUBJECT – Application February 14, 2008 – Special Permit (§73-30) to permit a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless. R3-2 zoning district.

PREMISES AFFECTED – 422 Clarke Avenue, south side of Clarke Avenue between St. Patricks Place and Tysen Court, Block 4467, Lot 23, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Burdioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 17, 2008, at 10 A.M., for decision, hearing closed.  
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## 30-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Special Permit (§73-30) to permit in an R3-1 district a 50 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Burdioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.  
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## 457-65-BZ

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR 73-30 and file under separate BSA application.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Burdioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.  
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## 54-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Muller, owner.

SUBJECT – Application March 12, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); rear yard (§23-47) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 3199 Bedford Avenue, east side

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# MINUTES

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of Bedford Avenue, between Avenue J and K, Block 7607,  
Lot 15, Borough of Brooklyn.

*Adjourned: 5:15 P.M.*

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 3,  
2008, at 10 A.M., for decision, hearing closed.

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**58-08-BZ**

APPLICANT – Fried, Frank Harris, Shriver & Jacobson  
LLP, Waldo Hutchins & J.P. Morgan Chasebank Trustee for  
Estate of Francis S. Appleby, owner; The Durst  
Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit  
 (§73-19) to allow the development of a six-story school  
 (U.G 3) on a vacant site. The proposal is contrary to section  
 42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58<sup>th</sup> Street,  
Twelfth Avenue, West 57<sup>th</sup> Street, West 58<sup>th</sup> Street, Eleventh  
Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of  
Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Carol Rosenthal, Phillip Habib, Christine  
Schlendorf and Anna Levin, Manhattan CB4.

**ACTION OF THE BOARD** – Laid over to June 24,  
2008, at 10 A.M., for continued hearing.

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**66-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland,  
owner.

SUBJECT – Application March 28, 2008 – 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 less than the required rear yard  
 (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21<sup>st</sup> Street, east side  
 of East 21<sup>st</sup> Street, between Avenue N and Avenue M, Block  
 7657, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Erik H. Rosanes and Robert Dueck.

**ACTION OF THE BOARD** – Laid over to July 1,  
2008, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 22-23

June 13, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|                        |  |
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| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                 |         |
|---------------------------------|---------|
| DOCKET .....                    | 357     |
| <b>CALENDAR</b> of July 1, 2008 |         |
| Morning .....                   | 358     |
| Afternoon .....                 | 358/359 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, June 3, 2008**

Morning Calendar .....360

**Affecting Calendar Numbers:**

|             |  |
|-------------|--|
| 206-61-BZ   | 30 East 39 <sup>th</sup> Street, Manhattan             |
| 18-78-BZII  | 111-113 East 38 <sup>th</sup> Street, Manhattan        |
| 127-05-BZII | 9216 Church Avenue, a/k/a 9220 Church Avenue, Brooklyn |
| 467-58-BZ   | 172-11 Northern Boulevard, Queens                      |
| 546-82-BZII | 148-15 89 <sup>th</sup> Avenue, Queens                 |
| 151-90-BZ   | 115-49 118 <sup>th</sup> Street, Queens                |
| 164-96-BZII | 84 Hugh Grant Circle, Bronx                            |
| 192-07-A    | 3546 Decatur Avenue, Bronx                             |
| 26-08-A     | 35 Bedford Avenue, Queens                              |
| 168-07-A    | 1479 Rosedale Avenue, Bronx                            |
| 47-08-A     | 7228 Thursby Avenue, Queens                            |
| 48-08-A     | 126 Oceanside Avenue, Queens                           |
| 49-08-A     | 305 Hillside Avenue, Queens                            |

Afternoon Calendar .....365

**Affecting Calendar Numbers:**

|                         |   |
|-------------------------|---|
| 111-07-BZ               | 155 Norfolk Street, Brooklyn                |
| 200-07-BZ               | 3333 Hylan Boulevard, Staten Island         |
| 219-07-BZ               | 11 West 36 <sup>th</sup> Street, Manhattan  |
| 227-07-BZ               | 1595 Canarsie Road, Brooklyn                |
| 269-07-BZ               | 378 Seaview Avenue, Staten Island           |
| 14-08-BZ                | 1958 East 13 <sup>th</sup> Street, Brooklyn |
| 31-08-BZ                | 2043 Richmond Avenue, Staten Island         |
| 456-85-BZ               | 2043 Richmond Avenue, Staten Island         |
| 54-08-BZ                | 3199 Bedford Avenue, Brooklyn               |
| 197-05-BZ               | 813/815 Broadway, Manhattan                 |
| 109-07-BZ               | 33-57 59 <sup>th</sup> Street, Queens       |
| 169-07-BZ               | 626 West 254 <sup>th</sup> Street, Bronx    |
| 173-07-BZ               | 1061 East 21 <sup>st</sup> Street, Brooklyn |
| 189-07-BZ               | 40-55 College Point Boulevard, Queens       |
| 243-07-BZ &<br>244-07-A | 120 John Street, Staten Island              |
| 257-07-BZ               | 3 East 101 <sup>st</sup> Street, Manhattan  |
| 258-07-BZ               | 105-55 Horace Harding Expressway, Queens    |
| 291-07-BZ               | 1912 New York Avenue, Brooklyn              |
| 32-08-BZ                | 1126 Richmond Avenue, Staten Island         |
| 44-08-BZ                | 1015 East 23 <sup>rd</sup> Street, Brooklyn |
| 50-08-BZ                | 265 McKinley Avenue, Brooklyn               |
| 52-08-BZ                | 3935 Bedford Avenue, Brooklyn               |
| 53-08-BZ                | 300 Soundview Avenue, Bronx                 |
| 731-68-BZ               | 300 Soundview Avenue, Bronx                 |
| 55-08-BZ                | 350/58 East Houston Street, Manhattan       |



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# DOCKET

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New Case Filed Up to June 3, 2008  
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**147-08-BZY**

95-04 Allendale Street, Between Atlantic Avenue and 97th Avenue., Block 10007, Lot(s) 108, Borough of **Queens, Community Board: 12.** Extension of time to 11-331 complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008 .

Applicant has been instructed to return to DOB to see if permit can be issued or obtain rev  
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**148-08-BZ**

1383 East 27th Street, East side of East 27th Street, 60 ft. north of Avenue N., Block 7663, Lot(s) 10, Borough of **Brooklyn, Community Board: 14.** Special Permit (73-622) for the enlargement of a single family home.  
-----

**149-08-A**

808 Columbus Avenue, 97th and 100th Street and Columbus Avenue., Block 1852, Lot(s) 5,15,20,23,25,31, Borough of **Manhattan, Community Board: 7.** Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space , parking , curb cuts and proper use group classification . R7-2 /C1-5  
-----

**150-08-A**

331 Hillside Avenue, Intersection of Hillside Avenue and the mapped Beach 182nd Street., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14.** Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4  
-----

**151-08-BZY**

5-15 West 125th Street, Between Fifth Avenue and Malcolm X Boulevard., Block 1723, Lot(s) 31,45,144, Borough of **Manhattan, Community Board: 10.** Extension of time to complete construction (11-331) under the prior district regulations.  
-----

**152-08-A**

515 West 23rd Street, North side of West 23rd Street, between 10th and 11th Avenue., Block 695, Lot(s) 27, Borough of **Manhattan, Community Board: 4.** Appeal seeking to vacate a Stop Work Order issued by the Department of Buildings for failure to obtain the authorization of the adjacent property owner.  
-----

**153-08-A**

150 Foster Road, Northeast south of forest Road, 159.85' northwest of Dalemere Road, Block 869, Lot(s) 50, 63 (tent. 52), Borough of **Staten Island, Community Board: 2.** Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36 .  
-----

**154-08-A**

156 Foster Road, Northeast south of forest Road, 159.85' northwest of Dalemere Road, Block 869, Lot(s) 50, 63 (tent. 52), Borough of **Staten Island, Community Board: 2.** Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36 .  
-----

**155-08-BZ**

282 Beaumont Street, South of Oriental Boulevard., Block 8739, Lot(s) 71, Borough of **Brooklyn, Community Board: 15.** Special Permit (73-622) for the enlargement of an existing two family home.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JULY 1, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 1, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**853-53-BZ**

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, Owner, Exxon Mobil Coperati, Lessee.  
SUBJECT – Application May 13, 2008 – Extension of Term/waiver to permit the continued operation of a gasoline service station (Mobil) which expired on October 23, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on April 1, 1996 in R3-2/C2-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, South west corner of Avenue X. Block 7429, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**713-55-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Brendan Utopia Mobil, lessee.  
SUBJECT – Application May 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a gasoline service station (Mobil), in a C2-2/R3-2 zoning district, which expired on May 22, 2003.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side blockfront between Utopia Parkway and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**268-06-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mokom Sholom Cemetery Association, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 24, 2008 – Reopening for an Amendment to previously approved Special Permit (§73-30) to permit a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”).

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150’ east of 80<sup>th</sup> Street, Lot 9141, Lot 20, Borough of Queens.

**COMMUNITY BOARD #10Q**

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**APPEALS CALENDAR**

**146-08-A**

APPLICANT – Fire Department of the City of New York  
OWNER: 1620 LLC DBAPK International c/o Jacob Ullman

Lessee: Plastic Kitchens Corp.

SUBJECT – Application May 16, 2008 – Application seeking to modify Certificate of Occupancy No. 84836 to require additional fire protection in the form of an automatic wet sprinkler system for the entire building under the authority under Section 27-4265. C8-2 Zoning District.

PREMISES AFFECTED – 1618-1620 Broadway, Hopkinson Avenue, Block 144, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

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**JULY 1, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 1, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**35-08-BZ**

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**78-08-BZ**

APPLICANT – Flora Edwards, Esq., for SBSCICA, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) to permit a new community facility building (South Bronx Charter School). The proposal is contrary to §§123-62 (Maximum floor area ratio for community facilities), 24-11 (Maximum floor area ratio and percentage of lot coverage) and 123-662 (b)(4) (As it relates to street wall height for all buildings in Special Mixed-Use Districts with R6, R7, R8 and R10 district designations). MX-1 (M1-2/R6A).

PREMISES AFFECTED – 611-617 East 133<sup>rd</sup> Street, Block 2546, Lot 27, Borough of Bronx.

**COMMUNITY BOARD #IBX**

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# CALENDAR

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**144-08-BZ**

APPLICANT – Rizzo Group, for William Nelville & Sons USA LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application May 14, 2008 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment on portions of the first and cellar floors. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 225 5<sup>th</sup> Avenue, easterly side of 5<sup>th</sup> Avenue between 26<sup>th</sup> Street and 27<sup>th</sup> Street, Block 856, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 3, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**206-61-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC,  
owner.

SUBJECT – Application March 24, 2008 – Extension of  
Term/Waiver filed pursuant to §11-411 for an existing six  
story office building located in an R8-B zoning district. The  
term of the variance expired on July 11, 2006.

PREMISES AFFECTED – 30 East 39<sup>th</sup> Street, south side,  
189’ east of Madison Avenue, Block 868, Lot 49, Borough  
of Manhattan.

**COMMUNITY BOARD #6M**

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, Commissioner Hinkson, and  
Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver and a  
reopening for an extension of term for a previously granted  
variance permitting a five-story building in a residential  
zoning district to be used for office use, which expired on July  
11, 2006; and

WHEREAS, a public hearing was held on this  
application on May 20, 2008 after due notice by publication  
in *The City Record*, and then to decision on June 3, 2008; and

WHEREAS, Community Board 6, Manhattan, has  
recommended approval of this application; and

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

WHEREAS, the site is located on the south side of East  
39<sup>th</sup> Street, 189 feet east of Madison Avenue, within an R8B  
zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since July 11, 1961, when, under the subject  
calendar number, the Board granted a variance to permit an  
existing five-story building, which had been occupied by  
residential use, to be converted to commercial use for a term  
of 15 years; and

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

WHEREAS, most recently, the term expired on July 11,  
2006; and

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

WHEREAS, the applicant represents that the application  
was not filed timely due to administrative oversight; 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  
July 11, 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 July 11, 2006, to expire on  
July 11, 2016, *on condition* that any and all work shall  
substantially conform to drawings filed with this application  
marked “Received March 24, 2008”- (1) sheet; and *on further  
condition*:

THAT the term of this grant shall expire on July 11,  
2016;

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.”

(DOB App. No. 110061352)

Adopted by the Board of Standards and Appeals, June  
3, 2008.

**18-78-BZII**

APPLICANT – Slater & Beckerman, LLP, for Kiitano  
Construction Corporation, owner.

SUBJECT – Application April 23, 2008 – Extension of  
Term for a variance (§72-21) to allow UG6 commercial use  
in the basement of a residential building, in an R8B zoning  
district, which expires on May 23, 2008.

PREMISES AFFECTED – 111-113 East 38<sup>th</sup> Street,  
between Park Avenue and Lexington Avenue, Block 894,  
Lots 10 and 11, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Joshua Trauner.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

# MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson, and Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a commercial use within a residential zoning district, which expired May 23, 2008; and

WHEREAS, a public hearing was held on this application on May 20, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

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

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

WHEREAS, the site is located on the north side of East 38<sup>th</sup> Street, between Park Avenue and Lexington Avenue; and

WHEREAS, the site is located within an R8B zoning district, and is occupied by a five-story residential building; and

WHEREAS, on April 8, 1975, under BSA Cal. No. 595-74-BZ, the Board granted a variance to permit a change in use of the basement and cellar levels for use by a trade school, for a term which would lapse if the tenant vacated the premises; the tenant subsequently vacated the premises; and

WHEREAS, on May 23, 1978, under the subject calendar number, the Board granted a new variance to permit the conversion of the basement level from doctors' offices into Use Group 6 business offices restricted to the then-owner's use as a real estate office, for a term of ten years; and

WHEREAS, on November 28, 1978, under the subject calendar number, the Board permitted an amendment to omit the restriction that the premises be limited to the then-owner's office use and enumerated additional permitted uses including offices for law, accounting, medicine, dentistry, architecture, engineering, and non-retail real estate management and brokerage, for a term of ten years; and

WHEREAS, the grant was subsequently extended for two ten-year periods and expired on May 23, 2008; and

WHEREAS, the current use of the site is as an office for the accounting, non-retail real estate, and property management functions of a construction business; and

WHEREAS, the applicant represents that the hours of operation are limited to 7:00 a.m. to 11:00 p.m., daily; and

WHEREAS, the applicant now seeks to extend the term of the variance for 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 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 May 23, 1978, 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

23, 2018; *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 May 23, 2018;

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. 110115474)

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 127-05-BZII

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

SUBJECT – Application January 30, 2008 – Extension of Term/Extension of Time to obtain C of O (§73-243) to reopen and extend the term for an accessory drive-thru facility at an existing eating and drinking establishment located in a C1-1/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, a/k/a 9220 Church Avenue and 526 East 93<sup>rd</sup> Avenue, southeast side of Church Avenue between East 92<sup>nd</sup> Street and the intersection of East 93<sup>rd</sup> Street and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #17BK

### APPEARANCES –

For Applicant: Josh Rinesmith.

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

### THE VOTE TO GRANT –

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

Negative: .....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, and an extension of term for a drive-through facility, which expired on January 24, 2008; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in *The City Record*, with a continued hearing on May 13, 2008, and then to decision on June 3, 2008; and

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

WHEREAS, Community Board 17, Brooklyn,

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# MINUTES

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recommends approval of this application; and

WHEREAS, the site is located on the southwest corner formed by Church Avenue, East 83<sup>rd</sup> Street, and Linden Boulevard, within a C1-1 (R5) zoning district; and

WHEREAS, on January 24, 2006, under the subject calendar number, the Board granted a special permit to legalize the accessory drive-through facility at an existing eating and drinking establishment for a term of two years; and

WHEREAS, the site is operated as Popeye's eating and drinking establishment; and

WHEREAS, the application noted that not all of the proposed construction has been completed since the prior approval; and

WHEREAS, specifically, the applicant noted that neither the proposed curb nor the proposed planters had been installed; and

WHEREAS, during the hearing process, the applicant was able to install the planters and provided photographs reflecting the condition; and

WHEREAS, however, the applicant requests nine months to install the curb and obtain a new certificate of occupancy; and

WHEREAS, the applicant also seeks a ten-year extension of term; and

WHEREAS, based upon its review of the record, the Board finds that the proposed ten-year extension of term and nine-month extension of time to complete work and 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 *reopens* and *amends* the resolution, dated January 24, 2006, so that as amended this portion of the resolution shall read: "to grant a ten-year extension of term, to expire on January 24, 2018 and a nine-month extension of time to obtain a certificate of occupancy to March 3, 2009; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the grant shall expire on January 24, 2018;

THAT a certificate of occupancy shall be obtained by March 3, 2009;

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 Administration 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. 301933022)

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application April 16, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Exxon Mobil) in an R3-2 zoning district which expired on May 21, 1999.

PREMISES AFFECTED – 172-11 Northern Boulevard, north side blockfront between 172<sup>nd</sup> Street and Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

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## 546-82-BZIII

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Pasquale Carpentiere.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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## 151-90-BZ

APPLICANT – Mitchell S. Ross, for Mega Real Estate Management, Incorporated, owner.

SUBJECT – Application March 13, 2008 – Amendment to allow legalization of existing conventional office use by amending resolution to remove condition limiting occupancy to governmental office use only previously granted by the Board. Located in a R3-2 zoning district.

PREMISES AFFECTED – 115-49 118<sup>th</sup> Street, 115-70 Lefferts Boulevard, East side of 118th Street, 240' north of Sutter Avenue, Block 11711, Lot 18, Borough of Queens.

### COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Mitchell S. Ross.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for continued hearing.

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## 164-94-BZII

APPLICANT – Jeffrey A. Chester, Esq., for Tuckahoe Realty, owner; LLC Lucille Roberts Health Club Parkchester, lessee.

SUBJECT – Application March 28, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a

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# MINUTES

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Physical Culture Establishment (Lucille Roberts), in a C1-2/R-6 zoning district, which expired on April 19, 2006.

PREMISES AFFECTED – 84 Hugh Grant Circle, south side of Hugh Grant Circle, 95.69' west of Cross Bronx Expressway, Block 3794, Lot 109, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Jeffrey Chester.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 192-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,

SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211th street) contrary to Section 35 of the General City Law. R7-1 Zoning District. PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Patrick Gorman.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 27, 2007, acting on Department of Buildings Application No. 200899670 which reads in pertinent part:

“The proposed NB construction is located within the bed of a mapped street contrary to Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required;” and

WHEREAS, this application proposes the construction of a four-story multiple dwelling building, within an R7-1 zoning district, which will be located within the bed of a mapped street (East 211<sup>th</sup> Street); and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in the *City Record*, with continued hearings on April 15, 2008 and May 20, 2008, and then to decision on June 3, 2008; and

WHEREAS, by letter dated September 5, 2007, the Department of Environmental Protection states that it reviewed the above application and has no objections; and

WHEREAS, by letter dated March 18, 2008, the Fire Department states that it has reviewed the above application and has no objections; and

WHEREAS, Department of Transportation (DOT) states that it has reviewed the application and requires the curbs and sidewalks abutting the proposed development conform to the existing width and alignment of the curbs and sidewalks that currently exist on Decatur 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, the applicant submitted a revised site plan indicating that the curb and sidewalk abutting the proposed development will conform to the existing width and alignment in Decatur Avenue; and

WHEREAS, by letter dated June 2, 2008, the DOT has reviewed the revised plan and has no further comments; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the decision of the Bronx Borough Commissioner, dated July 27, 2007, acting on Department of Buildings Application No. 200899670, 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 29, 2008,”-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, June 3, 2008.

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### 26-08-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Michael & Theresa Flanagan, lessees.

SUBJECT – Application January 13, 2008 – Reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district.

# MINUTES

PREMISES AFFECTED – 35 Bedford Avenue, north side 475.70’ west of 12<sup>th</sup> Avenue, Block 16350 Lot p/o 300. Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 28, 2008, acting on Department of Buildings Application No. 410037516, reads in pertinent part:

“Proposal to enlarge the existing second floor and construct a new roof at a home which lies within an R4 zoning district but does not front on a mapped street (Bedford Avenue) is contrary to Article 3, Section 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 application on June 3, 2008, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated, June 3, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated January 28, 2008, acting on Department of Buildings Application No. 410037516, 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 February 13, 2008”–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, June

3, 2008.

## 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Jeffrey A. Laufer of Council Member Annabel Palma’s Office, Zenali Tirado of Community Board #9, and Nerva Martinez.

For Administration: Lisa Orrantia.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

## 47-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50’ west of intersection with Beach 72<sup>nd</sup> Street, Bock 16066, Lot 46, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

## 48-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Kathleen Brunton, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to GCL Section 36 and partially located within the bed of a mapped street contrary to GCL Section 35. R4 Zoning District.

PREMISES AFFECTED – 126 Oceanside Avenue, north side Oceanside Avenue, 220.50’ east of Beach 207<sup>th</sup> Street, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to July 1,



# MINUTES

2008, at 10 A.M., for continued hearing.  
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## 49-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Charles & Kim Thompson, lessee.  
SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and located within mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 305 Hillside Avenue, east side Newport Walk, 110/19’ south of Oceanside Avenue, Block 16340, Lot 50, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for continued hearing.  
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*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JUNE 3, 2008 1:30 P.M.

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

### 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 and Frank Sellitto.

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

## THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Recused: Commissioner Hinkson.....1

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 3, 2007, acting on Department of Buildings Application No. 301474704, reads, in pertinent part:

“The enlargement of the one family residence in an R3-1 zoning district:

1. Increases the degree of non-compliance with respect to lot coverage and is contrary to Section 23-141 of the Zoning Resolution and 54-31.
2. Increases the degree of non-compliance with respect to floor area ratio and open space and is contrary to Section 23-141 ZR and 54-31.
3. 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 and 73-03 to permit, in an R3-1 zoning district, the legalization of a purported enlargement of a single-family home, which does not comply with the zoning requirements for lot coverage, floor area ratio (FAR), and side yards, contrary to ZR §§ 23-141, 23-461 and 54-31; and

WHEREAS, the Board notes that the site is the subject of a prior Board approval for a special permit, pursuant to ZR § 73-622, under BSA Cal. No. 18-99-BZ, for a home of a different design, which will be discussed in more detail below; and

WHEREAS, the Board notes that the above DOB objections were issued in response to a prior iteration of the proposal, rather than to the most recent plans stamped June 2, 2008, and may not reflect all of the non-complying conditions; and

WHEREAS, during the hearing process, the Board directed the applicant to return to DOB for a review of the plans dated May 27, 2008 (which had been presented as the final set of plans) to ascertain whether there were any additional objections; the applicant finally submitted the audit review on May 30, 2008; and

WHEREAS, the audit reflects 12 objections, one, which will be discussed below, was eliminated by reconsideration; and

WHEREAS, a public hearing was held on this application on November 20, 2008, after due notice by publication in *The City Record*, with continued hearings on February 26, 2008, April 1, 2008 and May 20, 2008, and then to decision on June 3, 2008; and

WHEREAS, a decision date was initially set for May 20, 2008, but, at the applicant’s request, the Board re-opened the record to permit supplemental submissions, which include: (1) DOB-stamped plans dated July 25, 2005

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# MINUTES

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(the “2005 Plans”); (2) a DOB audit of the May 27, 2008 plans, dated May 30, 2008; (3) a revised zoning analysis, stamped June 2, 2008; and (4) revised building plans, stamped June 2, 2008; and

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

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

WHEREAS, the Manhattan Beach Community Association provided testimony in opposition to the application, citing concerns that the applicant had not submitted sufficient evidence regarding (1) the conditions of the original home, (2) what portions of the original home were retained, and (3) proposed plans which fit within the parameters of the special permit; the Community Association also contends that the prior home was demolished in full and the existing/proposed home is incompatible with neighborhood character; and

WHEREAS, certain other neighbors who oppose the application provided photographs, which are not dated, but purportedly reflect site conditions during construction; and

WHEREAS, the site is located on the east side of Norfolk Street, between Oriental Boulevard and Shore Boulevard; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently occupied by a partially-constructed single-family home, which the applicant concedes does not comply with relevant zoning district regulations or with the parameters of the special permit; and

#### History of development at the site

WHEREAS, on April 27, 1999, under BSA Cal. No. 18-99-BZ, the Board granted a special permit, pursuant to ZR § 73-622, for the enlargement of an existing one-story single-family home at the site; and

WHEREAS, the existing parameters of the home in 1999, as represented by the applicant were: (1) a south side yard with a width of 1’-3”; and (2) a north side yard with a width of 4’-3”, and a portion with a width of 0’-11” adjacent to a one-story projection into that yard; and

WHEREAS, the proposed enlargement provided for (1) a floor area of 2,688 sq. ft., (2) a lot coverage of 47 percent, (3) side yards with widths of 1’-3” and 4’-3”, (4) a perimeter wall height of 21’-0”, and (5) a total building height of 29’-9”; and

WHEREAS, the applicant sought approval of the proposed plans which did not comply with zoning district regulations for rear yard, floor area, lot coverage, and side yards, but could be approved under ZR § 73-622; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained within two years of the grant, by April 27, 2001; in the absence of such a condition, ZR § 73-70 states that a special permit lapses if substantial construction is not completed within four years of the date of

the grant, by April 27, 2003; and

WHEREAS, the applicant represents that DOB approved the plans associated with the special permit on August 21, 1999 under DOB App. No. 300493981, and identified it as an Alteration Type 1; the applicant represents that the plans associated with that approval have not been located; and

WHEREAS, the building was not constructed pursuant to the Board-approved plans associated with the 1999 special permit; and

WHEREAS, the applicant represents that on November 21, 2002, the owner filed a different set of plans at DOB, which purportedly reflect an as of right enlargement of the existing one-story home and ultimately began construction; the applicant has been unable to provide a copy of the purportedly stamped and approved plans associated with the 2002 filing; and

WHEREAS, instead, after the resolution of a series of violations from DOB and ECB, including ones stating that the building was being built contrary to the approved plans (noting that the attic was truly a third floor, and not permitted in the zoning district), the construction was fully permitted on November 17, 2005; and

WHEREAS, since the site remained under the Board’s jurisdiction pursuant to the special permit, Board review and approval of changes to the plans approved under BSA Cal. No. 18-99-BZ was required prior to any action at DOB; and

WHEREAS, the Board notes that DOB’s Building Information System reflects information that states that the permit appears to have been contingent on the BSA-approved drawings associated with the approval under BSA Cal. No. 18-99-BZ; and

WHEREAS, however, the Board notes that, until the current application, the applicant did not return to the Board to request changes to the plans and that the 2005 Plans are not consistent with the plans approved pursuant BSA Cal. No. 18-99-BZ; and

WHEREAS, the Board notes that yet another set of plans, February 23, 2003, stamped by DOB reflect a two-story with attic home with side yards of 1’-3” and 4’-3”, a perimeter wall height of 21’-0”, and a total height of 29’-9”; this home was never built; and

WHEREAS, ultimately, the applicant submitted the 2005 Plans to the Board, purportedly approved by the Board approval under BSA Cal. No. 18-99-BZ; and

WHEREAS, however, the Board has reviewed the 2005 Plans and determined that they are not consistent with the Board-approved plans; and

WHEREAS, thus, the Board notes that the applicant filed them erroneously and DOB lacked the jurisdiction to approve them because they do not comply with the Board-approved plans and are not within the parameters of the special permit; and

WHEREAS, DOB has noted and the applicant concedes that the built conditions do not even comply with the erroneous 2005 Plans; and

WHEREAS, complaints about construction at the site

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# MINUTES

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resulted in a stop work order being issued on April 28, 2006; a ten-day letter of intent to revoke was subsequently issued; and

## Required findings of ZR § 73-622

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

WHEREAS, however, the applicant has failed to convince the Board that the proposed legalization meets the parameters of the special permit; and

WHEREAS, specifically, the applicant did not adequately address the two following deficiencies, which were raised by the Board during the public hearing process; and

WHEREAS, the first concern is whether the existing building reflects an actual enlargement of the prior building or, instead, is a new building; and

WHEREAS, the second issue is whether the width of the pre-existing non-complying side yards has been maintained; and

WHEREAS, as to the first issue, 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 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, the Board notes that the applicant has repeatedly relied on DOB’s Technical Policy and Procedure Notice (TPPN) 1/02, dated July 24, 2002, to support its argument that the construction at the site constitutes an enlargement; and

WHEREAS, the TPPN, titled “Application Type Required for Work Involving Alterations and Demotion in a Building,” sets forth a procedure to determine the kind of application that must be filed for work involving demolition of exterior building walls; and

WHEREAS, specifically, the TPPN describes the conditions for when an application would be considered an Alteration Type 1 versus a New Building; it also sets forth exceptions by which, *inter alia*, DOB could issue an alteration permit for the enlargement of a home pursuant to ZR § 73-622 even if exterior walls had been demolished; and

WHEREAS, the Board notes that the TPPN was in effect from July 24, 2002 until it was amended October 3, 2005, to explicitly eliminate these provisions; and

WHEREAS, the Board notes that during the hearing process, the applicant procured a reconsideration from DOB, dated May 1, 2008, which addressed the issue of whether the construction could be characterized as an Alteration Type 1, rather than a New Building despite the demolition of the exterior walls, pursuant to TPPN 1/02; and

WHEREAS, in the May 1 reconsideration, the Brooklyn Borough Commissioner agreed to accept the

application as an Alteration Type 1, despite the fact that the TPPN which previously would have permitted it was not in effect and was therefore irrelevant; and

WHEREAS, additionally, the first objection of the May 30, 2008 DOB audit review, which has been eliminated by reconsideration, also dated May 30, 2008, states: “#1 Dept records indicate the existing one story frame building over a crawl space was demolished in its entirety, and the present building including new foundations with cellar was built. Per TPPN 1/02, withdraw Alt. 1 application and file NB application after legalizing the demolition of the existing building” (emphasis added); and

WHEREAS, the Board respectfully disagrees with the issuance of both reconsiderations; and

WHEREAS, specifically, the Board notes that reliance on the TPPN is to establish whether a building is pre-existing is mistaken because DOB’s criteria for determining whether construction is an alteration is different than the Board’s criteria for determining whether construction constitutes an enlargement for the purposes of the special permit; and

WHEREAS, secondly, the TPPN was not in effect at the time of the 1999 approval or at the present time; the original version was in effect from July 24, 2002 to October 3, 2005, when it was amended to eliminate the language the applicant relies on; and

WHEREAS, further, the Board notes that the noted objection reflects one of several instances where there is an acknowledgment that the pre-existing home was demolished in its entirety; and

WHEREAS, by letter dated August 8, 2006, the Department of City Planning (DCP), addresses the subject of establishing the appropriate guideline for establishing whether construction is an enlargement for the purposes of ZR § 73-622 and draws a distinction between DOB’s classification of construction as an alteration and the meaning of an “enlargement” to be considered by the Board under ZR § 73-622; and

WHEREAS, DCP states that the Board is not guided by DOB’s determination as to whether construction is an alteration or a new building, when answering the threshold question of whether proposed construction reflects an enlargement for the purposes of ZR § 73-622; and

WHEREAS, instead, DCP states that the Board is guided instead by the text and legislative history of ZR § 73-622, which states that the special permit “was not intended to apply in circumstances where the buildings retain little of their original structure;” and

WHEREAS, therefore, the Board takes the position that the special permit may not be used where there has been, as appears to be the case at the subject site, a demolition of the pre-existing building; and

WHEREAS, in the case of a legalization, the Board often questions the applicant about this issue, as the construction work has already taken place and the Board is unable to ascertain, through visual observation, that there was a pre-existing un-enlarged home; and

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# MINUTES

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WHEREAS, the Board notes that a 2002 survey did not conclusively prove that the resultant building is an enlargement, while it did confirm the side yard parameters; and

WHEREAS, the Board notes that the applicant's representations as to the history of construction at the site are contradictory and not supported by evidence; and

WHEREAS, specifically, the Board notes that the applicant has alternately claimed that the entire building was demolished – both at hearing and in the context of the May 1, 2008 reconsideration – and that the rear wall and the first floor were retained; and

WHEREAS, in a May 28, 2008 submission, the applicant submitted 15 photographs purporting to reflect that the rear wall of the pre-existing home was retained; and

WHEREAS, the Board notes that the photographs are not dated and do not provide any conclusive evidence as to which, if any, portions of the pre-existing building were retained during construction; and

WHEREAS, in fact, the photographs appear to reflect a contradiction to the applicant's statement that the first floor was retained; and

WHEREAS, instead, the photographs reflect the condition also reflected on the building plans that the first floor was removed and the plinth raised approximately 4'-9 1/4" above grade and further, that a deeper foundation was constructed; and

WHEREAS, even if the Board were to accept that the rear wall was retained, a single wall does not constitute a building capable of being enlarged, within the ambit of the special permit; and

WHEREAS, throughout the hearing process, the applicant also made the following contentions: (1) the building was not demolished since no violations were issued, and (2) all four walls must be taken down in order to qualify as a demolition and, in this case, the rear wall remained; and

WHEREAS, the Board disagrees and states that: (1) the absence of violations is not prima facie evidence that the building was built within the parameters of the ZR and the Building Code, and (2) as noted above, the Board does not rely on DOB's criteria for establishing whether construction is an enlargement for the purposes of ZR § 73-622; and

WHEREAS, notwithstanding the well-established standard that construction must be an enlargement in order to qualify for a special permit under ZR § 73-622, the applicant actually stated that the building was demolished to grade but that it would still constitute an enlargement pursuant to a reconsideration from DOB, which relies on the un-amended TPPN 1/02 and concerns certain exceptions to the general conception of what a "new building" is; and

WHEREAS, as noted, DOB's criteria for identifying construction as either a new building or an alteration is not derived from the legislative intent or the text of ZR § 73-622 and is thus not relevant to the Board's analysis of the applicability of the special permit; and

WHEREAS, the Board again is guided by the ZR §

12-10 definition and DCP, which rely on the existence and maintenance of floor area as the basis for an existing building to be enlarged and that when all walls are demolished, no floor area exists; and

WHEREAS, further, the Board notes that even if it were to consider the TPPN relevant, the TPPN was not in effect during either time the site has been before the Board as it had not been adopted at the time of the original 1999 special permit; nor is the TPPN in effect now; and

WHEREAS, the Board notes that DOB issued a stop work order as to the construction; and

WHEREAS, accordingly, the Board does not consider the existence of an Alteration Type 1 permit, the terms of which have been violated, to be evidence that there was a pre-existing building that was enlarged; and

WHEREAS, further DCP says "[t]he fact that DOB allows buildings to be partially demolished pursuant to a type of permit called an 'alteration' permit does not justify thwarting the purposes of the Zoning Resolution to allow what is essentially a new non-complying building to be erected;" and

WHEREAS, the applicant also states that no violations were issued for illegal demolition, which must mean that no demolition occurred; and

WHEREAS, again, the Board does not consider the absence of violations to be dispositive, as the DOB does not perform daily inspections of all permitted work; thus, demolition could have occurred notwithstanding the absence of violations; and

WHEREAS, the applicant has submitted testimony and, as noted, numerous contradictory surveys and versions of building plans into the record, which fail to convince the Board that the construction at the site constitutes an enlargement under any meaning of the word; and

WHEREAS, thus, the applicant has not submitted into the record any firm evidence that the existing building is an enlargement of a prior building; and

WHEREAS, however, the applicant has submitted into the record evidence which suggests that the prior building and the existing building may not be the same building, due, for example, to inconsistent side yard widths and a change in the height of the plinth; and

WHEREAS, ZR § 73-622 does not authorize the Board to engage in speculation as to whether a home proposed to be legalized is an enlarged home; and

WHEREAS, instead, where a legalization is proposed, the applicant must convince the Board that the current home represents an enlargement of a prior home; and

WHEREAS, here, the applicant failed to meet this burden of proof; and

WHEREAS, the Board rejected the applicant's claim that the building had been enlarged in a similar case in which the applicant was unable to provide evidence that the current home represented an enlargement of a pre-existing home (see BSA Cal. No. 320-04-BZ); and

WHEREAS, the New York Supreme Court upheld the Board's decision in BSA Cal. No. 320-04-BZ, stating that

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# MINUTES

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the applicant “had the burden to prove it was actually an enlargement . . . it was entirely rational for BSA to disregard [inconsistent plans] as proof of an enlargement to an existing building” (see Reznikov v. BSA, 2007 N.Y. Slip Op. 18203/06, Kings Sup., May 2, 2007; and

WHEREAS, similarly, in the absence of any acceptable affirmative proof that the pre-existing building follows either the ZR § 12-10 definition of enlargement or DCP’s proffered interpretation of it, the applicant fails to meet a threshold for relief under ZR § 73-622; and

WHEREAS, given the record before it, the Board is unable to conclude that the existing or proposed building is an enlargement of a prior building as opposed to a new building; and

WHEREAS, the Reznikov court found that “an ‘enlargement’ is defined by ZR § 12-10 as ‘an addition to floor area of an existing building . . . (emphasis added)” which has not been established here; and

WHEREAS, accordingly, the subject special permit is not available to legalize the existing building; and

WHEREAS, a supplemental issue is the side yards of the existing home; and

WHEREAS, the Board notes that the during the application and hearing process the applicant presented multiple iterations of the proposed plans, the existing plans, the purported pre-existing plans, and surveys of the site, which contained numerous inconsistencies and misrepresentations; and

WHEREAS, the inconsistencies include representations of the FAR, perimeter wall height, total height, side yard widths; and

WHEREAS, the Board notes that the record associated with the 1999 special permit reflect a south side yard with a width of 1’-3””; the 1999 existing conditions plans, the 2003 DOB-approved plans, and the applicant’s own plans and statements represent the pre-enlargement condition as 1’-3””; the 2002 survey is unclear but appears to reflect a south side yard with a width in the range of 1’-2 ½” and 1’-3 ½””; and

WHEREAS, the Board requested a clear copy of the 2002 survey to help establish the dimensions of the yards, but one was never submitted; and

WHEREAS, however, the applicant is requesting to reduce the south side yard to a width of 1’-0””; and

WHEREAS, the applicant argues that although a reduction, it is *de minimus* and should be permitted; and

WHEREAS, as to the north side yard, the applicant’s representation of the dimensions of it have been inconsistent and the applicant has not established that the width of the pre-existing yard was equal to or greater than what is existing now; and

WHEREAS, specifically, the applicant’s representations as to the pre-existing dimensions of that yard have varied from 4’-3” and 0’-11” to 4’-0”/4’-5” and 1’-0””; and

WHEREAS, the Board notes, however, that even if it were to construe the applicant’s representations in the most

liberal way, the proposed reduction of the north side yard from 4’-3” to 4’-0” at any point, the proposed reduction of the small portion of the side yard, with a width of 0’-10 ¾””, and the proposed reduction of the south side yard from 1’-3” to 1’-0” reflect reductions in the widths of the side yards and are not permitted under ZR § 73-622; and

WHEREAS, the Board cites to the text of ZR § 73-622, which states “any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*”; and

WHEREAS, the Board acknowledges that even if the admitted reduction in the width of the side yards appears to be minor, two issues remain: (1) the applicant bears the burden of establishing the pre-existing conditions and the Board is not required to speculate as to whether the proposed construction fits within the parameters of the special permit requirement for an enlargement (see Reznikov v. BSA); and (2) the text of ZR § 73-622 does not provide for any exception to the provision cited above that the enlargement shall not result in the decrease in the width of the side yard; and

WHEREAS, the Board notes that the text clearly states that the enlargement into the side yard shall not result in a decrease in the width of that yard and does not include any exception for what may be deemed minor decreases; and

WHEREAS, further, the Board does not have any authority or discretion to exceed the parameters of the text set forth in ZR § 73-622; and

WHEREAS, the Board raised additional questions during the hearing process including those about (1) the compliance of the perimeter wall height and (2) the floor area calculations; and

WHEREAS, however, because the applicant was unable to establish the threshold requirement that the proposed building constitutes an enlargement of the pre-existing home, none of the supplemental zoning issues are relevant; and

WHEREAS, accordingly, even assuming that the applicant had submitted sufficient evidence that the existing home is actually an enlargement of a prior home, the special permit would still not be available because the Board does not have the jurisdiction to approve a reduction in the width of the non-complying side yards; and

WHEREAS, in conclusion, the Board finds that it is without authority to grant the requested special permit pursuant to ZR § 73-622; and

WHEREAS, the Board notes that due to the new non-compliances, which cannot be remedied by the special permit, the proposed building could also never have been constructed legally under the provisions of ZR § 54-31, which provides that: “Except as otherwise provided in Section 54-313, a *non-complying building or other structure* may be *enlarged* or converted, provided that no *enlargement* or conversion may be made which would either create a new

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# MINUTES

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*non-compliance* or increase the degree of *non-compliance* of a *building or other structure* or any portion thereof;” and

*Therefore it is Resolved* that the determination of the Brooklyn Borough Commissioner, dated May 3, 2007, acting on Department of Buildings Application No. 301474704, 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, June 3, 2008.

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## **200-07-BZ**

### **CEQR #08-BSA-022R**

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: Philip Rampulla.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Superintendent, dated January 24, 2008, acting on Department of Buildings Application No. 510026650, reads in pertinent part:

“The Proposed New Building for an Ambulatory Diagnostic or treatment facility (UG 4) with more than 1,500 SF located in an R3-1 Residential Zoning District is contrary to ZR 22-14”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3-1 zoning district within the Special South Richmond Development District (SSRD) and the Lower Density Growth Management area, the construction of a 9,989 sq. ft. two-story building with cellar to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 37 parking spaces, contrary to ZR § 22-14; and

WHEREAS, the applicant initially sought a variance under ZR § 72-21 to permit construction of a 16,159 sq. ft. two-story building with cellar health care facility (Use Group 4) on the site; and

WHEREAS, the applicant subsequently modified the application to reduce the size of the facility to 9,989 sq. ft.

and recast it as a special permit, rather than a variance, permitting its construction; and

WHEREAS, a public hearing was held on this application on December 11, 2007 after due notice by publication in *The City Record*, with continued hearings on February 26, 2008, April 8, 2008, and May 20, 2008, and then to decision on June 3, 2008; and

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

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

WHEREAS, City Council Member Vincent Ignizio and Assembly Member Louis R. Tobacco recommend approval of this application; and

WHEREAS, Borough President James P. Molinaro recommends approval of this application; and

WHEREAS, a local civic organization and certain neighborhood residents provided written and oral testimony in opposition to this application citing concerns with traffic, parking and noise; and

WHEREAS, the application is brought on behalf of Orthopedic Healthcare Realty, LLC, a privately owned medical facility which operates an adjacent affiliate facility at 3311 Hylan Boulevard; and

WHEREAS, the subject site is located on the western half of the block bounded on the north by Block Street, on the south by Hylan Boulevard, on the west by Spratt Avenue and on the east by Hopkins Avenue, within an R3-1 zoning district ; and

WHEREAS, the site has a lot area of 26,178 sq. ft. and is currently occupied by a vacant eating and drinking establishment (Use Group 6) with a floor area of 5,561 sq. ft., which is proposed to be demolished; and

WHEREAS, the site is the subject of prior Board actions, under BSA Cal. No. 691-53-BZ, which permitted the extension of an existing restaurant in a residential district, and BSA Cal. No. 294-74-BZ, permitting the enlargement of the formerly existing restaurant; and

WHEREAS, the proposed facility will occupy 9,989 sq. ft. of floor area (0.38 FAR) on the first and second floors, and approximately 4,426 sq. ft. of floor space in the cellar; and

WHEREAS, the cellar level of the proposed medical facility will be occupied by office space, pursuant to ZR § 25-31, the cellar floor space is included in the total floor area when calculating the required parking; accordingly, the total floor area for parking calculation purposes is approximately 14,414 sq. ft.; and

WHEREAS, therefore, 37 parking spaces will be provided (36 spaces are required, one space for every 400 sq. ft. of floor area); and

WHEREAS, the applicant represents that the facility will provide ambulatory diagnostic and treatment health care services related to the practice of orthopedics (Use Group 4); and

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# MINUTES

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WHEREAS, a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district; and

WHEREAS, pursuant to ZR § 73-125, the Board may grant a request to permit an increase in the floor area of an ambulatory diagnostic/treatment health care facility use from 1,500 sq. ft. up to a maximum of 10,000 sq. ft. on the site, provided that the Board finds that the amount of open area and its distribution on the zoning lot conforms to standards appropriate to the character of the neighborhood; and

WHEREAS, the applicant represents that the facility will have a floor area of 9,989 sq. ft., which the Board notes is less than the maximum of 10,000 sq. ft. permitted by the special permit; and

WHEREAS, the applicant states that the building will provide three new front yard setbacks where none previously existed; with a setback of 18'-0" from Spratt Avenue, a setback of 18'-0" from the rear lot line on Block Street, and a setback of approximately 57'-0" along Hylan Boulevard, and that these setbacks meet or exceed the minimum requirements for an otherwise conforming residential development; and

WHEREAS, the applicant further states that the 25'-0" height of the proposed facility complies with the district height limitations; and

WHEREAS, the applicant represents that approximately 79 percent of the zoning lot will remain as open space (including landscaping and parking areas), exceeding the residential equivalent minimum of 65 percent; and

WHEREAS, accordingly, the Board finds that the height of the building, the amount of open area and its distribution on the zoning lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; 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, the applicant states that the proposed facility will have operating hours of 9:00 a.m. to 9:00 p.m. Monday through Saturday; and 9:00 a.m. to 5:00 p.m. on Sunday; and

WHEREAS, the applicant represents that approximately 100 patients will be served by the facility each day, based on the number of examination rooms, the type of medical facility proposed, the orthopedic-related services to be rendered, and the length of patient visits associated with such services; and

WHEREAS, with respect to concerns about traffic, the applicant initially submitted a traffic analysis based on the operation of its existing facility at 3311 Hylan Boulevard;

and

WHEREAS, at the Board's request, the applicant further analyzed project generated traffic, travel patterns and trip assignments; and

WHEREAS, the applicant states that while Hylan Boulevard is a major thoroughfare carrying heavy traffic volume, Spratt Avenue and Hopkins Avenue carry minimal traffic; and

WHEREAS, the applicant further states that seven days of automated traffic recorder data gathered at the intersection of Hylan Boulevard and Hopkins Avenue indicated that southbound traffic volume on Hopkins Avenue approaching Hylan Boulevard never exceeded forty per hour and that such a traffic volume is indicative of a local road network operating well below its carrying capacity; and

WHEREAS, the applicant states that a patient and employee survey was conducted at its existing facility during a typical week to determine the mode of travel and to project the number of incremental trips the new facility would generate; and

WHEREAS, the applicant represents that the employee and patient surveys indicate that an estimated six new vehicles per hour would be added to local streets during the peak period; and

WHEREAS, the applicant further represents that a project-generated traffic analysis indicates that the incremental traffic associated with the project would add a maximum of 18 vehicles per hour to the intersection of Hylan Boulevard and Buffalo Street, and an increase of 15 cars to the intersection at Hopkins Avenue and Thollen Street during the peak travel hour, including all approaches, numbers well below the threshold level of 50 hourly trips above which there is a potential which warrants further study; and

WHEREAS, 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, the applicant represents that, pursuant to CEQR procedures, no further traffic analysis is required; and

WHEREAS, while the Board recognizes that traffic along Hylan Boulevard 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, according to the site plan, traffic will enter the site from curb cuts at Hopkins Avenue or at Hylan Boulevard and will exit the site from either Hylan Boulevard

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# MINUTES

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or Spratt Avenue; and

WHEREAS, with respect to concerns about parking, the Board notes that the applicant is providing more parking spaces than the 36 spaces which are required; and

WHEREAS, the plans reflect that 37 spaces are proposed on the subject site and an additional 12 spaces will be shared with its affiliate facility at 3311 Hylan Boulevard; and

WHEREAS, the Board notes that ZR § 25-541 permits accessory off-street parking spaces to be provided in facilities designed to jointly serve two or more buildings on zoning lots; and

WHEREAS, however, the Board requested that the Department of Buildings review the proposed parking layout and applicability of ZR § 25-541; and

WHEREAS, in a pre-consideration dated March 13, 2008, the Staten Island Borough Commissioner confirmed the applicability of ZR § 25-541 to the subject site contingent: (i) on the provision of an easement and deed restriction for the parking spaces shared by both lots; (ii) the filing of an alteration permit for 3311 Hylan Boulevard indicating such easement and deed restriction; and (iii) the listing of the required number of spaces on the "Schedule A" filed in connection with the permits for the respective properties; and

WHEREAS, at hearing, neighborhood residents asserted that the parking lot at 3311 Hylan Boulevard was inadequate to meet patient demand at that facility; and

WHEREAS, the applicant represents that the combined parking facility of 49 spaces would meet the parking demand generated by both facilities because the number of patient visits will increase by 67 percent, from 150 per day to 250 per day; but the number of available off-street parking spaces will increase by 300 percent; and

WHEREAS, the applicant further represents that a parking accumulation study analyzing arrival and departure patterns for both offices at 3311 and 3333 Hylan Boulevard indicated that the peak period from 12 noon to 1:00 p.m. would generate parking demand by 50 vehicles, thereby requiring curbside parking for one vehicle; and

WHEREAS, the applicant further states that, due to the availability of adequate number of curbside parking spaces on the block surrounding the site, no potential for parking impacts is associated with the proposed facility; and

WHEREAS, the applicant further states that a site visit during typical business hours on a weekday morning that curbside parking on Hopkins Avenue between Hylan Boulevard and Block Street was approximately 30 percent unoccupied, that approximately 50 percent of the curbside spaces on Block Street were unoccupied and that few cars were parked on Spratt Street; and

WHEREAS, photographs were submitted into the record indicating the availability of curbside parking on Spratt Street, Hopkins Avenue and Block Street surrounding the subject site; and

WHEREAS, as the site is within the Special South Richmond Development District (SSRD), an authorization

pursuant to ZR § 107-68 by the City Planning Commission (CPC) for group parking in excess of 30 vehicles and a curb cut on Hylan Boulevard is required; and

WHEREAS, in order to grant this authorization, CPC must find that the project design will draw a minimum of traffic through local residential streets, and that the location of the curb cut would not adversely affect pedestrian traffic; and

WHEREAS, the applicant represents that it will seek such authorization from CPC; and

WHEREAS, at hearing, neighborhood residents requested that the curb cut on Spratt Avenue be eliminated to reduce potential traffic through their community; and

WHEREAS, in a submission to the Board, the applicant represented that the elimination of the exit onto Spratt Avenue would render nine angled parking spaces unusable, since vehicles would not have sufficient circulation space to turn around and exit from the proposed curb cut on Hylan Boulevard; and

WHEREAS, the Board notes that the Spratt Avenue curb cut would be used only by cars exiting the site and its elimination would only increase cars exiting on Hylan Boulevard (a heavy arterial road); and

WHEREAS, given the traffic patterns and circulation on local streets in the area, it is unlikely that the elimination of the curb cut would reduce the number of vehicles traveling on Spratt Avenue; and

WHEREAS, the Board notes that the proposed circulation plan, as well as the proposed entrances and exits, provide for better distribution of vehicles within the surrounding street network; and

WHEREAS, neighborhood residents also expressed concerns with potential noise from mechanical equipment mounted on the roof of the building; and

WHEREAS, the applicant states that the distance from the front building wall of the nearest home, located at 216 Spratt Avenue, to the front wall of the proposed building will be 103'-0", thereby exceeding the minimum standard of 100'-0" established by the present NYC Building Code and maintained by the proposed new Building Code; and

WHEREAS, however, according to the building plans, the distance from the side wall of 197 Spratt Avenue to the Block Street property line of the proposed building is only 89'-0", below the minimum standard required by the Building Code; and

WHEREAS, in a revised submission, the applicant indicates that in order to maintain the minimum distance required, roof top mechanical equipment will be located a minimum of 11'-0" away from the Block Street side of the building; and

WHEREAS, neighborhood residents also raised concerns at hearing with the impact on neighborhood character posed by the building's size and proximity to a residential community; and

WHEREAS, as noted above, the applicant further states that approximately 79 percent of the zoning lot will remain as open space (including landscaping and parking



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# MINUTES

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areas), exceeding the residential equivalent minimum of 65 percent; and

WHEREAS, as also noted above, the applicant further states that the building will provide three new front yard setbacks; with a setback of 18'-0" from Spratt Avenue, a setback of 18'-0" from the rear lot line on Block Street, and a setback of approximately 57'-0" along Hylan Boulevard; and

WHEREAS, the applicant states that these setbacks meet or exceed the minimum requirements for an otherwise conforming residential development and represents that the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the applicant further represents that the former use on the site, an eating and drinking establishment (Use Group 6), had no front yard setbacks and its hours of operation and parking demand imposed greater impacts on the neighboring community than the proposed medical facility; and

WHEREAS, accordingly, the Board finds that the proposed ambulatory diagnostic/treatment health care facility will neither: (i) alter the essential character of the surrounding neighborhood; (ii) impair the use or development of adjacent properties; nor (iii) be detrimental to the public welfare; 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

WHEREAS, the project is classified as Unlisted pursuant to 6 NYCRR Part 617(ak); 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. 08BSA022R, dated March 26, 2008; 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 April 30, 2008 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 R3-1 zoning district within the Special South Richmond Development District (SSRD) and the Lower Density Growth Management area, construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 37 (plus 12) parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 3, 2008" – one (1) sheet and "Received April 29, 2008" – three (3) sheets; and *on further condition*:

THAT there shall be no change in use of the site as a Use Group 4 ambulatory diagnostic/ treatment facility without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 9:00 a.m. to 9:00 p.m. Monday through Saturday; 9:00 a.m. to 5:00 p.m. on Sunday;

THAT landscaping shall be provided and maintained, as per the approved plans;

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 approval is conditioned on obtaining an authorization pursuant to ZR § 107-68 from the City Planning Commission (CPC) permitting group parking in excess of 30 vehicles and a curb cut on Hylan Boulevard;

THAT approval is conditioned on the recording of an easement and deed restriction against the title for 3311 Hylan Boulevard (Block 4987, Lot 20) and the title for 3333 Hylan Boulevard (Bloc 4987, Lot 1) reflecting that the accessory parking for each respective property is shared with the other;

THAT the above conditions shall appear on the Certificate of Occupancy and the above-described deed restriction and easement shall be referenced on the Certificate of Occupancy for 3311 Hylan Boulevard;

THAT the parameters of the building shall be as follows: 9,989 sq. ft. of floor area on the first and second floors, 4,426 ft. of floor space in the cellar, and 37 (plus twelve) parking spaces, as per the approved plans;

THAT parking spaces be striped and directional traffic signals be indicated on the parking lot paving as shown on the approved plans;

# MINUTES

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

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, June 3, 2008.

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## 219-07-BZ

### CEQR #08-BSA-020M

APPLICANT – Sheldon Lobel, P.C., for Eternal Sino Int. Dev. Condo., LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application September 24, 2001 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the second floor of an existing building. Proposal contrary to section 42-13. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36<sup>th</sup> Street, located on the north side of West 36<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 838, Lot 35, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 27, 2007, acting on Department of Buildings Application No. 104851830, reads in pertinent part:

“Proposed massage establishment (SPA) is considered a physical culture establishment [ZR 12-10] and is not permitted as-of-right in M1-6 zoning district as per ZR 42-13;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the second floor of a six-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 18, 2008 after due notice by

publication in *The City Record*, with a continued hearing on May 13, 2008, and then to decision on June 3, 2008; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 36<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue; and

WHEREAS, the PCE occupies a total of approximately 1,670 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE will be operated as Cosmos Spa; and

WHEREAS, the applicant represents that the services at the PCE will include massage, skincare, and other beauty services; and

WHEREAS, the hours of operation will be: daily, 10:00 a.m. to 2:00 a.m.; and

WHEREAS, at hearing, the Board asked the applicant for a history of the operations of the PCE; and

WHEREAS, the applicant responded that the site had operated as a PCE from approximately December 2006 until February 2008, when it ceased operations as a special permit was sought; and

WHEREAS, the Board notes that the establishment operating at the site during that time received violations for purportedly operating contrary to the certificate of occupancy and contrary to zoning; and

WHEREAS, the Board notes that the operations at the site have ceased, but requested to see marketing information and masseuse licenses for the proposed PCE; and

WHEREAS, in response, the applicant provided: (1) marketing materials, which reflect the proposed use; and (2) copies of masseuse licenses; and

WHEREAS, the Board notes that because this is a legalization, and because the business has been the subject of violations, that a limited term is appropriate as the PCE becomes established pursuant to zoning regulations associated with the special permit; and

WHEREAS, accordingly, the Board stated that a two-year term would be appropriate for its initial term; 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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# MINUTES

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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 617.2 ak); 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. 08BSA020M, dated February 29, 2008; 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 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 M1-6 zoning district, the legalization of a physical culture establishment on the second floor of a six-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 29, 2008"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 3, 2010;

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 prior to the issuance of any permits, DOB shall

review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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 3, 2008.

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**227-07-BZ**

**CEQR #08-BSA-025K**

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications Inc., for Mikhail Arabov, owner.

SUBJECT – Application October 1, 2007 – Special Permit (§73-30) to permit approval for a proposed 52 foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 1595 Canarsie Road, Block 8277, Lot 9, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Robert Gaudio.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 14, 2007, acting on Department of Buildings Application No. 302314369, 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 R4 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 R4 zoning district, the proposed construction of a telecommunications pole (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 11, 2008 after due notice by publication in *The City Record*, with a continued hearing on May 13, 2008 and then to decision on June 3, 2008; and

WHEREAS, Community Board 18, Brooklyn,

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# MINUTES

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recommends disapproval of this application, citing concerns with its potential impacts on neighborhood character and health; and

WHEREAS, representatives of the United Canarsie South Civic Association and neighborhood residents (collectively, the "Opposition") presented written and oral testimony at hearing raising concerns with the appearance of the proposed tower and the surrounding site, perceived safety and health hazards, and its potential abandonment; and

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

WHEREAS, the applicant states that the proposed telecommunications pole, as modified, will consist of an 50-foot high monopole with internally mounted antennas and related equipment located within fenced area; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 telecommunications 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 states that related equipment cabinets will be installed within a six-foot opaque locked fence enclosure; and

WHEREAS, the proposed telecommunications facility was initially designed to resemble a flagpole, with an American flag that would be illuminated at night; and

WHEREAS, in response to concerns raised by the Opposition, at hearing the Board requested that the applicant modify its proposal to eliminate the flag and the proposed lighting and to ensure that fencing and screening be located within the property line; and

WHEREAS, in response to concerns raised by the Opposition as to the impact of the its size on the surrounding residential neighborhood, the Board also asked the applicant whether it was possible to reduce the height and width of the proposed telecommunications tower; and

WHEREAS, in response, the applicant submitted revised plans showing complying fencing and agreed to eliminate the flag and lighting and to reduce the width of the pole by 4" and its height by 2'-0" from the 52'-0" originally proposed; and

WHEREAS, the applicant represents that the 50'-0" 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, in response to concerns raised by the Opposition about the appearance of the site, the applicant states that the site's fencing has been replaced and that a new tree has been planted; and

WHEREAS, in response to the safety and health concerns raised by the Opposition, the applicant represents that the facility will be constructed in such a manner that it cannot collapse and submitted a compliance report certifying that emissions of the facility will conform to standards promulgated by the Federal Communications Commission in accordance with federal law; and

WHEREAS, at hearing, the Board also asked the applicant whether alternative sites outside the residential zoning district were evaluated, particularly within nearby Parks Department properties at Canarsie Park and at 1440 Paedergat Avenue North; and

WHEREAS, in a submission to the Board, the applicant reported that the Parks Department was unwilling to lease either property and that alternative sites were found to be either too close to existing wireless facilities operated by the same carrier or too far from the site to provide the extent of coverage necessary; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed telecommunications 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 1, 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;

# MINUTES

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 telecommunications pole (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 June 3, 2008"-(5) 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 telecommunications pole will be removed if its operation is ceased;

THAT the Department of Buildings must 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 3, 2008.

## 269-07-BZ

### CEQR #08-BSA-037R

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Seaside Enterprises, LLC, owner.

SUBJECT – Application November 26, 2007 – Special Permit (§73-125) to allow a cellar and two (2) story ambulatory diagnostic/treatment care facility (medical offices, UG 4). R3-1 district.

PREMISES AFFECTED – 378 Seaview Avenue, south side of Seaview Avenue, between Mason Avenue and Simpson Street, Block 3380, Lots 65, 68 and 70, 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, Commissioner Hinkson, and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 26, 2007, acting on Department of Buildings Application No. 510019196, reads in pertinent part:

“Proposed construction of ambulatory diagnostic or treatment health care facility, located in an R3-1 zone, exceeds 1,500 square feet, contrary to ZR. Refer to Board of Standards and Appeals for review”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3-1 zoning district, the construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 25 parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on April 15, 2008 after due notice by publication in *The City Record*, with a continued hearing on May 20, 2008, and then to decision on June 3, 2008; and

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

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

WHEREAS, the subject site is located on the south side of Seaview Avenue, between Mason Avenue and Simpson Street, within an R3-1 zoning district ; and

WHEREAS, the site has a lot area of 17,500 sq. ft. and is currently occupied by a single family home and three garages that are proposed to be demolished; and

WHEREAS, the facility will occupy 6,683 sq. ft. of floor area (0.38 FAR) on the first and second floors and approximately 3,114 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 9,797 sq. ft.; and

WHEREAS, therefore, 25 parking spaces will be provided (24 parking spaces are required, 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, with the specific types of medical services to be determined; and

WHEREAS, the Board notes that a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district;

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# MINUTES

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and

WHEREAS, the special permit pursuant to ZR § 73-125 allows for 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 10,000 sq. ft. on the site; and

WHEREAS, the Board notes that the proposed building provides for approximately 80 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the applicant states that the proposed facility will be limited to daytime operating hours; and

WHEREAS, the applicant initially submitted a traffic analysis which analyzed the incremental difference between an as of right development and the proposed project, based on the operation of an existing professional/ medical office building at 210 Northern Boulevard, Queens (BSA Cal. No. 351-04-BZ); and

WHEREAS, based on that analysis, the applicant represents that the proposed facility would generate a number of pedestrian trips and vehicle trips throughout an average day, and during the peak period that was below the threshold levels under which City Environmental Quality Review would require further analysis to determine whether they might result in significant adverse impacts; and

WHEREAS, at hearing, the Board asked the applicant to provide a comprehensive breakdown of the person and vehicular trips to be generated by an as of right facility, in addition to the person and vehicular trips to be generated by the proposed building, and the incremental difference in the number of trips generated between the as of right and the proposed building; and

WHEREAS, the applicant revised its analysis accordingly and represents that the results indicate that no significant impacts related to traffic, parking, transit, or pedestrians are expected to occur; and

WHEREAS, the applicant proposes to provide two 15'-0" curb cuts on Seaview Avenue; one curb cut limited to entrances and the other curb cut limited to exits; and

WHEREAS, the Board notes that the applicant is providing all of the required parking and does not anticipate overflow; and

WHEREAS, the applicant represents that the proposed facility is consistent with the neighborhood character which is characterized by a mix of community facility, residential and office uses and which includes Staten Island University Hospital located to the east of the site; and

WHEREAS, the plans indicate that landscaping is

provided along the perimeter of the site in conformity with the requirements of ZR § 37-90 for a site with more than 18 parking spaces; and

WHEREAS, the applicant agreed to direct lighting away from neighboring residential sites; 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 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 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. 08BSA037R, dated March 11, 2008; 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 R3-1 zoning district, the construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 25 parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 11, 2008"—eleven (11) sheets; and *on further condition*:

THAT there shall be no change in use of the building as an ambulatory diagnostic/treatment health care facility (Use Group 4);

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# MINUTES

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THAT landscaping, screening, curb cuts and bicycle parking 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: 6,683 sq. ft. of floor area on the first and second floor, 3,114 sq. ft. of floor space in the cellar, and 25 parking spaces, as per the approved plans;

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

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, June 3, 2008.

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## 14-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, 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, Commissioner Hinkson, and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 24, 2007, acting on Department of Buildings Application No. 310051172, reads in pertinent part:

“The proposed enlargement to existing home is contrary to ZR Sections ZR 23-46 (side yard) and ZR 23-47 (rear yard) and therefore requires a special permit pursuant to ZR 73-622;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, with continued hearings on April 8, 2008 and May 13, 2008, and then to decision on June 3, 2008; and

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

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

WHEREAS, the subject site is located on the west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 3,105.5 sq. ft. (0.80 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 3,105.5 sq. ft. (0.80 FAR), to 4,934.6 sq. ft. (1.24 FAR); the maximum floor area permitted is 5,000 sq. ft. (1.25 FAR); and

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

WHEREAS, the enlargement of the home is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will (1) maintain the existing non-complying side yard with a width of 4'-0" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required) and (2) provide a second side yard with a width of 13'-0"; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained; and

WHEREAS, in response, the applicant identified which portions of the existing home would be retained; and

WHEREAS, at hearing, the Board also directed the applicant to (1) confirm that the proposed building complies with height and setback requirements and (2) re-design the light wells, which appear to encroach into the side yard; and

WHEREAS, in response, the applicant (1) provided an axiomatic diagram, which reflects that the height and setback of the proposed home fit within the permitted sky exposure plane envelope and (2) re-designed the light wells to reflect a maximum permitted width of 1'-6"; 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

# MINUTES

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 R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 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 29, 2008"-(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 1,190.6 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 4,943.6 sq. ft. (1.24 FAR), side yards with minimum widths of 4'-0" and 13'-0", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 31-08-BZ

### CEQR #08-BSA-056R

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Special

Permit (§73-30) to allow a 110- foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert Gaudioso.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 13, 2008, acting on Department of Buildings Application No. 510021557, reads in pertinent part:

"Unipole in an R3-2 district requires the issuance of a special permit by the BSA (ZR 73-30);" 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 telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS, the site is the subject of a variance to permit the construction of a two-story office building in an R3-2 zoning district, under BSA Cal. No. 456-85-BZ; it is also the subject of an appeal to permit the installation of drywells, under BSA Cal. No. 220-88-A; and

WHEREAS, the applicant concurrently requested an amendment to the variance; there are separate resolutions for the subject special permit and the amendment, but the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on May 13, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

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

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a two-story office building (Use Group 6); and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network



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# MINUTES

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designed to support the City's public safety and public service agencies; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 110-foot tall pole with internally-mounted antennas and related equipment, located within a fenced area; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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. 08-BSA-056R, dated February 19, 2008; 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 R3-2 zoning district, the proposed construction of a telecommunications pole (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 June 3, 2008"-(6) sheets; and *on further condition*;

THAT any fencing 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 3, 2008.

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**456-85-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR §73-30 and file under separate BSA application.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for an amendment to a previously granted variance which permitted the construction of a two-story commercial building within an R3-2 zoning district; and

WHEREAS, concurrent with this application, under BSA Cal. No. 31-08-BZ, the applicant seeks a special permit, pursuant to ZR § 73-30, to permit the construction of a telecommunications pole; the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on May 13, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

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

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

WHEREAS, the site is located on the east side of Richmond Avenue, between Ashworth Avenue and Rockland Avenue; and

WHEREAS, the Board has exercised jurisdiction over the site since May 16, 1989, when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story office building in an R3-2 zoning district; under BSA Cal. No. 220-88-A, the Board also approved the use of drywells for the disposal of storm water; and

WHEREAS, the applicant now proposes to construct a telecommunications pole, with a height of 110 feet with internally-mounted antennas and related equipment, located within a fenced area at the site; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to support the City's public safety and public service agencies; and

WHEREAS, the Board notes that no changes are being made to the original grant other than the addition of the telecommunications pole to the site plan, pursuant to ZR § 73-30, which, as noted, is being requested concurrently under BSA Cal. No. 31-08-BZ; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the site plan, in conjunction with the separate request for the special permit,

pursuant to ZR § 73-30, at the site are appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 16, 1989, so that as amended this portion of the resolution shall read: "to permit the noted modification to the plans to reflect the proposed telecommunications pole at the site" *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received June 3, 2008"- (6) sheets; and *on further condition*:

THAT any fencing 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 3, 2008.

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## 54-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Muller, owner.

SUBJECT – Application March 12, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); rear yard (§23-47) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 3199 Bedford Avenue, east side of Bedford Avenue, between Avenue J and K, Block 7607, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### 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, Commissioner Hinkson, and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 12, 2008, acting on Department of Buildings Application No. 310091254, 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

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# MINUTES

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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 required rear yard of 30’.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard, straight line extension, is less than the 5’-0” minimum side yard permitted;” 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, rear yard, and side yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, with a continued hearing on May 20, 2008 and then to decision on June 3, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue J and Avenue K; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with floor area of 2,332.88 sq. ft. (0.62 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 2,332.88 sq. ft. (0.62 FAR), to 3,764 sq. ft. (1.00 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 53.71 percent (150 percent is the minimum required); and

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

WHEREAS, the enlargement of the home is not located within 20’-0” of the rear lot line; and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 3’-6” (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the applicant notes that due to the condition of the lot having a pre-existing undersized width, the required total side yard width is 12’-2”, pursuant to ZR § 23-48, and is proposed; 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, open space ratio, rear yard, and side 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 May 6, 2008”–(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 510 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 3,764 sq. ft. (1.00 FAR), a minimum open space ratio of 53.71 percent, side yards with minimum widths of 3’-6” and 8’-8”, and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 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

# MINUTES

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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

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## 109-07-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for continued hearing.

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## 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 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Mindy Chin.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for deferred decision.

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## 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 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

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## 189-07-BZ

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.

SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

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## 243-07-BZ/244-07-A

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

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (23-141); less than the minimum front yards (23-45) and less than the required amount of parking (23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Marie Wausnock.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

# MINUTES

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**257-07-BZ**

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections 24-522 (height, setbacks, and sky exposure plane for community facility), 24-11 (community facility lot coverage), and 24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

**COMMUNITY BOARD #11M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for continued hearing.  
-----

**258-07-BZ**

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

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Carl. A. Sulfaro.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.  
-----

**291-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to sections 24-35 (side yards), 24-391 (rear yard), 24-34 (front yard), and 24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Eric Palatnik and Lewis Garfinkel.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.  
-----

**32-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Baron Hirsch Cemetery Assn. Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 1126 Richmond Avenue, intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street, Block 1668, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Joe Deker and Robert Gardioso.

For Opposition: Dorothy Flores, Thomas Shust, Frank Rizzi and Theresa Smith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.  
-----

**44-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for continued hearing.  
-----

**50-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for St. Sylvester's R.C. Church, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 6, 2008 – Special Permit

# MINUTES

(§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. PREMISES AFFECTED – 265McKinley Avenue, between Grant Avenue and Eldert Lane, Block 4175, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

### APPEARANCES –

For Applicant: Carol Slater and Robert Gardioso.

For Opposition: Ricardo A. Sánchez.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

## 52-08-BZ

APPLICANT – Dennis D. Dell' Angelo, for Yossi Amar, owner.

SUBJECT – Application March 7, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and lot coverage (§23-141); side yards (§23-461) and rear yard requirement (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3935 Bedford Avenue, east side of Bedford Avenue, Block 6811, Lot 72, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Dennis Dell' Angelo.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

## 53-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2000 – Special Permit (§73-30), to permit a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #9BX

### APPEARANCES –

For Applicant: Robert Gardioso.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

## 731-68-BZ

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owners; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2008 – Amendment (§73-30) to allow the site showing removal of gas tanks and proposed change for a non-accessory radio tower.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #9BX

### APPEARANCES –

For Applicant: Robert Gardioso.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

## 55-08-BZ

APPLICANT – Walter T. Gorman, P.E., for Eileen & Benjamin Seiden, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 13, 2008 – Special Permit filed pursuant to §§11-411 & 73-01(d) to reinstate a variance previously granted under BSA calendar number 381-60-BZ, which expired on November 1, 1995, allowing the operation of an Automotive Service Station with accessory uses in a R7-2 zoning district.

PREMISES AFFECTED – 350/58 East Houston Street, North west corner of Avenue C, Block 384, Lot 33, Borough of Manhattan.

## COMMUNITY BOARD #3M

### APPEARANCES – None.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 1:30 P.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 24-25

June 26, 2008

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### DIRECTORY

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**DARA OTTLEY-BROWN**

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**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                  |         |
|----------------------------------|---------|
| DOCKET .....                     | 389     |
| <b>CALENDAR</b> of July 15, 2008 |         |
| Morning .....                    | 390     |
| Afternoon .....                  | 390/391 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, June 17, 2008**

Morning Calendar .....392

**Affecting Calendar Numbers:**

|                    |   |
|--------------------|---|
| 1334-66-BZ         | 150 West End Avenue, Manhattan                |
| 370-02-BZ, Vol. II | 56-14 Main Street, Queens                     |
| 373-02-BZ, Vol. II | 56-44 Main Street, Queens                     |
| 718-56-BZ          | 741 Forest Avenue, Staten Island              |
| 1098-83-BZ         | 147-10 Northern Boulevard, Queens             |
| 16-92-BZ           | 115 King Street, 78 Sullivan Street, Brooklyn |
| 1149-62-BZ         | 24-40 West 16 <sup>th</sup> Street, Manhattan |
| 84-91-BZ           | 2344 Eastchester Road, Bronx                  |
| 200-00-BZIII       | 107-24 37 <sup>th</sup> Avenue, Queens        |
| 33-06-BZII         | 1457 Richmond Road, Staten Island             |
| 259-07-A           | 41-97 Parsons Boulevard, Queens               |
| 194-07-A           | 1447 Rosedale Avenue, Bronx                   |
| 255-07-A           | 40-54 Francis Lewis Boulevard, Queens         |
| 141-07-A           | 129-48 Hookcreek Boulevard, Queens            |
| 68-08-A            | 135-23 82 <sup>nd</sup> Avenue, Queens        |

Afternoon Calendar .....398

**Affecting Calendar Numbers:**

|           |  |
|-----------|--|
| 174-07-BZ | 1925 Coney Island Avenue, Brooklyn     |
| 242-07-BZ | 1760 Gleason Avenue, Bronx             |
| 24-08-BZ  | 230-262 Arden Avenue, Staten Island    |
| 27-08-BZ  | 4845 Hylan Boulevard, Staten Island    |
| 29-08-BZ  | 422 Clarke Avenue, Staten Island       |
| 38-08-BZ  | 40 Broad Street, Manhattan             |
| 39-06-BZ  | 245 Varet Street, Brooklyn             |
| 134-06-BZ | 241-15 Northern Boulevard, Queens      |
| 119-07-BZ | 443 39 <sup>th</sup> Street, Brooklyn  |
| 171-07-BZ | 167 Norfolk Street, Brooklyn           |
| 205-07-BZ | 53-20 72 <sup>nd</sup> Place, Queens   |
| 245-07-BZ | 220 Water Street, Brooklyn             |
| 248-07-BZ | 32-15 60 <sup>th</sup> Street, Queens  |
| 274-07-BZ | 1157 83 <sup>rd</sup> Street, Brooklyn |
| 9-08-BZ   | 555 Foster Road, Staten Island         |
| 12-08-BZ  | 317 Lenox Avenue, Manhattan            |
| 39-08-BZ  | 77 Richmond Hill Road,, Staten Island  |
| 65-08-BZ  | 120-50 Springfield Boulevard, Queens   |
| 69-08-BZ  | 61-40 Mt. Olivet Crescent, Queens      |
| 85-08-BZ  | 222-89 Braddock Avenue, Queens         |



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# DOCKET

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New Case Filed Up to June 17, 2008  
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**156-08-BZ**

102 West 57th Street, Southerly side of West 57th Street, 150 feet west of Sixth Avenue., Block 1009, Lot(s) 37 & 39, Borough of **Manhattan, Community Board: 5**. Special Permit (73-03;73-36) to allow the operation of a physical culture establishment.  
-----

**157-08-BZ**

365 Bay Street, Eastern side of Bay Street between Grant Street and Saint Julian Place., Block 488, Lot(s) 71, Borough of **Staten Island, Community Board: 1**. Special Permit (73-36) to allow the proposed physical culture establishment in the cellar and first floor of the two-story and cellar building currently under construction on the subject site. The proposal is contrary to ZR section 42-10. M1-1 dist  
-----

**158-08-BZ**

1814 East 27th Street, West side of East 27th Street between Avenue R and Avenue S., Block 6832, Lot(s) 11, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home.  
-----

**159-08-BZ**

68-70 Spring Street, South side of Spring Street between Crosby and Lafayette Streets., Block 482, Lot(s) 19, Borough of **Manhattan, Community Board: 2**. Variance to allow a new seven-story residential building, contrary to use regulations.  
-----

**160-08-BZ**

651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot(s) 61,64,67,74-78,80,82, Borough of **Brooklyn, Community Board: 5**. Variance to enlarge and legalize the operation of parking, contrary to use regulations.  
-----

**161-08-BZ**

136 Dover Street, Between Hampton Street and Oriental Boulevard., Block 8735, Lot(s) 80, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for enlargement of a single family home.  
-----

**162-08-BZ**

150 East 93rd Street, Southeast corner of East 93rd Street and Lexington Avenue., Block 1521, Lot(s) 51, Borough of **Manhattan, Community Board: 4**. Special Permit (73-621) to allow a rooftop enlargement, contrary to regulations.

-----  
**163-08-BZ**

2022 Avenue M, Southwest corner of the intersection of Avenue M and East 21st Street., Block 7656, Lot(s) 31, Borough of **Brooklyn, Community Board: 14**. Variance to permit the construction of a community facility building (synagogue).  
-----

**164-08-A**

26-1/2 State Road, North side of Rocaway Point Boulevard, west of Beach 178th Street., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Proposed reconstruction in the bed of a mapped street contrary to General City Law Section 35. R4 Zoning  
-----

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

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# CALENDAR

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**JULY 15, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 15, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**406-82-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Adolf Clause & Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application April 29, 2008 – Extension of Term/waiver for a Special Permit (§73-243) Eating and Drinking Establishment (McDonald's) with accessory drive-thru which expired on January 18, 2008; and an Extension of Time to obtain a Certificate of Occupancy which expired on January 1, 2006 in an C1-3/R05 zoning district.

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

**COMMUNITY BOARD #11BK**

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**561-87-BZ**

APPLICANT – The Agusta Group, for 2700 Jerome Avenue Realty Corporation, owner.

SUBJECT – Application April 13, 2007 – Extension of Term/Amendment/Waiver-To permit eating and drinking. To legalize interior layout change and reduction from 53 to 50. To permit an increase in the hours of operation of the (UG12) from the 9:00pm-3:00am to 8:00pm 4:00am Wednesday thru Sunday.

PREMISES AFFECTED – 2700 Jerome Avenue, easterly side of Jerome Avenue, 221.27' northerly of Kingsbridge Road, Block 3317, Lot 17, Borough of Bronx.

**COMMUNITY BOARD #7BX**

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**152-05-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: 255 Butler LLC, owner.

SUBJECT – Application June 17, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 255 Butler Street, 484 Baltic Street; 206-224 Nevins Street, irregular L-shape lot west side Nevins Street, between Butler and Baltic, Block 405, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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**302-06-BZ**

APPLICANT – Harold Weinberg, P.E., for Mirror Yeshiva Central Inst.

SUBJECT – Application April 10, 2008 – Reopening for an Amendment (§§72-01 and 72-22) to allow a small increase in floor area and floor area ratio.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner of Avenue R, between Ocean Parkway and East 7<sup>th</sup> Street, Block 6663, Lot 46, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

-----

**APPEALS CALENDAR**

**104-08-BZY thru 119-08-BZY**

APPLICANT – Anthony J. Tucci, for Carmel Homes LLC, owner.

SUBJECT – Application April 23, 2008 – Extension of time (11-332) to complete construction and obtain a Certificate of Occupancy under the prior district regulations. R3X zoning district Series cases 104-08-BZY thru 119-08-BZY

PREMISES AFFECTED – 14/589 Carmela Court, Mill Road, Block 4690, Lots 129, 128, 127, 126, 120, 121, 122, 123, 124, 125, 110, 111, 112, 113, 114, 115, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**JULY 15, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 15, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**127-07-BZ**

APPLICANT – Gerald J. Caliendo, R.A., for Maric Mechanical, Incorporated, owner.

SUBJECT – Application May 18, 2007 – Variance (§ 72-21) to allow the enlargement of a legal, non-conforming warehouse and office building (UG16); proposal increases the degree of non-conformance (contrary to § 52-31) and non-compliance (contrary to § 54-31). Proposal is therefore contrary to regulations for use (§ 22-00), front yard (§ 23-45), side yard (§ 23-466), rear yard (§ 23-47), FAR (§ 23-141) and wall height (§ 23-631). R4 district.

PREMISES AFFECTED – 19-03 75<sup>th</sup> Street, southeast corner of Hazen Street and 75<sup>th</sup> Street, Block 943, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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# CALENDAR

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## **220-07-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§ 42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

-----

## **89-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Majorie Wilpon, owner.

SUBJECT – Application April 11, 2008 – Special Permit (§73-125) to allow a medical office (UG 4) in an existing one-story commercial office building, allowed by prior variance. R3X (HS) district.

PREMISES AFFECTED – 1101 Victory Boulevard, northwest corner of Victory Boulevard and Melrose Avenue, Block 247, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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## **156-08-BZ**

APPLICANT – Friedman & Gotbaum, LLP, for Hilton Resorts Corporation, owner; Spa Chakra, LLC, lessee.

SUBJECT – Application June 5, 2008 – Special Permit pursuant to ZR Section 73-36 to allow the proposed Physical Culture Establishment on a portion of the ground floor of a new hotel. The proposal is contrary to ZR Section 32-10. The premises is located in a C5-3 zoning district.

PREMISES AFFECTED – 102 West 57<sup>th</sup> Street, Southerly side of West 57<sup>th</sup> Street, 150 feet west of Sixth Avenue, Block 1009, Lots 37 & 39, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 17, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**1334-66-BZ**

APPLICANT – Sheldon Lobel, PC, for ACP Lincoln Garages, LLC, owners.

SUBJECT – Application March 3, 2008 – Reopening for an extension of term for a variance, which was originally granted under Section 60(3) of the Multiple Dwelling Law, which permits the operation of a transient parking garage in the cellar and sub-cellar of a building. R8 zoning district. PREMISES AFFECTED – 150 West End Avenue, east side of West End Avenue between West 66<sup>th</sup> and West 70<sup>th</sup> Streets, Block 1158, Lot 80, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on May 5, 2008; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, and then to decision on June 17, 2008; and

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

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

WHEREAS, the subject premises is located on the east side of West End Avenue between West 66<sup>th</sup> Street and West 67<sup>th</sup> Street; and

WHEREAS, the site is located within an R8 zoning district and is occupied by a 29-story residential building; and

WHEREAS, the cellar and sub-cellar are occupied by an accessory garage with 89 spaces; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit a

maximum of 44 surplus parking spaces to be used for transient parking for a term of 20 years; and

WHEREAS, on May 5, 1998, under the subject calendar number, the Board waived the Rules of Practice and Procedure and reopened and amended the resolution to grant a ten-year extension of term, which expired on May 5, 2008; and

WHEREAS, the applicant submitted a photograph of a sign posted onsite, which states building residents' right to recapture the surplus 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 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 May 5, 2008, to expire on May 5, 2018; *on condition* that that all work shall substantially conform to drawings filed with this application and marked 'Received March 3, 2008'-(1) sheet; and *on further condition*:

THAT this term shall expire on May 5, 2018;

THAT a sign indicating that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the parking garage operator 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. 101893756)

Adopted by the Board of Standards and Appeals, June 17, 2008.

**120-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Anthony Ariola, owner.

SUBJECT – Application January 23, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the commercial use (UG6) in an existing two-story building, which expired on May 14, 2006, located in an R4 zoning district and a Waiver of the rules.

PREMISES AFFECTED – 134-02 Cross Bay Boulevard, western side of Cross Bay Boulevard, between Gold and

# MINUTES

Silver Roads, Block 11374, Lot 134, Borough of Queens.

## COMMUNITY BOARD #10Q

### APPEARANCES –

For Applicant: Elizabeth Safian.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an extension of the time to complete construction and obtain a certificate of occupancy for a commercial building (Use Group 6), which expired on May 14, 2006; and

WHEREAS, a public hearing was held on this application on February 12, 2008, after due notice by publication in *The City Record*, with continued hearings on March 11, 2008, April 4, 2008, and May 6, 2008, and then to decision on June 17, 2008; and

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

WHEREAS, the subject premises is located on the west side of Cross Bay Boulevard, between Gold Road and Silver Road, within an R4 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building (Use Group 6); and

WHEREAS, on May 14, 2002, under the subject calendar number, the Board granted a variance to permit the legalization of commercial uses (Use Group 6) in an existing two-story building; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed within four years from the date of the grant; and

WHEREAS, the applicant represents that additional time was necessary to finance and complete construction; and

WHEREAS, thus, the applicant now requests a three-year extension to obtain a new certificate of occupancy; and

WHEREAS, at hearing, the Board asked the applicant if all signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant provided a revised zoning analysis, which reflects that an exterior canopy and other signage does not comply with C1 zoning district regulations; and

WHEREAS, the Board directed the applicant to remove the non-complying signage; and

WHEREAS, photographs submitted to the Board confirmed that the canopy and other non-complying signage had been removed; 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution dated May 14, 2002, 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 three years from the expiration of the prior grant; *on condition* that that all work shall substantially conform to drawings filed with this application and marked ‘Received April 28, 2008’–(1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained by May 14, 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.”

Adopted by the Board of Standards and Appeals, June 17, 2008.

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## 370-02-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-14 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 40, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Elizabeth Safian.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the time to complete construction and obtain a certificate of occupancy for a medical office building, which expired on May 20, 2007; and

WHEREAS, this application was filed with a companion application, under BSA Cal. No. 373-02-BZ, for a related medical office building at 56-44 Main Street; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by

# MINUTES

publication in *The City Record*, with continued hearings on April 1, 2008 and May 6, 2008, and then to decision on June 17, 2008; and

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

WHEREAS, the site is located on the west side of Main Street, between Booth Memorial Avenue and 56<sup>th</sup> Avenue, within an R5B zoning district; and

WHEREAS, on May 20, 2003, under the subject calendar number, the Board granted a variance to permit the legalization of the existing two-story building, occupied by a medical office, at the site in what was then an R4 zoning district; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed in accordance with ZR § 72-23, by May 20, 2007; and

WHEREAS, on February 28, 2007, the site was rezoned to R5B and the use is now permitted as of right, but the requirement for supplemental waivers remains; and

WHEREAS, the application was brought on behalf of New York Hospital Medical Center of Queens (the "Hospital"); and

WHEREAS, the applicant represents that the Hospital was unable to complete the construction and obtain the new certificate of occupancy within the prescribed time frame; and

WHEREAS, the Board observes that certain construction, including access ramps, has not been completed and because this involves safety concerns and the building is already occupied, the Board directed the applicant to complete the construction expeditiously; and

WHEREAS, at hearing, the Board directed the applicant to provide a timeline as to when the construction would be completed; and

WHEREAS, the applicant represents that the Hospital has not completed construction due to funding constraints and would complete it as soon as possible; and

WHEREAS, the applicant has requested one year to obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to complete construction and an additional six-month 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 May 20, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction to December 17, 2008 and to grant an extension of time to obtain a certificate of occupancy to June 17, 2009; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by June 17, 2009;

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. 401482766)

Adopted by the Board of Standards and Appeals, June 17, 2008.

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## 373-02-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for New York Hospital Medical Center of Queens, owner.

SUBJECT – Application February 1, 2008 – Extension of Time to obtain a Certificate of Occupancy for a (UG4) Medical Offices, in an R5B zoning district, which expired on May 20, 2007, and a waiver of the rules.

PREMISES AFFECTED – 56-44 Main Street, between 56<sup>th</sup> and Booth Memorial Avenue, Block 5133, Lot 55, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the time to complete construction and obtain a certificate of occupancy for a medical office building, which expired on May 20, 2007; and

WHEREAS, this application was filed with a companion application, under BSA Cal. No. 370-02-BZ, for a related medical office building at 56-14 Main Street; and

WHEREAS, a public hearing was held on this application on March 4, 2008, after due notice by publication in *The City Record*, with continued hearings on April 1, 2008 and May 6, 2008, and then to decision on June 17, 2008; and

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

WHEREAS, the site is located on the west side of Main Street, between Booth Memorial Avenue and 56<sup>th</sup> Avenue, within an R5B zoning district; and

WHEREAS, on May 20, 2003, under the subject calendar number, the Board granted a variance to permit the legalization of the existing two-story building, occupied by a

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# MINUTES

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medical office, at the site in what was then an R4 zoning district; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed in accordance with ZR § 72-23, by May 20, 2007; and

WHEREAS, on February 28, 2007, the site was rezoned to R5B and the use is now permitted as of right, but the requirement for supplemental waivers remains; and

WHEREAS, the application was brought on behalf of New York Hospital Medical Center of Queens (the "Hospital"); and

WHEREAS, the applicant represents that the Hospital was unable to complete the construction and obtain the new certificate of occupancy within the prescribed time frame; and

WHEREAS, the Board observes that certain construction, including access ramps, has not been completed and because this involves safety concerns and the building is already occupied, the Board directed the applicant to complete the construction expeditiously; and

WHEREAS, at hearing, the Board directed the applicant to provide a timeline as to when the construction would be completed; and

WHEREAS, the applicant represents that the Hospital has not completed construction due to funding constraints and would complete it as soon as possible; and

WHEREAS, the applicant has requested one year to obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to complete construction and an additional six-month 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 May 20, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction to December 17, 2008 and to grant an extension of time to obtain a certificate of occupancy to June 17, 2009; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by June 17, 2009;

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. 401482775)

Adopted by the Board of Standards and Appeals, June 17, 2008.

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**718-56-BZ**

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation

SUBJECT – Application March 31, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil) which expired on July 2, 2002; an Extension of Time to obtain a Certificate of Occupancy which expired on July 27, 2000 and an Amendment to legalize the conversion of one restroom to office space and office/sales area to an accessory convenience store in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner of North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.  
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**1098-83-BZ**

APPLICANT – Walter T. Gorman, P.E., Joseph M. Mattone, Estate of James J. Mannix, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application March 21, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil), in C1-2/R5 zoning district, which expired on April 3, 2004 and an Amendment to legalize the conversion of the sales area to an accessory convenience store, the installation of planters, public telephone, chain link fencing atop a portion of a brick wall and the elimination of bollards on Northern Boulevard.

PREMISES AFFECTED – 147-10 Northern Boulevard, south east corner of 147<sup>th</sup> Street. Block 5016, Lot 18, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.  
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**16-92-BZ**

APPLICANT – Stadtmuer Bailkin, LLP, for High Teck

# MINUTES

Park, Inc., owner.

**SUBJECT** – Application May 18, 2007 – Pursuant to Z.R §72-01 and §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: Sheldon Lobel.

For Opposition: Loris Sones and Molly Rouzie.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for continued hearing.

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## **1149-62-BZ**

**APPLICANT** – Bryan Cave LLP, for College of Saint Francis Xavier/Clothing Workers Center, Incorporated.

**SUBJECT** – Application May 8 2008 – Amendment to a previously approved UG3 parochial school (Xavier High School) for the increase of the zoning lot in a C6-2 zoning district.

**PREMISES AFFECTED** – 24-40 West 16<sup>th</sup> Street & 31-35 West 15<sup>th</sup> Street, irregularly shaped lot with frontage on W. 15<sup>th</sup> & 16<sup>th</sup>, between 5<sup>th</sup> and Avenue of the Americas. Block 817, Lot 72, 21. Borough of Manhattan.

## **COMMUNITY BOARD #5M**

**APPEARANCES** –

For Applicant: Robert Davis.

**THE VOTE TO CLOSE HEARING** –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.

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## **84-91-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Ronald Klar, owner.  
**SUBJECT** – Application March 13, 2008 – Extension of Term/waiver of a previously granted variance (72-21) for the continued UG6 use (Professional Offices) in a residential building in an R4A zoning district and an Amendment to allow storage use in the attic.

**PREMISES AFFECTED** – 2344 Eastchester Road, east side, south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

## **COMMUNITY BOARD #11BX**

**APPEARANCES** –

For Applicant: Adam Rothkrug.

**THE VOTE TO CLOSE HEARING** –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

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## **200-00-BZIII**

**APPLICANT** – Eric Palatnik, P.C., for Plans 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 37<sup>th</sup> Avenue aka 37-16 108<sup>th</sup> Street, southwest corner of 108<sup>th</sup> Street and 37<sup>th</sup> Avenue, Block 1773, Lot 10, Borough of Queens.

## **COMMUNITY BOARD #3Q**

**APPEARANCES** –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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## **33-06-BZII**

**APPLICANT** – Rampulla Associates Architects, owner; Carroll's Garden Florist Corp., lessee.

**SUBJECT** – Application March 5, 2008 – Amendment to a previously-approved variance to allow the relocation of the approved commercial building to a different portion of the zoning lot. R1-2 district.

**PREMISES AFFECTED** – 1457 Richmond Road, north side Richmond Road from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

## **COMMUNITY BOARD #2SI**

**APPEARANCES** –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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# MINUTES

## APPEALS CALENDAR

### 259-07-A

APPLICANT – George N. Mihalios, Esq., for Hikmat Sultan, owner.

SUBJECT – Application November 8, 2007 – Proposed construction of an eight story mixed use building 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.

PREMISES AFFECTED – 41-97 Parsons Boulevard, Block 5374, Lot 11, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: George N. Mihalios.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 10, 2007, acting on Department of Buildings Application No. 402540871, reads in pertinent part:

“Proposed application to build in the bed of a mapped street requires approval from the Board of Standards and Appeals pursuant to GCL Section 35;” and

WHEREAS, this application requests permission to build an eight-story, multi-unit residential building with a medical office located within the bed of a mapped street (Ash Avenue) contrary to General City Law Section 35; and

WHEREAS, the subject zoning lot is a split lot located in partially within an R6 zoning district and partially within an R3-2 zoning district; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in the *City Record*, with a continued hearing on May 13, 2008, then to decision on June 17, 2008; and

WHEREAS, by letter dated January 16, 2008, the Department of Environmental Protection (DEP) states that it reviewed the above application and has no objections to the proposed application; and

WHEREAS, DEP also notes that there are no existing sewers or City water mains in the bed of Ash Avenue between Parsons Boulevard and 147<sup>th</sup> Street; and

WHEREAS, by letter dated March 31, 2008, the Fire Department states that it has reviewed the above application and has no objection to the proposed application; and

WHEREAS, by letter dated April 18, 2008, the Department of Transportation (DOT) states that it has reviewed the above application and has no objections provided that the curb and sidewalk abutting the proposed development to conform to the maximum existing sidewalk width and curb alignment as currently exists in Parsons

Boulevard; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the subject site in its ten-year capital plan; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the subject lot is free of any easements or encumbrances and to provide the ownership history of the lot; and

WHEREAS, in response to the Board’s request the applicant provided a title company report that reflects that the lot is a single tax lot free of any easements and encumbrances; and

WHEREAS, based upon its review of the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 7, 2006, acting on Department of Buildings Application No. 402540871, is modified by the power vested in the Board by Sections 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 11, 2008”-one (1) sheet and 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 is to be approved by the Department of Buildings;

THAT the Department of Buildings must 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 17, 2008.

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### 194-07-A

APPLICANT – Rothkrug Rothkrug & Spector, for Elite III Contractor’s Inc., owner.

SUBJECT – Application August 8, 2007 – Appeal seeking 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. R5 Zoning District.

PREMISES AFFECTED – 1447 Rosedale Avenue, Cross Bronx Expressway Service Road N and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.

### COMMUNITY BOARD #9BX

# MINUTES

## APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Zenali Tirado.

For Administration: Lisa Orrantia, Department of Buildings.

## THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

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## 255-07-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon LLC, owner.

SUBJECT – Application April 8, 2008 – Proposed construction of a daycare center located within the bed of mapped street (Francis Lewis Boulevard contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard (aka 196-23 42<sup>nd</sup> Ave.) corner of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lots 10 & 12, Borough of Queens.

## COMMUNITY BOARD #11Q

### APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Henry Euler and Dennis Devoti.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for decision, hearing closed.

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## 141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.

SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

## COMMUNITY BOARD #13Q

### APPEARANCES –

For Applicant: Hakime Altine.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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## 68-08-A

APPLICANT – Sheldon Lobel, P.C., for N.J.A. Ventures, LLC, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior R6A zoning. R5D Zoning District.

PREMISES AFFECTED – 135-23 82<sup>nd</sup> Avenue, between 135<sup>th</sup> Street and 138<sup>th</sup> Street (aka Hoffman Avenue), Block 9669, Lot 30, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Jordan Most and Gerald Caliendo, R.A.

For Opposition: Seymour Schwartz.

For Administration: Amandus Derr, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 12:30 P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JUNE 17, 2008 1:30 P.M.

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

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## ZONING CALENDAR

### 174-07-BZ

#### CEQR #08-BSA-103K

APPLICANT – Carl A. Sulfaro, Esquire, for David Oil Corporation, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application June 28, 2007 – Special Permit (§73-211). Proposed reconstruction of an existing Auto Service Station with new metal canopy, new fuel tanks, pumps, new accessory convenience store, located in a C2-3/R7-A zoning district.

PREMISES AFFECTED – 1925 Coney Island Avenue, a/k/a 1935 Coney Island Avenue, Northeast corner of Avenue P. Block 6758, Lot 51, Borough of Brooklyn.

#### COMMUNITY BOARD #12BK

### APPEARANCES –

For Applicant: Carl A. Sulfaro.

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

THE VOTE TO GRANT –

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# MINUTES

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

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 1, 2007, acting on Department of Buildings Application No. 302333981, reads in pertinent part:

“Proposed removal of existing one story service station building and replacement with a new one story accessory convenience store with a new metal canopy structure and new fuel dispensing pumps at an existing gasoline service station now located within a C2-3 within R7-A zoning district as shown on map #22-D is contrary to Section 52-22 ZR and Section 52-41 ZR and is hereby denied;” and

WHEREAS, this is an application under ZR § 73-211, to permit certain site modifications to an existing automotive service station including a new metal canopy, new fuel tanks and pumps and a new accessory convenience store in a C2-3 (R7A) zoning district, contrary to ZR §§ 52-22 and 52-41; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2008, and then to decision on June 17, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the premises is located on the northeast corner of Coney Island Avenue and Avenue P; and

WHEREAS, the subject site has a total lot area of 16,622 sq. ft.; and

WHEREAS, the site is currently occupied by an automotive service station with an accessory convenience store; and

WHEREAS, the Board has had jurisdiction over the site since June 26, 1919, when, under BSA Cal. No. 368-19-BZ, it approved a variance for the construction of a one-story parking garage in what was then a residential zoning district; and

WHEREAS, on September 14, 1982, under BSA Cal. No. 215-82-A, the Board granted an appeal to permit self-service gasoline pumps at the site; and

WHEREAS, the applicant now seeks to make the following modifications to the site: (1) eliminate automotive repair service, (2) construct a new accessory convenience store, (3) construct a new metal canopy over the new fuel dispensing area, (4) increase the number of fueling positions from four to 12, and (5) replace existing fuel storage tanks; and

WHEREAS, the required findings for the special permit for automotive service stations in certain districts, pursuant to ZR § 73-211, include the following: (1) that the site has a minimum lot area of 7,500 sq. ft., (2) that any facilities for

auto repair and washing be located within an enclosed building, (3) that five reservoir parking spaces be provided, (4) that means of ingress and egress are designed so as to cause minimum obstruction, (5) that screening be provided along lot lines adjoining residential districts, and (6) that signage comply with applicable district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the automotive service station, as currently operating, complies with these requirements for the special permit; and

WHEREAS, at hearing, the Board asked the applicant to confirm that all signage complied with zoning district regulations; and

WHEREAS, in response, the applicant provided a revised signage analysis reflecting compliance with C2-3 zoning district parameters; and

WHEREAS, additionally, the applicant submitted evidence into the record from New York City Transit stating that it agreed to relocate the bus stop on Coney Island Avenue further to the north (at the applicant’s expense) so as to improve vehicle circulation and safety; and

WHEREAS, accordingly, the applicant has submitted sufficient evidence that the findings set forth at ZR § 73-211 have been met; and

WHEREAS, the Board notes that the retention and renovation of the existing station 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 §§ 73-211 and 73-03; 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 and makes the required findings under ZR §§ 73-211 and 73-03, to permit certain site modifications to an existing automotive service station including a new metal canopy, new fuel tanks and pumps and a new accessory convenience store in a C2-3 (R7A) zoning district, contrary to ZR §§ 52-22 and 52-41; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 6, 2008” - (8) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on June 17, 2018;

THAT signage shall comply with C2-3 zoning district regulations and be limited to that indicated on the BSA-approved plans;

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

THAT the site shall be maintained clean and free of debris and graffiti;

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# MINUTES

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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 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 17, 2008.

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## 242-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 1760 Gleason Properties, LLC, owner.

SUBJECT – Application October 26, 2007 – Variance (§72-21) to construct a two story, two family detached residence with an accessory one car garage and one accessory open parking space on a vacant corner lot which encroaches into a required front yard (23-45) in an R5 zoning district.

PREMISES AFFECTED – 1760 Gleason Avenue, Commonwealth Avenue and Saint Lawrence Avenue, Block 3752, Lot 41, Borough of Bronx.

## COMMUNITY BOARD # 9BX

APPEARANCES –

For Applicant: Irvin Minkin.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 17, 2007, acting on Department of Buildings Application No. 210014250, reads in pertinent part:

“Proposed residential building . . . and open parking within a required front yard is contrary to Section 23-45;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the construction of a two-story two-family home on a lot that does not comply with front yard requirements, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in The City Record, with a continued hearing on May 13, 2008, and then to decision on June 17, 2008; and

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

WHEREAS, Community Board 9, Bronx, recommends disapproval of this application; and

WHEREAS, a neighbor, represented by counsel, provided testimony in opposition to the proposed application, citing concerns regarding the orientation of the proposed home towards Commonwealth Avenue as opposed to Gleason Street; and

WHEREAS, the proposed building will have the following non-complying parameter: one front yard with a depth of 3’-0” on the western portion of the lot (front yards with depths of 10’-0” are the minimum required); and

WHEREAS, the site is located on the southeast corner of Gleason Avenue and Commonwealth Avenue and is currently vacant; and

WHEREAS, the proposed building will provide a floor area of 1,870 sq. ft., 0.70 FAR, a wall height of 19’-0”, a total height of 25’-0”, and two parking spaces; all of these parameters comply with zoning district regulations; and

WHEREAS, the applicant states that the site cannot be developed without a variance, due to its narrow width, 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 site in compliance with underlying district regulations: the corner lot’s narrow width of 25 feet; and

WHEREAS, the applicant notes that the lot width and lot area are non-complying conditions; the site has a lot width of 25’-0” and a lot area of 2,667.25 sq. ft. (the minimum required lot width and lot area in the zoning district are, respectively, 30’-0” and 2,850 sq. ft.); and

WHEREAS, the applicant has submitted evidence establishing that the subject lot was owned separate and apart from both adjacent lots on December 15, 1961 and at the time of the current application; and

WHEREAS, as to the lot’s width, the applicant notes that without a front yard waiver, the site could not feasibly be developed; and

WHEREAS, the applicant notes that, given the narrow width and position as a corner lot, the provision of two front yards and two side yards would result in an uninhabitable home with a width of 10’-0”; and

WHEREAS, the applicant notes that the surrounding area is characterized by lots with widths comparable to that of the subject site, but that the majority of them are occupied by homes built prior to December 15, 1961 or are interior lots with different yard requirements; and

WHEREAS, further, there is no other vacant corner lot of comparable size within a 400-ft. radius of the site; and

WHEREAS, the applicant notes that a number of the existing homes in the area have pre-existing non-complying yards; and

WHEREAS, the Board agrees that the front yard waiver is necessary in order to construct a habitable home; and

WHEREAS, thus, the Board finds that the aforementioned unique physical condition creates a practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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# MINUTES

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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 home complies with all R5 zoning district regulations aside from the front yard requirement, and that the proposed bulk and height is compatible with the other residential buildings in the immediate vicinity; and

WHEREAS, the applicant originally proposed a home with a garage at the southern end of the site, which also encroached into the required front yard; and

WHEREAS, at hearing, the Board expressed concern that the proposed parking with garage may not be viable; and

WHEREAS, in response, the applicant revised the site plan to eliminate the proposed garage and to allow for the parking area to be accessed via a curb cut between two mature street trees; and

WHEREAS, the Board finds this alternative, located within the deep southern side yard to be viable and compatible with neighborhood character; and

WHEREAS, based 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, 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 R5 zoning district, the construction of a two-story two-family home on a lot that does not comply with front yard requirements, 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 March 11, 2008"-- (5) sheets and "April 29, 2008"--(1) sheet; and on further condition:

THAT the parameters of the proposed home are as follows: one side yard of 5'-0" along the eastern lot line, one side yard of 36'-0" along the southern lot line, one front yard of 12'-0" along the northern lot line, and one front yard of 3'-0" along the western lot line; 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, June 17, 2008.

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## **24-08-BZ CEQR #09-BSA-050R**

APPLICANT – Omnipoint Communications, Inc., for Village Greens Shopping Center, LLC., owner.

SUBJECT – Application February 5, 2008 – Special Permit (§73-30) seek approval for a proposed 90-foot non-accessory radio tower and related equipment at grade. C1-3 overlay within R3-2 and SRD district.

PREMISES AFFECTED – 230-262 Arden Avenue, south side Arden Avenue and Tarbes Avenue, Block 6025, Lot 35, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

#### **APPEARANCES –**

For Applicant: Robert Gaudio.

For Opposition: Sherwin Berman and David Codner.

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

#### **THE VOTE TO GRANT –**

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

#### **THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Superintendent, dated January 15, 2008, acting on Department of Buildings Application No. 500863309, reads in pertinent part:

“Proposed construction of telecommunication cabinets on grade and 90 feet high unipole that are not attached to a building or other secure structure that has a lawful use in commercial C1-3 district as per TPPN #5/98 is referred to Board of Standards and Appeals for approval pursuant to . . . 73-30 of NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within a C1-3 (R3-2) zoning district

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# MINUTES

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within the Special South Richmond Development District, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 32-21; and

WHEREAS a public hearing was held on this application on May 13, 2008 after due notice by publication in *The City Record*, and then to decision on June 17, 2008; and

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

WHEREAS, neighborhood residents testified in opposition to this application, citing concerns with its location and impacts on health; and

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

WHEREAS, the proposed telecommunications pole will be located to the rear of a one-story commercial building (Use Group 6) at the Village Greens Shopping Plaza; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 90-foot tall pole with internally-mounted antennas and related equipment located within a fenced area; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, a special permit is required from the City Planning Commission pursuant to ZR § 107-43, since the facility exceeds the 50-ft. height limitation of the Special South Richmond Development District; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole-related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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, at hearing neighborhood residents raised concerns about the proximity of the telecommunications pole to a local public school and to homes, and its potential health effects; and

WHEREAS, in response, the applicant represented that the pole would be located at least 700 feet from the local public school and from homes and that radio frequency

wave exposure was well below the limits set by the Federal Communications Commission; 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. 08-BSA-049R, dated February 5, 2008; 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 a C1-3 (R3-2) zoning district within the Special South Richmond Development District, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 32-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed

# MINUTES

with this application marked "Received February 5, 2008"- (6) sheets; and *on further condition*;

THAT any fencing will be maintained in accordance with BSA-approved plans;

THAT approval is conditioned on obtaining a special permit from the City Planning Commission pursuant to ZR § 107-43;

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 17, 2008.

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## 27-08-BZ

### CEQR #09-BSA-052R

APPLICANT – Slater & Beckerman, LLP for JDK Hylan Properties, LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 13, 2008 – Special Permit (§73-30) to permit in an R3X district, a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4845 Hylan Boulevard, northwest corner of Barclay Avenue, Block 6401, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Burdiaso and Slater & Beckerman.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Superintendent, dated February 11, 2008, acting on Department of Buildings Application No. 510023920, reads in pertinent part:

"Proposed unipole in R3X district requires the issuance of a special permit by the Board of Standards and Appeals. Refer to the BSA for issuance of a special permit under ZR 73-30 of the Zoning Resolution;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3X zoning district within the Special South Richmond Development District, the

proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on May 20, 2008 after due notice by publication in *The City Record*, and then to decision on June 17, 2008; and

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

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by an open parking lot; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 50-foot tall pole designed as a flagpole with internally-mounted antennas and related equipment, located within a fenced area immediately adjacent to the pole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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, at hearing, the applicant stated that the flag is proposed to be illuminated by three narrow beamed lights which will shine only on the flag and will be directed away from nearby residential uses; and

WHEREAS, the applicant states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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

# MINUTES

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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-052R, dated February 13, 2008; 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 R3X zoning district within the Special South Richmond Development District, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 17, 2008"-(5) sheets; and *on further condition*;

THAT fencing 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 17, 2008.

## **29-08-BZ CEQR #09-BSA-053R**

APPLICANT – Slater & Beckerman, LLP, for Hebrew Free Burial Association, owner; Northrop Grumman Info., Tech., Inc., lessee.

SUBJECT – Application February 14, 2008 – Special Permit (§73-30) to permit a 50-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/ Wireless. R3-2 zoning district.

PREMISES AFFECTED – 422 Clarke Avenue, south side of Clarke Avenue between St. Patricks Place and Tysen Court, Block 4467, Lot 23, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

#### **APPEARANCES –**

For Applicant: Robert Burdioso.

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

#### **THE VOTE TO GRANT –**

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

#### **THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Superintendent, dated February 6, 2008, acting on Department of Buildings Application No. 510008689, reads in pertinent part:

“Proposed monopole (Use Group 6) is not permitted within zoning district R3-2, and therefore requires a special permit under ZR 73-30.

Refer to the Board of Standards and Appeals for review and issuance of a special permit pursuant to ZR 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-2 zoning district within the Special South Richmond Development District, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this



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# MINUTES

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application on May 20, 2008 after due notice by publication in *The City Record*, and then to decision on June 17, 2008; and

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

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by the Hebrew Free Burial Association Mount Richmond Cemetery; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 50-foot tall pole designed as a light pole, with internally-mounted antennas and related equipment located within a fenced area; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant represents that the height of the pole 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, at hearing, the applicant further represented that the light from the pole will be directed downward and away from nearby residential 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-053, dated February 14, 2008; 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 R3-2 zoning district within the Special South Richmond Development District, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 14, 2008"- (5) sheets; and *on further condition*;

THAT any fencing 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;

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# MINUTES

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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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2008.

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## 38-08-BZ

### CEQR #09-BSA-059M

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 40 Broad LLC, owner; 40 Broad Commercial LLC, lessee. SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing 25-story commercial building. The proposal is contrary to §32-10. C5-5 within the Historic & Commercial Core Area of the Special Lower Manhattan District.

PREMISES AFFECTED – 40 Broad Street (a/k/a 34-40 New Street) lot fronting Broad Street and New Street, south of Exchange Place, north of Beaver Street, Block 24, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #1M

#### APPEARANCES –

For Applicant: Sidney N. Hockens.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 23, 2008, acting on Department of Buildings Application No. 110069372, reads in pertinent part:

“A Physical Culture Establishment is not a permitted as of right use in a C5-5 district;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district within the Historic and Commercial Core Area of the Special Lower Manhattan District, the establishment of a physical culture establishment (PCE) on portions of the second and third floors of a 25-story mixed use residential/commercial office building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, and then to decision on June 17, 2008; and

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

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

WHEREAS, the subject site occupies a through lot located on the west side of Broad Street and the east side of New Street between Exchange Place and Beaver Street; and

WHEREAS, a 25-story mixed-use commercial/residential building is currently under construction at the site; and

WHEREAS, the PCE will occupy a total of approximately 8,320 sq. ft. of floor area on portions of the second and third floors; and

WHEREAS, the PCE will be operated as Setai Club Spa; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the building plans reflect that the PCE will be located at least four stories below the residential portions of 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 617.2 ak); 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. 08BSA059M, dated February 22, 2008; 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

# MINUTES

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 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 C5-5 zoning district within the Historic and Commercial Core Area of the Special Lower Manhattan District, the establishment of a physical culture establishment on portions of the second and third floors of a 25-story mixed use residential/commercial office building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 18, 2008"- (2) sheets and "Received February 22, 2008"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 17, 2018;

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

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

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

THAT 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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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 17, 2008.

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## 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

APPEARANCES –

For Applicant: Eric Palatnik..

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for continued hearing.

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## 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 and Robert Pauls.

For Opposition: Marc Bresky, Marie Marsina, Margaret Nihan, Elliott Socci, Stuart Hersh, Marie L. Morra and Arthur F. Kelley.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for continued hearing.

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## 119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§ 72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§ 42-10), rear yard (§ 43-26) and parking (§ 44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

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

# MINUTES

19, 2008, at 1:30 P.M., for continued hearing.

## 171-07-BZ

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED – 167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Judith Barron.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for continued hearing.

## 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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

## COMMUNITY BOARD #5Q

APPEARANCES – Robert Burdiaso.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for an adjourned hearing.

## 245-07-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Hawthorne Village, LLC, owner.

SUBJECT – Application October 30, 2007 – Variance (§ 72-21) to allow the residential conversion of an existing five-story industrial building. Proposed project will contain 147 dwelling units, ground floor retail space and 59 accessory parking spaces. Proposal is contrary to use regulations (§ 42-00). M1-2 district.

PREMISES AFFECTED – 220 Water Street, between Water and Bridge Streets, Block 41, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Chris Wright and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for continued hearing.

## 248-07-BZ

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to section (23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for continued hearing.

## 274-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Abdo Balikcioglu, owner.

SUBJECT – Application November 29, 2007 – Special Permit (§73-522) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141) and side yards (§23-461) in an R3X zoning district.

PREMISES AFFECTED – 1157 83<sup>rd</sup> Street northern side of 83<sup>rd</sup> Street between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue, Block 6301, Lot 54, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

## 9-08-BZ

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§107-42); to vary side yards (§23-462) and front yards (§23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

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# MINUTES

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PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES – Phil Rampulla.

**ACTION OF THE BOARD** – Laid over to July 24, 2008, at 1:30 P.M., for continued hearing.

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**12-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Empire State Development Corp., owner; Harlem Center, LLC, lessee.  
SUBJECT – Application January 3, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on a portion of the cellar and ground floor in a ten-story commercial building. The proposal is contrary to §32-10. C4-7 district.

PREMISES AFFECTED – 317 Lenox Avenue, a/k/a 105 W. 125<sup>th</sup> Street, west side of Lenox Avenue, between 125<sup>th</sup> Street and 126<sup>th</sup> Street, Block 1910, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #10M**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

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**39-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Kenbar Development, owner; Synergy Fitness, lessees.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of the subject building. The proposal is contrary to section 32-10. C2-1 district.

PREMISES AFFECTED – 77 Richmond Hill Road, middle of the Ken-Bar Plaza shopping center on Richmond Hill Road, Block 2380, Lot 500, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for continued hearing.

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**65-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for MBU Bridge Home, Inc., n/k/a Community Bridge Home, Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 28, 2008 – Special Permit (§73-30) to permit, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R3A zoning district.

PREMISES AFFECTED – 120-50 Springfield Boulevard, northwest corner of 121<sup>st</sup> Avenue and Springfield

Boulevard, Block 12694, Lot 56, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Robert Gardioso.

For Opposition: Angelica Herrera and Joan Williams.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

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**69-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for United States Columbarium Company, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application March 31, 2008 – Special Permit (§73-30) to permit in an R4 district, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R4 zoning district.

PREMISES AFFECTED – 61-40 Mt. Olivet Crescent, northwest corner of 62<sup>nd</sup> Avenue and Mt. Olivet Crescent, Block 2767, Lot 1, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

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**85-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Braddock Avenue Owners, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”). R4 zoning district.

PREMISES AFFECTED – 222-89 Braddock Avenue, northwest corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 26

July 3, 2008

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### DIRECTORY

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*Commissioners*

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**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                  |     |
|----------------------------------|-----|
| DOCKET .....                     | 412 |
| <b>CALENDAR</b> of July 22, 2008 |     |
| Morning .....                    | 413 |
| Afternoon .....                  | 414 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, June 24, 2008**

Morning Calendar .....415

**Affecting Calendar Numbers:**

|                         |  |
|-------------------------|--|
| 775-55-BZ               | 2155-2159 Newbold Avenue, Bronx  |
| 1149-62-BZ              | 24-40 West 16 <sup>th</sup> Street and 31-35 West 15 <sup>th</sup> Street, Manhattan |
| 164-94-BZII             | 84 Hugh Grant Circle, Bronx  |
| 709-55-BZIII            | 2000 Rockaway Parkway, Brooklyn  |
| 615-57-BZ               | 154-11 Horace Harding Expressway, Queens   |
| 286-86-BZ               | 100 7 <sup>th</sup> Avenue, Brooklyn   |
| 826-86-BZII             | 269-10 Grand Central Parkway, Queens   |
| 827-86 BZII             | 270-10 Grand Central Parkway, Queens   |
| 828-86-BZII             | 271-10 Grand Central Parkway, Queens   |
| 788-89-BZ               | 187-17 Jamaica Avenue, Queens  |
| 24-96-BZ                | 213 Madison Street, Manhattan  |
| 340-03-BZ               | 408 Greenwich Street, Manhattan  |
| 163-07-A                | 11 Cliff Street, Staten Island   |
| 306-05-BZY              | 206A Beach 3 <sup>rd</sup> Street, Queens  |
| 162-06-A                | 2852 Faber Terrace, Queens   |
| 165-06-A                | 2848 Faber Terrace, Queens   |
| 39-07-A thru<br>40-07-A | 3248, 3250 Wickham Avenue, Bronx   |
| 230-07-BZY              | 90-22 176 <sup>th</sup> Street, Queens   |
| 265-07-A                | 57 West 70 <sup>th</sup> Street, Manhattan   |
| 47-08-A                 | 7228 Thursby Avenue, Queens  |
| 143-08-A                | 43 Beach 221 <sup>st</sup> Street, Queens  |

Afternoon Calendar .....422

**Affecting Calendar Numbers:**

|                          |   |
|--------------------------|---|
| 100-07-BZ                | 642 Barclay Avenue, Staten Island               |
| 30-08-BZ                 | 4360 Hylan Boulevard, Staten Island             |
| 457-65-BZ                | 4360 Hylan Boulevard, Staten Island             |
| 39-06-BZ                 | 245 Varet Street, Brooklyn                      |
| 281-06-BZ &<br>282-06-A  | 232 Beaumont Street, Brooklyn                   |
| 74-07-BZ                 | 6-10 West 70 <sup>th</sup> Street, Manhattan    |
| 114-07-BZ                | 7-05 152 <sup>nd</sup> Street, Queens           |
| 271-07-BZ                | 213-219 West 23 <sup>rd</sup> Street, Manhattan |
| 282-07-BZ &<br>283-07-BZ | 774 Schenck Avenue, Brooklyn                    |
| 23-08-BZ                 | 182-69 80 <sup>th</sup> Road, Queens            |
| 36-08-BZ                 | 1177 East 23 <sup>rd</sup> Street, Brooklyn     |
| 37-08-BZ                 | 100 Merrill Avenue, Staten Island               |
| 58-08-BZ                 | 614-632 West 58 <sup>th</sup> Street, Manhattan |
| 80-08-BZ                 | 1073 East 24 <sup>th</sup> Street, Brooklyn     |
| 86-08-BZ                 | 111-26 Corona Avenue, Queens                    |
| 90-08-BZ                 | 104-36 196 <sup>th</sup> Street, Queens         |
| 91-08-BZ                 | 37-68 97 <sup>th</sup> Street, Queens           |
| 102-08-BZ                | 103 Beachview Avenue, Staten Island             |

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# DOCKET

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New Case Filed Up to June 24, 2008  
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**165-08-BZ**

11 Penn Plaza, South side of West 32nd Street between Seventh and Sixth Avenues., Block 807, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow a physical culture establishment on four levels in an existing 26-story building. The proposal is contrary to ZR section 32-10. C6-6 & C6-4.5 MiD districts.  
-----

**166-08-BZ**

1201 Avenue Z, Northeast corner of East 12th Street., Block 7433, Lot(s) 148, Borough of **Brooklyn, Community Board: 15**. Variance to allow the enlargement of commercial/residential of existing building, contrary to use regulations.  
-----

**167-08-BZ**

253 5th Avenue, Northeast corner of the intersection formed by 5th Avenue and West 28th Street., Block 858, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow the legalization of a physical culture establishment on the second floor of an existing seven-story building. The proposal is contrary to ZR section 32-10. C5-2 district.  
-----

**168-08-A**

63 Brighton 2nd Place, East side of Brighton 2nd Place, 110' north of Brighton 2nd Lane, Block 8662, Lot(s) 157, Borough of **Brooklyn, Community Board: 13**. Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36 . R6(OP) zoning district.  
-----

**169-08-BZ**

46 Laight Street, North side of Laight Street 25' of frontage on Laight Street depth of 100'., Block 35, Lot(s) 220, Borough of **Manhattan, Community Board: 1**. Variance to allow new five-and one half story residential building, contrary to bulk 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.**



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# CALENDAR

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**JULY 22, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 22, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **728-29-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Exxon Mobil Franchisee, lessee.  
SUBJECT – Application June 27, 2008 – Extension of Time to obtain a Certificate of Occupancy and Waiver of the rules for a UG16 Gasoline Service Station (Mobil), in an R-4 zoning district, which expired on May 15, 2003.  
PREMISES AFFECTED – 154-04 Horace Harding Expressway, Block 6744, Lot 71, Borough of Queens.  
**COMMUNITY BOARD #8Q**

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### **713-55-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Brendan Utopia Mobil, lessee.  
SUBJECT – Application May 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a gasoline service station (Mobil), in a C2-2/R3-2 zoning district, which expired on May 22, 2003.  
PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side blockfront between Utopia Parkway and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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### **7-04-BZ**

APPLICANT – Lawrence Whiteside, for Reverend Doctor Sheldon E. Williams, owner.  
SUBJECT – Application June 26, 2008 – Extension of Time to Complete Construction of a UG4 Church/Community Outreach Center (Co-Op City Baptist Church), in an R3A zoning district, which expired June 8, 2008.  
PREMISES AFFECTED – 2208 Boller Avenue, north side of Erskine Place, from Boller Avenue to Hunter Avenue, Block 5135, Lot 1, Borough of Bronx.  
**COMMUNITY BOARD #10BX**

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### **180-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for 47 Development, LLC, owner; Ritual Spa LLC dba Silk Day Spa, lessee.  
SUBJECT – Application June 12, 2008 - Extension of Time to obtain a Certificate of Occupancy for a previously granted PCE (Silk Day Spa), in a C6-2/C6-2M zoning district, which expired on May 20, 2008.  
PREMISES AFFECTED – 47 West 13<sup>th</sup> Street, north side of

West 13<sup>th</sup> Street, between Fifth and Sixth Avenues, Block 577, Lot 15, Borough of Manhattan.  
**COMMUNITY BOARD #2M**

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## **APPEALS CALENDAR**

### **251-07-A thru 254-07-A**

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner  
SUBJECT – Application November 2, 2007 – 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.  
PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**

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### **34-08-A**

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth (“NAG”) and People’s Firehouse, Inc. (“PFI”).  
OWNER: North Seven Associates LLC  
SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR 23-142 and ZR 12-10 which fails to provide adequate open space on the zoning lot to support the Building’s floor area.  
PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.  
**COMMUNITY BOARD #1BK**

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# CALENDAR

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**JULY 22, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 22, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**42-08-BZ**

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**59-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**84-08-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; L & M Service Station, lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§§11-411, 11-412 & 73-01 (d)) to reinstate and amend the variance granted under Cal No. 410-48-BZ for an automotive service station with accessory uses located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 67-24 Main Street, aka 68-12 Main Street, West side Street 315.5' north of 68th Drive, Block 6486, Lot 38, Borough of Queens.

**COMMUNITY BOARD #8Q**

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**165-08-BZ**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP; for Vornado Office Management LLC, owner; Bally Sports Club, Incorporated, lessee.

SUBJECT – Application June 18, 2008 – Special Permit (§73-36) to allow a physical culture establishment on four levels in an existing 26-story building. The proposal is contrary to ZR section 32-10. C6-6 & C6-4.5 MiD districts. PREMISES AFFECTED – 11 Penn Plaza, a/k/a 166 West 32nd Street, south side of West 32nd Street between Seventh and Sixth Avenues. Block 807, Lot 1, Borough of Manhattan

**COMMUNITY BOARD # 5M**

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**167-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Profile Enterprises, L.P., owner; for Garden Retreat Spa, LLC, lessee.

SUBJECT – Application June 19, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the second floor of an existing seven-story building. The proposal is contrary to ZR section 32-10. C5-2 district.

PREMISES AFFECTED – 253 5<sup>th</sup> Avenue, northeast corner of the intersection formed by 5<sup>th</sup> Avenue and West 28<sup>th</sup> Street, Block 858, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 24, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**774-55-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for  
FGP West Street LLC c/o Citibank, N.A., owner.

SUBJECT – Application February 26, 2008 – Extension of  
Term/Waiver of the rules for a previously granted variance  
to permit the operation of a (UG8) parking lot, for more than  
five cars, for employees and customers of a bank (Citibank)  
on the adjoining lot which expired on January 31, 2003 in R-  
5 and C1-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue,  
north side of Newbold Avenue between Olmstead and Castle  
Hill Avenues, Block 3814, Lot 59, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure and an extension of term for a  
previously granted special permit permitting the operation of a  
parking lot, which expired on January 31, 2003; and

WHEREAS, a public hearing was held on this  
application on April 8, 2008, after due notice by publication in  
*The City Record*, with continued hearings on May 6, 2008 and  
May 20, 2008, and then to decision on June 24, 2008; and

WHEREAS, Community Board 9, Bronx, has  
recommended approval of this application; and

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

WHEREAS, the site is located on the north side of  
Newbold Avenue, between Olmstead Avenue and Castle Hill  
Avenue; and

WHEREAS, the site is located partially within an R5  
zoning district and partially within a C1-2(R5) zoning district  
and is occupied by a parking lot with 32 spaces; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since October 8, 1957, when, under the subject

calendar number, the Board granted a special permit for the  
continued operation of a parking lot for more than five cars for  
use by a bank on the adjacent site in what was then a  
residential district, for a term of five years; and

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

WHEREAS, most recently, on August 3, 1993, the  
Board granted a ten-year term, which expired on January 31,  
2003; and

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

WHEREAS, since the initial grant, the site was re-zoned  
to be partially within an R5 zoning district (where the special  
permit is required) and partially within a C1-2(R5) zoning  
district (where the use is permitted as of right); and

WHEREAS, the Board notes that only 16 parking  
spaces remain partially or entirely within the R5 zoning  
district and require the special permit; and

WHEREAS, at hearing, the Board directed the applicant  
to (1) provide fencing with at least 50 percent opaque  
screening adjacent to residential uses, (2) repair all fencing,  
and (3) re-stripe the parking spaces; and

WHEREAS, the applicant submitted photographs  
reflecting these conditions and a reduction in the number of  
parking spaces to 30, to accommodate the required aisle  
widths; and

WHEREAS, the applicant also submitted a revised site  
plan depicting the existing site conditions and noting the  
district boundary line; 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 October 8, 1957,  
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 January 31, 2003, to expire on  
January 31, 2013, *on condition* that any and all work shall  
substantially conform to drawings filed with this application  
marked “Received May 21. 2008”-(1) sheet; and *on further  
condition*:

THAT the term of this grant shall expire on January 31,  
2013;

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

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# MINUTES

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (N.B. 3148-55)

Adopted by the Board of Standards and Appeals, June 24, 2008.

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## 1149-62-BZ

APPLICANT – Bryan Cave LLP, for College of Saint Francis Xavier/Clothing Workers Center, Incorporated.

SUBJECT – Application May 8, 2008 – Amendment to a previously approved UG3 parochial school (Xavier High School) for the increase of the zoning lot in a C6-2 zoning district.

PREMISES AFFECTED – 24-40 West 16<sup>th</sup> Street and 31-35 West 15<sup>th</sup> Street, irregularly shaped lot with frontage on W. 15<sup>th</sup> and 16<sup>th</sup>, between 5<sup>th</sup> and Avenue of the Americas. Block 817, Lot 72, 21. Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Robert Davis.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow an increase in the size of a zoning lot in a C6-2M zoning district and an amendment to the site plan; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on June 24, 2008; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of St. Francis Xavier High School (the “School”), a nonprofit religious educational institution; and

WHEREAS, the subject zoning lot (Lot 72) is a through-block site located between West 16<sup>th</sup> Street and West 15<sup>th</sup> Street, east of Sixth Avenue, and has a lot area of approximately 44,216 sq. ft.; and

WHEREAS, the site is located within a C6-2M zoning district; and

WHEREAS, the subject lot is occupied by a six-story and cellar, School building, with a height of 84’-6”, floor area of 165,584 sq. ft., and an FAR of 3.74; and

WHEREAS, the applicant states that the site has a maximum total FAR of 6.50 and a maximum floor area of 287,405 sq. ft., of which approximately 121,821 sq. ft. of floor

area is undeveloped; and

WHEREAS, on February 19, 1963, under the subject calendar number, the Board granted a variance and a special permit that allowed the construction of a six-story and cellar school and monastery in a C6-2 zoning district; and

WHEREAS, the waivers associated with the grant relate to side and rear yard requirements and the special permit relates to height and setback requirements; and

WHEREAS, under the subject calendar number, the Board subsequently reopened and amended the resolution to extend the time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant represents that the site’s conditions remain unchanged from those approved by the Board; and

WHEREAS, the applicant further represents that the bulk regulations of the C6-2M zoning district are identical to those of the C6-2 zoning district in effect at the time of the Board’s grant; and

WHEREAS, the applicant now proposes to merge its zoning lot with adjacent Lot 21 to its east, resulting in a zoning lot with a lot area of approximately 51,959 sq. ft., for the purpose of transferring a portion of its excess development rights to Lot 21 for the construction of a hotel; and

WHEREAS, the School also proposes to demolish an existing brownstone building located on the eastern edge of the School’s property on West 16<sup>th</sup> Street and to use the remainder of its excess development rights to build a new rectory for use in connection with the neighboring church to its west; and

WHEREAS, the applicant seeks to modify its site plan to reflect the zoning lot merger and the redevelopment of the brownstone; and

WHEREAS, the applicant represents that neither the proposed development of Lot 21, nor the redevelopment of the brownstone, require a modification of the Board’s grant because the waivers and conditions of the underlying grant are not implicated; the School building and the side and rear yards authorized by the variance will be unchanged, and the configuration of the other buildings on the zoning lot will remain the same; and

WHEREAS, the applicant further represents that no new non-compliance will be created on the zoning lot as a result of the lot merger; and

WHEREAS, the Board notes that the respective fee owners of Lot 72 and Lot 21 authorized the instant application; and

WHEREAS, based upon its review of the record, the Board finds that the proposed increase in the size of the zoning lot and modification of the site plan is appropriate.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on February 13, 1962, so that as amended this portion of the resolution shall read: “to permit the increase in size of the zoning lot to include tax lot 21 and to permit modifications to the BSA-approved site plan *on condition* that all site conditions shall comply with drawings

# MINUTES

marked 'Received May 8, 2008'--(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 Nos. 110159970, 110159961)

Adopted by the Board of Standards and Appeals, June 24, 2008.

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## 164-94-BZII

APPLICANT – Jeffrey A. Chester, Esq., for Tuckahoe Realty, owner; LLC Lucille Roberts Health Club Parkchester, lessee.

SUBJECT – Application March 28, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a Physical Culture Establishment (Lucille Roberts), in a C1-2/R-6 zoning district, which expired on April 19, 2006.

PREMISES AFFECTED – 84 Hugh Grant Circle, south side of Hugh Grant Circle, 95.69' west of Cross Bronx Expressway, Block 3794, Lot 109, Borough of Bronx.

## COMMUNITY BOARD #9BX

### APPEARANCES –

For Applicant: Alycia Huckaby.

**ACTION OF THE BOARD** – Appeal granted.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a Certificate of Occupancy, which expired on April 19, 2006, for a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on May 6, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 3, 2008, and then to decision on June 24, 2008; and

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

WHEREAS, the site is located on the south side of Hugh Grant Circle, 95.69 feet west of the Cross Bronx Expressway, within a C1-2 zoning district; and

WHEREAS, the PCE is located in a commercial building, and occupies 14,102 sq. ft. of floor area; it is operated as a Lucille Roberts Health Club; and

WHEREAS, on December 10, 1996, under the subject calendar number, the Board granted a variance for a term of seven years, pursuant to ZR § 71-21, to permit, in a C1-2 zoning district, the operation of the subject PCE, with certain conditions; and

WHEREAS, on April 19, 2005, under the subject calendar number, the Board granted an extension of the term of the variance, until March 1, 2013; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained by April 19, 2006; and

WHEREAS, the applicant represents that the owner's failure to obtain the Certificate of Occupancy in the time stipulated was due in part to a change in management; and

WHEREAS, the applicant represents that the work has since been completed; and

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

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to obtain a certificate of occupancy until December 24, 2008 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, 1996, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to December 24, 2008; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by December 24, 2008;

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

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

(DOB Application No. 200238484)

Adopted by the Board of Standards and Appeals, June 24, 2008.

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## 709-55-BZIII

APPLICANT – Walter T. Gorman, P.E., for L M T Realty Company, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application May 27, 2008 – Extension of Time to obtain a Certificate of Occupancy, in a C1-2/R4 zoning district, for a gasoline service station (Mobil) which expired on January 9, 2003; waiver of the rules and an Amendment to legalize existing condition contrary to previous approved plans.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lot 68, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

### APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.

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# MINUTES

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## 615-57-BZII

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

SUBJECT – Application June 24, 2008 – Extension of Time to obtain a Certificate of Occupancy and waiver of the rules for a Gasoline Service Station (Exxon) which expired on October 9, 2007 in an C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, north side of Horace Harding Expressway between Kissena Boulevard and 154<sup>th</sup> Place, Block 6731, Lot 1, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

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## 286-86-BZ

APPLICANT – Sheldon Lobel, P.C., for 808 Union Street, LLC, owner.

SUBJECT – Application April 14, 2008 – Extension of Term filed pursuant to §72-01 and §72-22 to allow the continued use of a Physical Cultural Establishment previously granted pursuant to §72-21 of the zoning resolution. The site is located in a R6A/C1-3 zoning district.

PREMISES AFFECTED – 100 7<sup>th</sup> Avenue, southwest corner of the intersection formed by Seventh Avenue and Union Street, Block 957, Lot 33, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

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## 826-86-BZII

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy

which expired on March 6, 2003; waiver of the rules and an Amendment to legalize additional transmitting equipment on the roof and to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for continued hearing.

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## 827-86-BZII

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 270-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for continued hearing.

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## 828-86-BZII

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 271-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

# MINUTES

19, 2008, at 10 A.M., for continued hearing.

## 788-89-BZ

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mark McArthy.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.

## 24-96-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.

## 340-03-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, by Howard S. Weiss, Esq., for 408-410 Greenwich Street, LLC.

SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

### COMMUNITY BOARD #1M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 163-07-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Sea Cliff Towers Owners Corp., owner.

SUBJECT – Application June 14, 2007 – Proposed construction of an accessory parking lot located within a portion of the bed of a mapped street (Cliff Street) contrary to General City Law Section 35 . R3-2 Zoning District.

PREMISES AFFECTED – 11 Cliff Street, northeast corner of Cliff Street and Cliff Court, Block 2833, tent. Lot 65, Borough of Staten Island

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 24, 2007, acting on Department of Buildings Application No. 510001267 reads in pertinent part:

“The Proposed accessory parking (UG2) in the bed of a final mapped street, is contrary to Article 111, Section 35 of the General City Law and therefore referred to the Board of Standards and Appeals for Approval;” and

WHEREAS, this application requests permission to build an accessory parking lot for 49 cars, a portion of which is located within the bed of the mapped but un-built portion of Cliff Street, to be used by the residents and visitors of the adjacent multiple dwelling building located at 20 Cliff Street; and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in the *City Record*, with continued hearings on May 6, 2008 and June 24, 2008, and to decision on June 24, 2008; and

WHEREAS, by letter dated August 10, 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-a, Sheet 4 of 6 which calls for: (1) a 36-in. diameter combined sewer in Cliff Street between Cliff Court and Nautilus Court, (2) a 36-in. diameter combined sewer in Nautilus Court between Cliff Street and Nautilus Street, (3) a 6’-6” by 5’-11” combined sewer in Nautilus Street between Cliff Court and Nautilus Court, and (4) a 36-in. diameter sanitary sewer and 6-in. diameter and 10-in. diameter force mains in the bed of Nautilus Court between Cliff Street and Nautilus Street; and

WHEREAS, DEP also notes that there is an existing 36-in. diameter sanitary sewer, 6-in. diameter and 10-in. diameter

# MINUTES

force mains and an 8-in. diameter existing city water main in the bed of Cliff Street between Cliff Court and Nautilus Court; further, there is an existing 6'-6" by 5'-11" combined sewer in the bed of Nautilus Street between Cliff Court and Nautilus Court and a 36-in. diameter sanitary sewer and 6-in. diameter and 10-in. diameter force mains in the bed of Nautilus Court between Cliff Street and Nautilus Street; and

WHEREAS, accordingly, DEP requested a survey showing the width of the mapped Nautilus Street between Cliff Court and Nautilus Court and the width of the widening portion of the street at the above location and the horizontal and vertical distances between the proposed development and existing sewers and water mains in Cliff Street, Cliff Court, and Nautilus Street; and

WHEREAS, in response to DEP's request, the applicant has provided a revised survey, which reflects the proposed development and existing sewer and water lines in the surrounding area; and

WHEREAS, by letter dated May 22, 2008, DEP states that it has reviewed the revised site plan and finds it acceptable; and

WHEREAS, by letter dated September 13, 2007, the Department of Transportation (DOT) states that it has reviewed the above application and advises the Board that it has no objections to the proposed project; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the subject site in its ten-year capital plan; and

WHEREAS, by letter dated October 18, 2007, the Fire Department states that it has reviewed the proposed project and has no objections; and

WHEREAS, based upon its review of the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated May 24, 2007, acting on Department of Buildings Application No. 510001267, 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 17, 2008,"-one (1) sheet and 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 Department of Buildings must 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 24, 2008.

## 306-05-BZY

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED –206A Beach 3<sup>rd</sup> Street, Block 15604, Lot 34, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Stuart A. Klein.

**ACTION OF THE BOARD** – Laid over to August 26, 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 –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for decision, hearing closed.

## 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: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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



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# MINUTES

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

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for decision, hearing closed.

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## 39-07-A thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of two, 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED –3248, 3250, Wickham Avenue, unnamed street between Wickham and Givan Avenue,, Block 4755, Lots 65 & 66, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for continued hearing.

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## 230-07-BZY

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Alco Builders, Inc., owner.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Marc M. Isaac.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for continued hearing.

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## 265-07-A

APPLICANT – Abigail Patterson, for West 70<sup>th</sup> Associates, owner.

SUBJECT – Application November 19, 2007 – 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.

PREMISES AFFECTED – 57 West 70<sup>th</sup> Street, north side of 70<sup>th</sup> Street, 160' east of corner formed by 70<sup>th</sup> Street and Columbus Avenue, Block 1123, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Stuart Klein.

For Opposition: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

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## 47-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50' west of intersection with Beach 72<sup>nd</sup> Street, Bock 16066, Lot 46, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.

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## 143-08-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Nora Cahill, lessee.

SUBJECT – Application May 13, 2008 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of the private disposal system contrary to DOB policy. R4 Zoning district.

PREMISES AFFECTED – 43 Beach 221<sup>st</sup> Street, east side of Beach 221<sup>st</sup> Street, 100' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JUNE 24, 2008  
1:30 P.M.**

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

**ZONING CALENDAR**

**100-07-BZ**

APPLICANT – David L. Businelli, for Ekram Tadros, owner.

SUBJECT – Application April 26, 2007 – Variance (§ 72-21) to allow a one-story and cellar community facility building (medical offices – UG4) to violate front yard (§ 24-34) and side yard (§ 107-464) requirements. R3X district (SRD).

PREMISES AFFECTED – 642 Barclay Avenue, west side Barclay Avenue, south of Hylan Boulevard, Block 6398, Lot 9, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES – None.

**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, June 24, 2008.

**30-08-BZ**

**CEQR #08-BSA-055R**

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Special Permit (§73-30) to permit in an R3-1 district a 50 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Robert Burdioso.

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

**THE VOTE TO GRANT –**

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 17, 2008, acting on Department of Buildings Application No. 510010355, reads in pertinent part:

“Proposed monopole in an R3-1 district requires the issuance of a special permit by the BSA. Refer to Board of Standards and Appeals for the issuance of a special permit under 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-1 zoning district within the Special South Richmond Development District, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS, the site is the subject of a variance to permit the construction of a one-story commercial building in what was then an R3-2 zoning district, under BSA Cal. No. 457-65-BZ; and

WHEREAS, the applicant concurrently requested an amendment to the variance; there are separate resolutions for the subject special permit and the amendment, but the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on May 20, 2008, after due notice by publication in *The City Record*, and then to decision on June 24, 2008; and

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

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a one-story commercial building (Use Group 6); and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 50-foot tall pole with internally-mounted antennas and related equipment, located within a fenced area; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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

# MINUTES

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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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. 08-BSA-055R, dated February 15, 2008; 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 6NYCRR 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 R3-1 zoning district within the Special South Richmond Development District, the proposed construction of a telecommunications pole (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 February 15, 2008"- (4) sheets and "June 3, 3008"-(1) sheet; and on further condition:

THAT any fencing 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 24, 2008.

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## 457-65-BZ

APPLICANT – Slater & Beckerman, LLP, for Hylan Richmond Realty LLC, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 15, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR § 73-30 and file under separate BSA application.

PREMISES AFFECTED – 4360 Hylan Boulevard, between Oceanic Avenue and Richmond Avenue, Block 5322, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Burdioso.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for an amendment to a previously granted variance which permitted the construction of a one-story commercial building within what was an R3-2 zoning district and is now an R3-1 zoning

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# MINUTES

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district; and

WHEREAS, concurrent with this application, under BSA Cal. No. 30-08-BZ, the applicant seeks a special permit, pursuant to ZR § 73-30, to permit the construction of a telecommunications pole; the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on May 20, 2008, after due notice by publication in *The City Record*, and then to decision on June 24, 2008; and

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

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

WHEREAS, the site is on the southeast side of Hylan Boulevard, between Oceanic Avenue and Richmond Avenue; and

WHEREAS, the Board has exercised jurisdiction over the site since July 20, 1965, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story commercial building in what was then an R3-2 zoning district; and

WHEREAS, the applicant now proposes to construct a telecommunications pole, with a height of 50 feet with internally-mounted antennas and related equipment, located within a fenced area at the site; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, at hearing, the Board directed the applicant to remove any signage that does not comply with C1-1 zoning district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that all non-complying signage had been eliminated; and

WHEREAS, the Board notes that no other changes are being made to the original grant other than the addition of the telecommunications pole to the site plan, pursuant to ZR § 73-30, which, as noted, is being requested concurrently under BSA Cal. No. 30-08-BZ; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the site plan, in conjunction with the separate request for the special permit, pursuant to ZR § 73-30, at the site are appropriate with

certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 20, 1965, so that as amended this portion of the resolution shall read: "to permit the noted modification to the plans to reflect the proposed telecommunications pole at the site" *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received February 15, 2008"-(4) sheets and "June 3, 2008"-(1) sheet; and *on further condition*:

THAT any fencing 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 24, 2008.

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## **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 August 26, 2008, at 1:30 P.M., for deferred decision.

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## **281-06-BZ & 282-06-A**

APPLICANT – Eric Palatnik, P.C., for Yuri Frayman, owner.

SUBJECT – Application October 20, 2006 – Special Permit (§73-622) for the In-Part Legalization of the existing floor area which exceeds the district requirement (§23-141) in an R3-1 zoning district. This application also proposes to reduce the overall height which exceeds the district requirement.

Appeal of DOB determination that the proposed street wall eaves, slope roof projection and trussed rafters were not permitted obstruction as stated in §27-335 (A)(2) of the Building Code.

PREMISES AFFECTED – 232 Beaumont Street, west side

# MINUTES

of Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 50, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Robert Pulesmo.

For Opposition: Judith Baron and Susan Klapper.

For Administration: Garnine Gayland.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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 70<sup>th</sup> Street, south side of West 70<sup>th</sup> Street, west of the corner formed by the intersection of Central Park West and West 70<sup>th</sup> Street, Block 1122, Lots 36 & 37, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Jack Freeman, Shelly Friedman and Louis Salomon.

For Opposition: Alan Sugarman, Martin Levine, James Greer, Jared Chausow, Ron Prince, Bruce Simon, Kate Wood, Susan Nial, Ernest Von Simon, Linda Blumkin and Ken Fernade.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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 – 7-05 152<sup>nd</sup> Street, 152<sup>nd</sup> Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for deferred decision.

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## 271-07-BZ

APPLICANT – The Rizzo Group, for Mitchell Marks, owner; Club Ventures II, LLC, lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (PCE) in the C2-7A portion of the zoning district. A variance is also requested to allow the PCE use in the 22'3" portion of the site in the R8A zoning district. The proposal is contrary to §§ 22-10 and 32-18.

PREMISES AFFECTED – 213-219 West 23<sup>rd</sup> Street, north side of 23<sup>rd</sup> Street between Seventh and Eighth Avenues, Block 773, Lot 34, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for continued hearing.

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## 282-07-BZ & 283-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 774 Schenck Properties, LLC, owner.

SUBJECT – Application December 17, 2007 – Variance (§72-21) to allow two (2) two-family, two-story detached homes; contrary to front yard requirements (§23-45). R5 district.

PREMISES AFFECTED – 774 Schenck Avenue, a/k/a 764 Schenck Avenue and 825 Hendrix Street, Linden Boulevard and Hendrix Avenue, Block 4330, Lot 28C, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Gary Brown.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for decision, hearing closed.

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## 23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Bokharian Communities Center, Inc., owner.

SUBJECT – Application February 1, 2008 – Variance (§72-21) to permit the construction of a community facility building (Use Group 4). The proposal is contrary to sections 24-10 and 25-30. R1-2 district.

PREMISES AFFECTED – 182-69 80<sup>th</sup> Road, located at the northwest corner of the intersection of 80<sup>th</sup> Road and Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel and Hiram Rothkrug.

For Opposition: Laura Schwartzberg and Helene Pangalos.

THE VOTE TO CLOSE HEARING –

# MINUTES

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

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

## 36-08-BZ

APPLICANT – Lewis Garfinkel, R.A., for Antoninette Mizrahi, owner.

SUBJECT – Application February 21, 2008 – 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)); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1177 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street, 130’ north of Avenue L, Block 7623, Lot 12, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis Garfinkel.

For Opposition: Samuel M. Rotenberg.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for decision, hearing closed.

## 37-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Catholic High School Association of N.Y., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 21, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications / Wireless Network. R3X zoning district.

PREMISES AFFECTED – 100 Merrill Avenue, between Arlene Street and Richmond Avenue, Block 2236, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert Gaudio.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for continued hearing.

## 58-08-BZ

APPLICANT – Fried, Frank Harris, Shriver & Jacobson LLP, Waldo Hutchins & J.P. Morgan Chasebank Trustee for Estate of Francis S. Appleby, owner; The Durst Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit (§73-19) to allow the development of a six-story school (U.G 3) on a vacant site. The proposal is contrary to section 42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58<sup>th</sup> Street, Twelfth Avenue, West 57<sup>th</sup> Street, West 58<sup>th</sup> Street, Eleventh Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for decision, hearing closed.

## 80-08-BZ

APPLICANT – Dennis D. Dell’Angelo, for Joseph Leshkowitz, owner.

SUBJECT – Application April 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary the open space ratio and floor area (§23-141); side yards (§23-46) and rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1073 East 24<sup>th</sup> Street, east side of East 24<sup>th</sup> Street, 175’ north of Avenue K, Block 7606, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for decision, hearing closed.

## 86-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Tuchman Associates II, LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”). R6 zoning district.

PREMISES AFFECTED – 111-26 Corona Avenue, apx. 200’ east of Saultell Avenue, Block 1972, Lot 38, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Robert Gaudio.

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# MINUTES

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## THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 15,  
2008, at 1:30 P.M., for decision, hearing closed.

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## 90-08-BZ

APPLICANT – Slater & Beckerman, LLP, for BNS  
Properties LLC, owner; Northrop Grumman Information  
Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit  
(\$73-30) to permit a non-accessory radio facility as part of  
the New York City Department of Information Technology  
and Telecommunications (“DoITT”) New York City  
Wireless Network (“NYCWIn”). R3X zoning district.

PREMISES AFFECTED – 104-36 196<sup>th</sup> Street, northwest  
corner of Hollis Avenue and 196<sup>th</sup> Street, Block 10891, Lot  
21, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Robert Gaudio.

## THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 15,  
2008, at 1:30 P.M., for decision, hearing closed.

-----

## 91-08-BZ

APPLICANT – Slater & Becker, LLP, for NAND Limited  
Partnership, owner; Northrop Grumman Information  
Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit  
(\$73-30) to permit, a non-accessory radio facility as pat of  
the New York City Department of Information Technology  
and Telecommunications (“DoITT”) New 666York City  
Wireless Network (“NYCWIn”). R6A zoning district.

PREMISES AFFECTED – 37-68 97<sup>th</sup> Street, northwest  
corner of 97<sup>th</sup> Street and 38<sup>th</sup> Avenue, Block 1759, Lot 30  
Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Robert Gaudio.

## THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 15,  
2008, at 1:30 P.M., for decision, hearing closed.

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## 102-08-BZ

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

SUBJECT – Application April 21, 2008 – Variance (§72-  
21) for the construction of a one family residence on a  
vacant undersized lot that does not provide sufficient side  
yards (§23-461) and does not provide one of the required  
parking spaces (§25-22) within a R3-1 zoning Low Density  
Growth Management district.

PREMISES AFFECTED – 103 Beachview Avenue, 40’  
west of intersection of Beachview Avenue and Idlease Place,  
Block 3724, Lot 30, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Linda Burhardt.

**ACTION OF THE BOARD** – Laid over to August  
19, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 27-28

July 10, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|                        |  |
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| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                  |     |
|----------------------------------|-----|
| DOCKET .....                     | 430 |
| <b>CALENDAR</b> of July 29, 2008 |     |
| Morning .....                    | 431 |
| Afternoon .....                  | 431 |



---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, July 1, 2008**

Morning Calendar .....432

**Affecting Calendar Numbers:**

|           |  |
|-----------|--|
| 853-53-BZ | 2402/16 Knapp Street, Brooklyn           |
| 713-55-BZ | 181-05 Horace Harding Expressway, Queens |
| 151-90-BZ | 115-49 118 <sup>th</sup> Street, Queens  |
| 268-06-BZ | 80-35 Pitkin Avenue, Queens              |
| 162-06-A  | 2852 Farber Terrace, Queens              |
| 165-06-A  | 2848 Faber Terrace, Queens               |
| 255-07-A  | 40-54 Francis Lewis Boulevard, Queens    |
| 45-08-A   | 126 Oceanside Avenue, Queens             |
| 49-08-A   | 305 Hillside Avenue, Queens              |
| 146-08-A  | 1618-1620 Broadway, Brooklyn             |

Afternoon Calendar .....437

**Affecting Calendar Numbers:**

|           |  |
|-----------|--|
| 197-05-BZ | 813/815 Broadway, Manhattan                  |
| 169-07-BZ | 626 West 254 <sup>th</sup> Street, Bronx     |
| 173-07-BZ | 1061 East 21 <sup>st</sup> Street, Brooklyn  |
| 258-07-BZ | 105-55 Horace Harding Expressway, Queens     |
| 50-08-BZ  | 265 McKinley Avenue, Brooklyn                |
| 52-08-BZ  | 3935 Bedford Avenue, Brooklyn                |
| 53-08-BZ  | 300 Soundview Avenue, Bronx                  |
| 731-68-BZ | 300 Soundview Avenue, Bronx                  |
| 55-08-BZ  | 350/58 East Houston Street, Manhattan        |
| 109-07-BZ | 33-57 59 <sup>th</sup> Street, Queens        |
| 143-07-BZ | 6404 Strickland Avenue, Brooklyn             |
| 238-07-BZ | 5-11 47 <sup>th</sup> Avenue, Queens         |
| 257-07-BZ | 3 East 101 <sup>st</sup> Street, Manhattan   |
| 32-08-BZ  | 1126 Richmond Avenue, Staten Island          |
| 35-08-BZ  | 1856 East 24 <sup>th</sup> Street, Brooklyn  |
| 44-08-BZ  | 1015 East 23 <sup>rd</sup> Street, Brooklyn  |
| 66-08-BZ  | 1497 East 21 <sup>st</sup> Street, Brooklyn  |
| 78-08-BZ  | 611-617 East 133 <sup>rd</sup> Street, Bronx |
| 144-08-BZ | 225 5 <sup>th</sup> Avenue, Manhattan        |

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# DOCKET

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New Case Filed Up to July 1, 2008  
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**170-08-BZ**

411-431 East 69th Street, East 69th Street midblock portion, block bounded by East 69th and East 70th Streets and York and First Avenues., Block 1464, Lot(s) 8,14,15,16,p/o 21, Borough of **Manhattan**, **Community Board: 8**. Variance to  
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**171-08-BZ**

40 West 68th Street, Between Central Park West and Columbia Avenue., Block 1120, Lot(s) 48, Borough of **Manhattan**, **Community Board: 7**. Variance to allow an enlargement of an existing school.  
-----

**172-08-BZ**

40-20 47th Avenue, situated on the southwest corner of 47th Avenue and 41st Street., Block 198, Lot(s) 36, Borough of **Queens**, **Community Board: 2**. Variance to permit the conversion of a existing 2-family residential to a community facility, contrary to bulk regulations.  
-----

**173-08-BZ**

42-59 Crescent Street, Northeast corner of the intersection of Crescent Street and 43rd Avenue., Block 430, Lot(s) 37,38, Borough of **Queens**, **Community Board: 2**. Variance to allow the construction of a hotel, contrary to use regulations.  
-----

**174-08-A**

617 Bayside Drive, South east corner of the intersection of mapped Bayside Drive & Beach 202nd Street., Block 16350, Lot(s) p/o 300, Borough of **Queens**, **Community Board: 14**. Construction within mapped street, contrary to Section 35, Article 3 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.**

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# CALENDAR

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**JULY 29, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 29, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## APPEALS CALENDAR

### 95-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for 6701 Realty, LLC, owner.

SUBJECT – Application April 16, 2008 – An appeal seeking a determination that the property owner has acquired common law vested right to continue development under the prior C4-3 zoning district regulations. C4-2A zoning district.

PREMISES AFFECTED – 6701 Bay Parkway, southeast corner of the intersection of Bay Parkway and West 8<sup>th</sup> Street, Block 6576, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**JULY 29, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 29, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### 51-08-BZ

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR sections 24-11 (lot coverage, FAR, & open space), 24-382 (required rear yard equivalent), 24-522 & 23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### 61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86<sup>th</sup> Street, LLC, owner; TSI Bay Ridge 86<sup>th</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR section 32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86<sup>th</sup> Street, north side of 86<sup>th</sup> Street and east of 4<sup>th</sup> Avenue, Block 6035, Lot 64, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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### 67-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Jack M. Skaba, owner.

SUBJECT – Application March 31, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3842 Bedford Avenue, west side of Bedford Avenue, Block 6807, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### 93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§ 72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§ 22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

**COMMUNITY BOARD #3Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, JULY 1, 2008 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC,  
Owner, Exxon Mobil Coperati, Lessee.

SUBJECT – Application May 13, 2008 – Extension of  
Term/waiver to permit the continued operation of a gasoline  
service station (Mobil) which expired on October 23, 1999  
and an Extension of Time to obtain a Certificate of  
Occupancy which expired on April 1, 1996 in R3-2/C2-2  
zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, South  
west corner of Avenue X. Block 7429, Lot 10, Borough of  
Brooklyn.

#### COMMUNITY BOARD #15BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 15,  
2008, at 10 A.M., for postponed hearing.

#### 713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil  
Corporation, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 23, 2008 – Extension of Time  
to obtain a Certificate of Occupancy/waiver for a gasoline  
service station (Mobil), in a C2-2/R3-2 zoning district,  
which expired on May 22, 2003.

PREMISES AFFECTED – 181-05 Horace Harding  
Expressway, north side blockfront between Utopia Parkway  
and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.

#### COMMUNITY BOARD #11Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 22,  
2008, at 10 A.M., for postponed hearing.

#### 151-90-BZ

APPLICANT – Mitchell S. Ross, for Mega Real Estate  
Management, Incorporated, owner.

SUBJECT – Application March 13, 2008 – Amendment to  
allow legalization of existing conventional office use by  
amending resolution to remove condition limiting occupancy  
to governmental office use only previously granted by the  
Board. Located in a R3-2 zoning district.

PREMISES AFFECTED – 115-49 118<sup>th</sup> Street, 115-70  
Lefferts Boulevard, East side of 118<sup>th</sup> Street, 240' north of  
Sutter Avenue, Block 11711, Lot 18, Borough of Queens.

### COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22,  
2008, at 10 A.M., for decision, hearing closed.

#### 268-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Mokom  
Sholom Cemetery Association, owner; Northrop Grumman  
Information Technology, Inc., lessee.

SUBJECT – Application April 24, 2008 – Reopening for an  
Amendment to previously approved Special Permit (§73-30)  
to permit a 90-foot non-accessory radio tower as part of the  
New York City Department of Information Technology and  
Telecommunications (“DoITT”) New York City Wireless  
Network (“NYCWIn”).

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150' east  
of 80<sup>th</sup> Street, Lot 9141, Lot 20, Borough of Queens.

#### COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Robert Gurdioso.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22,  
2008, at 10 A.M., for decision, hearing closed.

### APPEALS CALENDAR

#### 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: Todd Dale.

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

THE VOTE TO GRANT –

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

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# MINUTES

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

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 12, 2006, acting on Department of Buildings Application Nos. 402295565 and 402296118, reads in pertinent part:

“Proposed construction of a new two-story one-family dwelling in the bed of a mapped street which is contrary to General City Law 35. Refer to the BSA for their review;” 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 continued hearings on October 23, 2007, March 18, 2008, May 6, 2008, and June 24, 2008, and then to decision July 1, 2008; and

WHEREAS, this application seeks to build two single-family homes each of which extend into the mapped but unbuilt portions of the intersection of mapped Faber Terrace and mapped Edgewater Road; and

WHEREAS, by letter dated September 24, 2007, the Fire Department states that it has reviewed the application and has advised the Board that they have no objections; and

WHEREAS, by letter dated September 1, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advised the Board that there is an Amended Drainage Plan No. 50 SW(54) and 50 S(79), which calls for a future 36-in. diameter storm sewer and 12-in. diameter sanitary sewer in the bed of Edgewater Road between Faber Terrace and Egmont Place and 30-in. diameter sewer and 10-in. diameter sanitary sewer in Faber Terrace at the intersection with Edgewater Road; and

WHEREAS, DEP also advises that there is an existing 54-in. diameter storm sewer and 15-in. sanitary sewer in Edgewater Road between Faber Terrace and Egmont Place; a 24-in. diameter storm sewer and 10-in. sanitary sewer in Faber Terrace at the intersection with Edgewater Road; and an 8-in. diameter City water main in the bed of Faber Terrace at the intersection with Edgewater Road, but that there are no existing water mains in the bed Edgewater Road between Faber Terrace and Egmont Place; and

WHEREAS, DEP required the applicant to submit a survey showing the total width of the widening portion of Faber Terrace at the intersection with Edgewater Road, the total width of the mapped street and distance between the proposed development and existing sewers and water mains; and

WHEREAS, DEP also requires that there be a minimum 35-ft. corridor in the bed of Edgewater Road between Faber Terrace and Egmont Place for the purpose of maintenance, repair and /or reconstruction of existing and future sewers; and

WHEREAS, by letter dated June 11, 2007, in response to DEP’s request, the applicant provided a revised site plan which includes a proposed 12.5-ft. easement on the subject premises; and

WHEREAS, the applicant represents that the proposed

12.5-ft. easement represents the maximum that can be provided on the site without impacting construction on the property; the applicant also provided a map, which reflects that the property to the north of the subject premises, in the bed of Edgewater Road, is owned by the City, so that the additional 22.5-ft requested by DEP can be accommodated there; and

WHEREAS, by letter dated July 11, 2007, DEP states that the revised plan was not sufficient; DEP also notes that it requires a minimum 32-in. “Sewer Corridor” in the bed of Faber Terrace, at the northwest corner with Edgewater Road for the purpose of maintenance, repair and/or reconstruction of the existing 24-in. diameter storm sewer; and

WHEREAS, subsequently, the applicant provided a copy of the title reports for the three lots that border the subject premises, which reflect ownership by the City to support the assertion that this City-owned portion is adequate to satisfy the needs of the DEP; and

WHEREAS, during the hearing process, the applicant requested additional time to revise surveys in order to provide the requested information to DEP’s satisfaction; and

WHEREAS, the applicant has submitted a revised plan which includes the sewer easement requested by DEP; and

WHEREAS, by letter dated June 20, 2008, DEP states that the applicant has provided a revised plan that reflects the total mapped width of Edgewater Road, 35-ft. of the traveled portion of Edgewater Road between Faber Terrace and Egmont Place and an additional 17.5-ft. wide Sewer Corridor; and

WHEREAS, further, a total width of 52.5 feet will be available for the installation, maintenance and/or reconstruction of the existing 54-ft. diameter storm sewer, a 15-ft. diameter sanitary sewer and for the future 36-in. diameter storm sewer and 12-in. diameter sanitary sewer; and

WHEREAS, based on the above the DEP has no further objections; and

WHEREAS, by letter dated November 21, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has advised the Board that DOT requires the applicant to provide for a sidewalk and curb in alignment with the existing sidewalk and curb on the north side of Faber Terrace for the entire length of the proposed lots; 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, in response to DOT’s request, by letter dated June 11, 2007, the applicant submitted a revised site plan showing a that the new sidewalk will match the existing sidewalk adjacent to the premises; and

WHEREAS, by letter dated September 13, 2007, DOT states that it has reviewed the revised site plan and has no further 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

# MINUTES

Borough Commissioner, dated July 12, 2006, acting on Department of Buildings Application Nos. 402295565 and 402296118 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 18, 2008" 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, July 1, 2008.

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## 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: Todd Dale.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated July 12, 2006, acting on Department of Buildings Application Nos. 402295565 and 402296118, reads in pertinent part:

“Proposed construction of a new two-story one-family dwelling in the bed of a mapped street which is contrary to General City Law 35. Refer to the BSA for their review;” 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 continued hearings

on October 23, 2007, March 18, 2008, May 6, 2008, and June 24, 2008, and then to decision July 1, 2008; and

WHEREAS, this application seeks to build two single-family homes each of which extend into the mapped but unbuilt portions of the intersection of mapped Faber Terrace and mapped Edgewater Road; and

WHEREAS, by letter dated September 24, 2007, the Fire Department states that it has reviewed the application and has advised the Board that they have no objections; and

WHEREAS, by letter dated September 1, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advised the Board that there is an Amended Drainage Plan No. 50 SW(54) and 50 S(79), which calls for a future 36-in. diameter storm sewer and 12-in. diameter sanitary sewer in the bed of Edgewater Road between Faber Terrace and Egmont Place and 30-in. diameter sewer and 10-in. diameter sanitary sewer in Faber Terrace at the intersection with Edgewater Road; and

WHEREAS, DEP also advises that there is an existing 54-in. diameter storm sewer and 15-in. sanitary sewer in Edgewater Road between Faber Terrace and Egmont Place; a 24-in. diameter storm sewer and 10-in. sanitary sewer in Faber Terrace at the intersection with Edgewater Road; and an 8-in. diameter City water main in the bed of Faber Terrace at the intersection with Edgewater Road, but that there are no existing water mains in the bed Edgewater Road between Faber Terrace and Egmont Place; and

WHEREAS, DEP required the applicant to submit a survey showing the total width of the widening portion of Faber Terrace at the intersection with Edgewater Road, the total width of the mapped street and distance between the proposed development and existing sewers and water mains; and

WHEREAS, DEP also requires that there be a minimum 35-ft. corridor in the bed of Edgewater Road between Faber Terrace and Egmont Place for the purpose of maintenance, repair and /or reconstruction of existing and future sewers; and

WHEREAS, by letter dated June 11, 2007, in response to DEP’s request, the applicant provided a revised site plan which includes a proposed 12.5-ft. easement on the subject premises; and

WHEREAS, the applicant represents that the proposed 12.5-ft. easement represents the maximum that can be provided on the site without impacting construction on the property; the applicant also provided a map, which reflects that the property to the north of the subject premises, in the bed of Edgewater Road, is owned by the City, so that the additional 22.5-ft requested by DEP can be accommodated there; and

WHEREAS, by letter dated July 11, 2007, DEP states that the revised plan was not sufficient; DEP also notes that it requires a minimum 32-in. “Sewer Corridor” in the bed of Faber Terrace, at the northwest corner with Edgewater Road for the purpose of maintenance, repair and/or reconstruction of the existing 24-in. diameter storm sewer; and

WHEREAS, subsequently, the applicant provided a

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# MINUTES

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copy of the title reports for the three lots that border the subject premises, which reflect ownership by the City to support the assertion that this City-owned portion is adequate to satisfy the needs of the DEP; and

WHEREAS, during the hearing process, the applicant requested additional time to revise surveys in order to provide the requested information to DEP's satisfaction; and

WHEREAS, the applicant has submitted a revised plan which includes the sewer easement requested by DEP; and

WHEREAS, by letter dated June 20, 2008, DEP states that the applicant has provided a revised plan that reflects the total mapped width of Edgewater Road, 35-ft. of the traveled portion of Edgewater Road between Faber Terrace and Egmont Place and an additional 17.5-ft. wide Sewer Corridor; and

WHEREAS, further, a total width of 52.5 feet will be available for the installation, maintenance and/or reconstruction of the existing 54-ft. diameter storm sewer, a 15-ft. diameter sanitary sewer and for the future 36-in. diameter storm sewer and 12-in. diameter sanitary sewer; and

WHEREAS, based on the above the DEP has no further objections; and

WHEREAS, by letter dated November 21, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has advised the Board that DOT requires the applicant to provide for a sidewalk and curb in alignment with the existing sidewalk and curb on the north side of Faber Terrace for the entire length of the proposed lots; 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, in response to DOT's request, by letter dated June 11, 2007, the applicant submitted a revised site plan showing a that the new sidewalk will match the existing sidewalk adjacent to the premises; and

WHEREAS, by letter dated September 13, 2007, DOT states that it has reviewed the revised site plan and has no further 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 12, 2006, acting on Department of Buildings Application Nos. 402295565 and 402296118 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 18, 2008" 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, July 1, 2008.

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## 255-07-A

APPLICANT – Eric Palatnik, P.C., for Yee Kon LLC, owner.

SUBJECT – Application April 8, 2008 – Proposed construction of a daycare center located within the bed of mapped street (Francis Lewis Boulevard contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard (aka 196-23 42<sup>nd</sup> Ave.) corner of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lots 10 & 12, Borough of Queens.

## COMMUNITY BOARD #11Q

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated October 11, 2007, 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 8, 2008 after due notice by publication in the *City Record*, with continued hearings on May 13, 2008 and on June 17, 2008, and then to decision on July 1, 2008; and

WHEREAS, this application seeks to build a daycare facility which will be located within the bed of a mapped street (Francis Lewis Boulevard); and

WHEREAS, this site was the subject of a prior GCL 35 approval under BSA Cal. No. 217-06-A; herein the applicant seeks to include an additional adjacent lot; and

WHEREAS, by letter dated March 11, 2008, the Fire Department states that it has reviewed the application and has no objection; and

WHEREAS, by letter dated December 17, 2007, the Department of Environmental Protection (DEP) advised the

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# MINUTES

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Board that Adopted Drainage Plan Nos. 39A(2), 39AS(18) and 39ASAW(6), which provide for two 12-in. diameter combined sewers in the bed of Francis Lewis Boulevard between Station Road and 42<sup>nd</sup> Avenue, and for an 18-in. diameter combined sewer in the bed of 42<sup>nd</sup> Avenue between Francis Lewis Boulevard and 196<sup>th</sup> Street; and

WHEREAS, DEP also advises that there is an existing 12-in. diameter water main and a 12-in. diameter combined sewer in the bed of Francis Lewis Boulevard between Station Road and 42<sup>nd</sup> Avenue and a 12-in. diameter water main and 18-in. diameter combined sewer in the bed of 42<sup>nd</sup> Avenue between Francis Lewis Boulevard and 196<sup>th</sup> Street; and

WHEREAS, DEP requested that the applicant submit a survey showing the total width of Francis Lewis Boulevard, the width of the widening portion of the street at the proposed location, and the distances between the proposed development and the existing sewers and water mains; and

WHEREAS, in response, by letter dated February 12, 2008, the applicant provided a site plan indicating that 144'-11" of the total irregular width of Francis Lewis Boulevard and the remaining approximately 108'-0" of Francis Lewis Boulevard between Station Road and 42<sup>nd</sup> Avenue will be available for the installation, maintenance and/or reconstruction of the existing 12-in. diameter combined sewer, the existing two 12-in. diameter City water mains and the proposed two 12-in. diameter combined sewers ("February 12<sup>th</sup> Plan"); and

WHEREAS, the February 12<sup>th</sup> Plan also shows a 60'-0" total width of 42<sup>nd</sup> Avenue and the remaining 50'-0" width of 42<sup>nd</sup> Avenue between Francis Lewis Boulevard and 196<sup>th</sup> Street that is available for the purpose of installation, maintenance and/or reconstruction of the existing 18-in. diameter combined sewer and 12-in. diameter water main, and for the future 18-in. diameter combined sewer; and

WHEREAS, by letter dated February 14, 2008, DEP states that it has reviewed the February 12<sup>th</sup> Plan and has no further objections; and

WHEREAS, by letter dated June 9, 2008, the Department of Transportation (DOT) stated that it reviewed the application and has advised the Board that the applicant is required to provide for a full width sidewalk and curb for the entire length of property on the north side of 42<sup>nd</sup> Avenue and to adjust the irregular sidewalk width adjacent to the lot on north side of the Francis Lewis Boulevard to match the existing sidewalk between Station Road and 42<sup>nd</sup> Avenue; and

WHEREAS, DOT further requires the installation of a pedestrian ramp at the corner of 42<sup>nd</sup> Avenue and Francis Lewis Boulevard; and

WHEREAS, in response, the applicant submitted a revised site plan indicating: (i) a full width sidewalk and curb on the north side of 42<sup>nd</sup> Avenue for the entire length of the property; (ii) that the sidewalk width adjacent to the lot on the north side of Francis Lewis Boulevard has been adjusted to mirror the existing sidewalk at Station Road and 42<sup>nd</sup> Avenue; and (iii) a pedestrian ramp at the corner of 42<sup>nd</sup> Avenue and Francis Lewis Boulevard; and

WHEREAS, by letter dated June 16, 2008, DOT states

that it has reviewed the revised site plan and has no further 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, recommended disapproval of this application, citing concerns about potential impacts on traffic and children's safety during arrival and departure; and

WHEREAS, State Senator Frank Padavan and City Council Member Tony Avella submitted letters in opposition to the application, also citing concerns regarding traffic, parking, and the impact on local services and infrastructure; and

WHEREAS, neighborhood residents submitted written and oral testimony in opposition to the application similarly citing concerns with traffic, parking, and the impact on local services and infrastructure; and

WHEREAS, the Board reviewed these concerns, but notes that the proposed use is permitted as of right, and that all zoning regulations and Building Code requirements must be complied with; and

WHEREAS, furthermore, by letter dated May 29, 2008, the DOT School Safety Engineering Office reported that the proposed daycare facility did not meet the minimum threshold of 250 full-time students necessary to warrant implementation of child safety measures; and

WHEREAS, the applicant nonetheless submitted a letter seeking the designation of the main entrance of the proposed daycare facility on 42<sup>nd</sup> Avenue as a "No Standing (School Zone)" by DOT; 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 11, 2007, 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 June 13, 2008 (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 1, 2008.

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# MINUTES

## 48-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Kathleen Brunton, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to GCL Section 36 and partially located within the bed of a mapped street contrary to GCL Section 35. R4 Zoning District.

PREMISES AFFECTED – 126 Oceanside Avenue, north side Oceanside Avenue, 220.50’ east of Beach 207<sup>th</sup> Street, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for adjourned hearing.

## 49-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Charles & Kim Thompson, lessee. SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and located within mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 305 Hillside Avenue, east side Newport Walk, 110/19’ south of Oceanside Avenue, Block 16340, Lot 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for adjourned hearing.

## 146-08-A

APPLICANT – Fire Department of the City of New York  
OWNER: 1620 LLC DBAPK International c/o Jacob Ullman

Lessee: Plastic Kitchens Corp.

SUBJECT – Application May 16, 2008 – Application seeking to modify Certificate of Occupancy No. 84836 to require additional fire protection in the form of an automatic wet sprinkler system for the entire building under the authority under Section 27-4265. C8-2 Zoning District.

PREMISES AFFECTED – 1618-1620 Broadway, Hopkinson Avenue, Block 144, Lot 4, Borough of Brooklyn.

### COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 12:30 P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JULY 1, 2008 1:30 P.M.

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

## 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 12<sup>th</sup> Street, Block 563, Lots 33 & 34, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 26, 2007, acting on Department of Buildings Application No. 104072076, reads in pertinent part:

- “1. Proposed FAR and Open Space Ratio are contrary to Section ZR 23-142.
2. Proposed front wall height, setback and sky exposure plane are contrary to ZR 33-432.
3. Proposed dwelling unit count is contrary to ZR 23-22;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C6-1 zoning district, the proposed development of an 11-story mixed-use building

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# MINUTES

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with ground floor commercial space and 40 dwelling units, which is non-complying as to residential FAR, open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22; and

WHEREAS, a public hearing was held on this application on December 11, 2007 after due notice by publication in the *City Record*, with continued hearings on February 5, 2008, April 1, 2008, May 6, 2008, and June 3, 2008 and then to decision on July 1, 2008; and

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

WHEREAS, Community Board 2, Manhattan, initially voted to recommend approval of this application on November 20, 2007; the Community Board subsequently voted to disapprove the application on the basis that it did not find that (1) there was a hardship on the site or (2) that an as of right building was not viable; and

WHEREAS, the Tenth Street Block Association provided testimony in opposition to the proposal, citing the same concerns cited by the Community Board in its second vote; and

WHEREAS, the site is located on the west side Broadway, between East 11<sup>th</sup> Street and East 12<sup>th</sup> Street; and

WHEREAS, together, Lots 33 and 34 have a total lot area of 5,029 sq. ft., with a frontage of 50 feet along Broadway and with varying depths of approximately 100 feet; and

WHEREAS, Lot 33 is currently occupied by a two-story mixed-use commercial/residential building and Lot 34 is occupied by a four-story mixed-use commercial/residential building, both of which will be demolished; and

WHEREAS, the proposed building has the following bulk parameters: 11 stories, a residential floor area of 28,153 sq. ft., a residential FAR of 5.6, a commercial floor area of 1,970 sq. ft., a commercial FAR of 0.4, 2,022 sq. ft. of open space, an open space ratio of seven percent, 40 dwelling units, and a street wall and total height of 129'-8"; and

WHEREAS, of these parameters, the following are non-compliant: the residential floor area and FAR (the maximum permitted residential floor area and FAR are 17,300 sq. ft. and 3.44, respectively); open space and open space ratio (a minimum of 5,631 sq. ft. and 20 percent are required); dwelling unit count (a maximum of 25 dwelling units are permitted); and height and setback (a setback of 15'-0" is required at 85 feet); 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 existence of a subway tunnel within approximately 6'-0" to 7'-0" of the site; (2) subsurface soil conditions; (3) the small size of the site; and (4) the adjacent built conditions, including lot line walls on adjacent lots at

both sides and the rear of the site; and

WHEREAS, the applicant states that the combination of the presence of the subway and the subsurface soil conditions compromises complying development, in that the conditions result in increased construction costs; and

WHEREAS, specifically, the applicant notes that the subway is approximately only 1'-0" below the sidewalk vault and 24 feet below grade where the bedrock is at 40 feet and the subway tunnel rests on subsurface soil that is sandy in nature, rather than on the bedrock; and

WHEREAS, the applicant represents that these conditions necessitate a foundation design that includes caisson-driven piles and a complex system of shoring and underpinning as opposed to a slab foundation, which would be feasible at a site that was not so near to a subway tunnel; and

WHEREAS, the applicant notes that additional time and expenditures will be required to satisfy the Metropolitan Transit Authority's (MTA) requirements to protect the tunnel and the sidewalk grate, which is continuous in front of the site, during construction; this includes the use of two smaller cranes, rather than one larger one during construction; and

WHEREAS, the applicant represents that, although many sites may abut subway tunnels in New York City, this site is unusually close to one; and

WHEREAS, further, the MTA will supervise and monitor the site for vibration during construction; and

WHEREAS, the applicant submitted the following evidence in support of these representations: a geotechnical report reflecting the purported nature of the soil, with a recommendation that caisson piles be employed for the foundation and engineering reports addressing the line of influence of the subway and the need for a pile-driven foundation; and

WHEREAS, the applicant represents that the site, with a total lot area of 5,009 sq. ft. is small and is not suitable for a higher proportion of floor area dedicated to a commercial use; and

WHEREAS, specifically, the Board notes that the site has an as-of-right FAR of 6.0 for commercial use or 6.5 for community facility use, yet the resultant floor plates of 3,000 to 5,000 sq. ft. (at the base) cannot accommodate Class A office space, are inefficient, and cannot command market rate rents; and

WHEREAS, the applicant states that a mixed use building, which limits the residential floor area to the as of right 3.44 FAR is even less efficient because two elevator/stair cores would be required, compromising the floor plates even further; and

WHEREAS, finally, the applicant notes that an adjacent 14-story building is built to the lot line, wrapping around the site along the entire northern side lot line and half of the western/rear lot line; and, the southern lot line is occupied by a five-story building for 80 percent of its depth; and

WHEREAS, the applicant represents that the noted

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# MINUTES

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built conditions result in a walled-in effect for the rear yard and reduces the value of the rear-facing dwelling units; and

WHEREAS, to help overcome the walled-in effect at the rear, the applicant proposes to provide a rear yard with a depth of between approximately 43'-8" and 43'-11", which reduces the depth of the floor plates while making the dwelling units more marketable; and

WHEREAS, the applicant submitted the following evidence in support of these assertions: Sanborn maps and multiple floorplate schemes; and

WHEREAS, the applicant notes that a complying scheme results in a building with inefficient floor plates on the residential floors; and

WHEREAS, the applicant states that this inefficiency and the afore-mentioned construction costs can only be overcome with the additional residential FAR; and

WHEREAS, as to uniqueness, the applicant submitted evidence which analyzes the development on Broadway from East Houston Street to East 14<sup>th</sup> Street, which is within C6-1, M1-5A, and M1-5B zoning districts; and

WHEREAS, the analysis reflects that out of 90 sites, only nine are significantly under-developed (built up to 50 percent or less of the allowable development potential); of those nine, only four, that are neither landmarked nor within the NoHo Historic District, are similarly-sized and are within comparable proximity to the subway; and

WHEREAS, the applicant notes that the required elevator cores, hallways and stairwells further constrain the floor plates; and

WHEREAS, the applicant concludes that the bulk waivers reduce design inefficiencies by allowing for improved apartment layouts; and

WHEREAS, the applicant notes that the total FAR of 6.0 is permitted at the site, if the building were occupied exclusively by commercial use or if the residential use were limited to 3.44 FAR; the maximum permitted FAR for a community facility is 6.5; and

WHEREAS, however, as noted, the hardship on the site prevents the feasibility of such uses; and

WHEREAS, as noted the floor plates could not accommodate commercial use; as to community facility use, the applicant represents that a nearby university was approached to see if it would be interested in using the site for dormitory/community facility use, which would be permitted as of right and at 6.5 FAR; the applicant submitted a response stating that the university was not interested; and

WHEREAS, the applicant notes that the amount of open space for the proposed building is 5,631 sq. ft., which is in excess of the site's actual lot area of 5,029 sq. ft.; and

WHEREAS, the applicant represents that the proposed 2,022 sq. ft. of open space is the most that can be provided and still result in efficient floor plates; as noted, the applicant proposes to provide a deep rear yard, in excess of 43 feet; and

WHEREAS, similarly, the applicant represents that, due to the small size of the lot, the required setback cannot be provided because it would not allow for uniform floor

plates or an efficient layout; and

WHEREAS, finally, the applicant represents that, in order to compensate for the increased construction costs and to realize a reasonable return, the proposed residential FAR is required; and

WHEREAS, the Board observes that the applicant has established each of the bases of hardship and uniqueness and has justified the requested waivers; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study that analyzed (1) an as of right seven-story residential development with ground floor retail; and (2) an as of right eight-story mixed-use development with ground floor retail; and

WHEREAS, the applicant concluded that neither of the two noted complying scenarios would realize a reasonable return due to the site's constraints; and

WHEREAS, specifically, the applicant has identified significant premium costs related to the site's unique features that render a complying development infeasible; and

WHEREAS, additionally, the applicant provided a financial analysis of the as of right scenarios without the premium costs associated with the subway, which reflect that they do not result in a reasonable return; and

WHEREAS, based upon the above, 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 the specified zoning provisions will provide a reasonable return; and

WHEREAS, the applicant states that the proposed variance, if granted, will not negatively affect the character of the neighborhood nor impact adjacent uses; and

WHEREAS, the applicant notes that both of the proposed uses are permitted as of right in the zoning district; and

WHEREAS, additionally, the total FAR of 6.0 is permitted as of right if the building were occupied by a lower proportion of residential FAR; and

WHEREAS, the applicant notes that the buildings on Broadway, between East 10<sup>th</sup> Street and East 14<sup>th</sup> Street range in height from two to 23 stories and are predominantly built without setbacks, with a small number of buildings providing one setback floor; and

WHEREAS, further, the applicant states that none of the nearby buildings appears to provide the required height and setback or exclusion from the sky exposure plane; and

WHEREAS, specifically, the applicant notes that directly north of the site, at the corner of East 12<sup>th</sup> Street, is a 14-story building without a setback, and the remaining three corners at East 12<sup>th</sup> Street and Broadway are occupied by buildings of 11 or 13 stories; and

WHEREAS, further, the corridor of Broadway

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# MINUTES

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between East 10<sup>th</sup> Street and East 14<sup>th</sup> Street is occupied by at least nine buildings, which are ten stories or taller; and

WHEREAS, as to residential density, the applicant notes that several of the nearby ten-story or taller buildings are occupied by residential use and the shorter buildings of five and six stories are built at or near full lot coverage, so they also have comparable residential density; and

WHEREAS, as to the proposed ground floor retail, the applicant notes that that use is consistent with the commercial character along Broadway; and

WHEREAS, the Board has reviewed the map and photos submitted with this application, and has also conducted site visits, and concludes that the proposed bulk and height of the building will be compatible with the existing conditions in the immediate neighborhood; 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 instead results from the above-mentioned unique physical conditions; and

WHEREAS, as to minimum variance, the Board directed the applicant to provide a financial analysis for a lesser variance of 5.0 FAR, with less residential floor area; and

WHEREAS, the applicant states that it examined several complying scenarios, as well as the 5.0 FAR lesser variance alternative (which resulted in a ten-story building) and found that none provide a reasonable return; and

WHEREAS, the applicant represents that without the FAR waiver, construction costs could not be overcome, and the floor plates would be less efficient and therefore less marketable; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; 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 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. 06BSA013M, dated October 19, 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; 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, with the condition stipulated below and 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, on a site within a C6-1 zoning district, the proposed development of an 11-story mixed-use building with ground floor commercial space and 40 dwelling units, which is non-complying as to residential FAR, open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 19, 2007"— twelve (12) sheets; and *on further condition*:

THAT the total FAR of the development is limited to 6.0, with a residential FAR of 5.6 and a commercial FAR of 0.4;

THAT the street wall of the building is limited to a height of 129'-8" and the open space is limited to a minimum of 2,022 sq. ft. (seven percent OSR); other bulk parameters of the building shall be as indicated on the BSA-approved plans;

THAT the interior layout and all exiting requirements 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 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 1, 2008.

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## **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.

# MINUTES

PREMISES AFFECTED – 626 West 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

**COMMUNITY BOARD #8BX**

APPEARANCES – None.

**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, July 1, 2008.

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**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 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 4, 2007, acting on Department of Buildings Application No. 302351256, reads in pertinent part:

- “1) Proposed floor area and OSR is contrary to section: ZR 23-141(a)
- 2) Proposed one side yard is contrary to section ZR 23-461(a)
- 3) Proposed rear yard is contrary to section 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, open space ratio, side yard and rear yard, contrary to ZR §§ 23-141(a), 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on November 20, 2007, after due notice by publication in *The City Record*, with continued hearings on

January 8, 2008, February 12, 2008, March 18, 2008, May 6, 2008 and June 3, 2008, and then to decision on July 1, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of East 21<sup>st</sup> Street, between Avenue I and Avenue J; and

WHEREAS, the subject site has a total lot area of 3,500 sq. ft., and is occupied by a single-family home with floor area of 1,976 sq. ft. (0.564 FAR); and

WHEREAS, the premises are 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 1,976 sq. ft. (0.564 FAR), to 3,498 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,750 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 52.4 percent (a minimum of 150 percent is required); and

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

WHEREAS, the enlargement of the home is not located within 20’-0” of the rear lot line; and

WHEREAS, the proposed enlargement will maintain the existing complying side yard with a width of 8’-0” and increase the existing non-complying side yard from a width of 2’-0” to 2’-1 1/2” (side yards with a total width of 13’-0” and a minimum width of 5’-0” each are required); and

WHEREAS, at hearing, the Board directed the applicant to (1) confirm which portions of the existing home will be retained, (2) confirm zoning calculations including basement floor area, (3) confirm compliance of the driveway slope into the basement, and (4) remove the porches from the plans; and

WHEREAS, in response, the applicant (1) provided revised plans reflecting the portions of the building, which would be retained, (2) provided revised zoning calculations including basement floor area, (3) removed the below grade garage and associated driveway, and (4) eliminated all but an outline of the porches and noted on the plans that they were subject to DOB approval; 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

# MINUTES

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 yard and rear yard, contrary to ZR §§ 23-141(a), 23-461(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 30, 2008" – (12) sheets and "July 1, 2008" – (1) sheet; and *on further condition*:

THAT the floor area of the attic shall be limited to 442 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 3,498 sq. ft. (0.99 FAR), an open space ratio of 52.4 percent, one side yard with a width of 8'-0", one side yard with a width of 2'-1 1/2", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT porches, balconies, bay windows, and exterior staircases 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 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 1, 2008.

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## 258-07-BZ

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

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

## COMMUNITY BOARD #4Q

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated October 12, 2007, acting on Department of Buildings Application No. 402649951, reads in pertinent part:

"The proposal to continue to occupy the premises as a gasoline service station in a C2-2 within R6 zoning district is . . . inconsistent with the terms and conditions of the special permit previously granted by the Board of Standards and Appeals under BSA Cal. No. 791-51-BZ and is hereby denied.

The proposal to remove the existing convenience store, canopy and fuel dispensing equipment and pump islands and to erect a new convenience store, new metal canopy and new fuel dispensing area at a gasoline service station located within a C2-2 within R6 zoning district. . . is contrary to the special permit previously granted by the Board of Standards and Appeals under Cal. No. 791-51-BZ and is hereby denied"; and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in the *City Record*, with continued hearings on May 6, 2008 and June 3, 2008 and then to decision on July 1, 2008; and

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

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

WHEREAS, the premises is located on the northwest corner of 108<sup>th</sup> Street and the Horace Harding Expressway, an arterial highway; and

WHEREAS, this is an application for a special permit under ZR § 73-211, on a site previously before the Board, to permit the proposed demolition of the existing structure and the proposed construction of a new automotive service station (Use Group 16) within a C2-2 (R6) zoning district; and

WHEREAS, the applicant states that automobile repairs will no longer be performed at the subject premises, but that gasoline sales will remain; and

WHEREAS, on May 13, 1952, under BSA Cal. No. 791-51-BZ, the Board granted a variance to permit, partly in a

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# MINUTES

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business district, the construction and maintenance of a gasoline service station with automobile repair accessory uses for a term of 15 years; and

WHEREAS, the grant was subsequently amended and extended until March 2, 1971, when a special permit was granted by the Board, under BSA Cal. No. 636-70-BZ, permitting the reconstruction of the gasoline service station; and

WHEREAS, on March 23, 1999, the Board granted an amendment to permit certain site modifications including the conversion of an accessory building to a convenience store, the replacement of pump islands, the installation of a new canopy, and the discontinuance of auto repair uses; and

WHEREAS, the applicant did not pursue construction in accordance with the 1999 special permit; and

WHEREAS, the site is currently occupied by an automotive service station containing eight fuel pumps, five 4,000 gallon underground fuel storage tanks, and an accessory building for automobile repair and maintenance and the sale of automotive supplies; and

WHEREAS, the instant proposal seeks to demolish the existing structure and remove all five existing underground storage tanks, as well as the pump islands and to replace them with a 2,100 sq. ft. convenience store, 12 new pumps, a new canopy, four 10,000 gallon underground storage tanks, together with a new piping system, and on-site parking for nine automobiles; and

WHEREAS, the required findings for the special permit for gasoline service stations in certain districts, pursuant to ZR § 73-211, include the following: (1) that the site is located within certain commercial zoning districts in which the longer dimension is at least 375 feet; (2) the site has a minimum lot area of 7,500 sq. ft., (3) that five reservoir parking spaces be provided, (4) that means of ingress and egress are designed so as to cause minimum obstruction, (5) that screening be provided along lot lines adjoining residential districts, and (6) that signage comply with applicable district regulations; and

WHEREAS, the applicant represents that the C2-2 zoning district that encompasses this site extends to the east for a distance exceeding the 375 ft. minimum required by ZR § 73-211; and

WHEREAS, the site's total lot area of 13,941 sq. ft. meets the minimum lot area requirement of ZR § 73-211; and

WHEREAS, the applicant represents that five reservoir parking spaces will be provided; and

WHEREAS, at hearing, the Board questioned whether sufficient circulation space existed to provide the required number of reservoir spaces on-site; and

WHEREAS, the applicant provided a site plan showing that five reservoir spaces could be accommodated on-site; and

WHEREAS, with respect to circulation within the site, the applicant submitted a traffic circulation plan indicating that 32 feet of space is provided between the gasoline dispensers closest to the Horace Harding Expressway, allowing traffic to flow between the dispensers even while fueling positions are used on both sides; and

WHEREAS, with respect to ingress to and egress from

the site, the applicant represents that entrances and exits are designed to ensure that vehicular movement in and from the site can circulate with a minimum of obstruction of streets and sidewalks; and

WHEREAS, at hearing, the Board questioned the need to maintain two curb cuts on both the frontage on 108<sup>th</sup> Street and the frontage on the Horace Harding Expressway; and

WHEREAS, a traffic engineering study submitted by the applicant reported that dual curb cuts were required on each frontage to prevent site congestion when egress was blocked by buses or individuals waiting for buses on 108<sup>th</sup> Street or the Horace Harding Expressway; and

WHEREAS, at hearing the Board questioned whether the curb cuts could be reconfigured to alleviate congestion concerns and to improve pedestrian safety; and

WHEREAS, the applicant submitted a revised site plan and letter from New York City Transit confirming that the location of the bus stop at 108<sup>th</sup> Street was being relocated to the parcel immediately to the north of the site and that bus shelters would be installed at both the new bus stop position on 108<sup>th</sup> Street, as well as along the Horace Harding Expressway; and

WHEREAS, regarding site screening, the applicant states that both the northerly lot line, adjoining a residential district, and the westerly lot line will be screened with a continuous six-foot high chain link fence with aluminum slat enclosures to create a 50 percent opaque effect; and

WHEREAS, the applicant proposes approximately 254 sq. ft. of signage, of which 107 sq. ft. would be non-illuminated and approximately 147 sq. ft. would be illuminated; and

WHEREAS, the applicant represents that the surface area of the proposed signage is below the limit of 450 sq. ft. permitted for a site with three frontages in a C2-2 zoning district under ZR § 73-211; and

WHEREAS, accordingly, the applicant has submitted sufficient evidence that the findings set forth at ZR § 73-211 have been met; and

WHEREAS, the applicant states that the proposed accessory convenience store is permitted as of right in a C2-2 zoning district; and

WHEREAS, the applicant represents that lighting will be designed so as to be directed at the site and away from adjacent uses; and

WHEREAS, the applicant further represents that refuse will be stored in sealed metal containers within an enclosure and that trash collection will be scheduled for daytime hours to be more compatible with nearby uses; and

WHEREAS, the Board notes that the reconstruction of the gasoline service station 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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# MINUTES

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the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 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. 08-BSA-034Q, dated November 7, 2008; and

HEREAS, the EAS documents show that the continued operation of the gasoline service station 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 gasoline service station 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 §§ 73-211 and 73-03, to permit in a C2-2 (R6) zoning district the permit the proposed demolition of the existing structure and the proposed construction of a new automotive service station (Use Group 16); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2008"-(2) sheets and "June 17, 2008"-(1) sheet; and *on further condition*:

THAT signage shall comply with C2-2 zoning district regulations and be limited to that indicated on the BSA-approved plans;

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

THAT the site shall be maintained clean and free of debris and graffiti;

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 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 1, 2008.

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## 50-08-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Sylvester’s R.C. Church, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 6, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network.

PREMISES AFFECTED – 265McKinley Avenue, between Grant Avenue and Eldert Lane, Block 4175, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Robert Gardioso.

For Opposition: Ricardo A. Sánchez.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 4, 2008, acting on Department of Buildings Application No. 310018398, reads in pertinent part:

“Proposed monopole is not allowable within R5 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 R5 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 3, 2008 after due notice by publication in *The City Record*, and then to decision on July 1, 2008; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a one-story church building; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to



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# MINUTES

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provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment, located within a fenced area immediately adjacent to the pole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-064K, dated March 6, 2008; 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 R5 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received March 6, 2008"-(5) 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 1, 2008.

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**52-08-BZ**

APPLICANT – Dennis D. Dell' Angelo, for Yossi Amar, owner.

SUBJECT – Application March 7, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and lot coverage (§23-141); side yards (§23-461) and rear yard requirement (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3935 Bedford Avenue, east side of Bedford Avenue, Block 6811, Lot 72, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# MINUTES

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## APPEARANCES –

For Applicant: Marc Dell'Angelo.

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

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 12, 2008, acting on Department of Buildings Application No. 310074870, reads in pertinent part:

- “1) Proposed FAR and lot coverage constitutes an increase in the degree of existing non-compliance contrary to ZR § 23-141.
- 2) Proposed horizontal enlargement provides less than the required side yards contrary to ZR § 23-46 and less than the required rear yard contrary to ZR § 23-47 Z.R.”; 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, side yards and rear yard, contrary to ZR §§ 23-141(a), 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on May 6, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 3, 2008, and then to decision on July 1, 2008; and

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

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue S and Avenue R; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with floor area of 1,544 sq. ft. (0.514 FAR); and

WHEREAS, the premises are 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 1,544 sq. ft. (0.514 FAR), to 2978.5 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 a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the home is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with minimum widths of 2'-8 ¾" and 7'-0 ½" (side yards with a total width of 13'-

0" and a minimum width of 5'-0" each are required); and

WHEREAS, at hearing, the Board directed the applicant to note that the existing porch at the front of the building is subject to DOB approval; and

WHEREAS, in response, the applicant provided revised plans, which reflect this condition; 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, side yards and rear yard, contrary to ZR §§ 23-141(a), 23-461(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 April 21, 2008"-(3) sheets, "June 16, 2008"-(3) sheets and "June 30, 2008"-(8) 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 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 2,978.5 sq. ft. (0.99 FAR), one side yard with a minimum width of 2'-8 ¾", one side yard with a minimum width of 7'-0 ½", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

THAT the front open porch shall be reviewed and approved by DOB;

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

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# MINUTES

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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 1, 2008.

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## 53-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2000 – Special Permit (§73-30), to permit a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and O’Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Robert Gardioso.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 5, 2008, acting on Department of Buildings Application No. 210019567, reads in pertinent part:

“Proposed monopole requires a Special Permit from the New York City Board of Standards and Appeals. Referred to the BSA for the issuance of a special permit under 73-30;” 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 telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS, the site is the subject of a variance to permit the construction of a one-story automotive service station within a residential zoning district, under BSA Cal. No. 731-68-BZ; and

WHEREAS, the applicant concurrently requested an amendment to the variance; there are separate resolutions for the subject special permit and the amendment, but the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on June 3, 2008 after due notice by publication in *The City Record*, and then to decision on July 1, 2008; and

WHEREAS, Community Board 9, the Bronx, recommends approval of this application; and

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

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a one-story automotive service station (Use Group 16); and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet, with internally-mounted antennas and related equipment, located within a fenced area; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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

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# MINUTES

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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 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. 08-BSA-066, dated March 11, 2008; 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 6NYCRR 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 R3-2 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received March 11, 2008"-(4) sheets and "May 22, 2008"-(1) sheet ; and *on further condition*;

THAT any fencing 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

1, 2008.

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## 731-68-BZ

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owners; Northop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2008 – Amendment (§73-30) to allow the site showing removal of gas tanks and proposed change for a non-accessory radio tower.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Robert Gardioso.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for an amendment to a previously granted variance which permitted the construction of a one-story automotive service station within an R3-2 zoning district; and

WHEREAS, concurrent with this application, under BSA Cal. No. 53-08-BZ, the applicant seeks a special permit, pursuant to ZR § 73-30, to permit the construction of a telecommunications pole; the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on June 3, 2008 after due notice by publication in *The City Record*, and then to decision on July 1, 2008; and

WHEREAS, Community Board 9, the Bronx, recommends approval of this application; and

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

WHEREAS, the site is bounded by Soundview Avenue, White Plains Road and O'Brien Avenue; and

WHEREAS, the Board has exercised jurisdiction over the site since September 20, 1968, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story automotive service station in an R3-2 zoning district; and

WHEREAS, the applicant now proposes to construct a telecommunications pole, with a height of 90 feet with internally-mounted antennas and related equipment, located within a fenced area at the site; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

# MINUTES

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the site plan, in conjunction with the separate request for the special permit, pursuant to ZR § 73-30, at the site are appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on September 20, 1968, so that as amended this portion of the resolution shall read: "to permit the noted modification to the plans to reflect the proposed telecommunications pole at the site" *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received March 11, 2008"-(4) sheets and "May 22, 2008"-(1) sheet ; and *on further condition*:

THAT any fencing 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 1, 2008.

## 55-08-BZ

APPLICANT – Walter T. Gorman, P.E., for Eileen & Benjamin Seiden, owner; Exxon Mobil Corporation, lessee.  
SUBJECT – Application March 13, 2008 – Special Permit filed pursuant to §§11-411 & 73-01(d) to reinstate a variance previously granted under BSA calendar number 381-60-BZ, which expired on November 1, 1995, allowing the operation of an Automotive Service Station with accessory uses in a R7-2 zoning district.

PREMISES AFFECTED – 350/58 East Houston Street, North west corner of Avenue C, Block 384, Lot 33, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 11, 2008, acting on Department of Buildings Application No. 110100774, reads:

"Denied. Need the BSA approval prior to approval"; and

WHEREAS, this is an application for a reinstatement of a prior Board approval special permit pursuant to ZR § 11-411, which allowed the operation of a gasoline service station with accessory automotive repairs and car washing (UG 16) in an R7-2 zoning district, and to permit pursuant to ZR § 11-412 the legalization of modifications to the site; and

WHEREAS, a public hearing was held on this application on June 3, 2008 after due notice by publication in the *City Record*, and then to decision on July 1, 2008; 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 3, Manhattan, recommends approval of this application, on condition that the site be well-maintained; and

WHEREAS, the premises is located on a through-block site on the west side of Avenue C which is bounded on the south by East Houston Street and on the north by East Second Street, within an R7-2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,970 sq. ft.; and

WHEREAS, the site is currently occupied by an automotive service station with a 1,344 sq. ft. building; and

WHEREAS, the Board originally granted a variance to permit the construction of a gasoline service station with accessory automotive uses at the site, including the storage of motor v

WHEREAS, the variance was subsequently amended, and extended by the Board, most recently on December 11, 1990, under BSA Cal. No. 381-60-BZ, to permit an extension of term for a gasoline service station with accessory uses for a term of five years, expiring on November 1, 1995; and

WHEREAS, the applicant represents that there has been no enlargement to the zoning lot or the building, and the only change to the site from the time of the last grant is the addition of a car vacuum and air tower, and a planter; a UG 16 use has been continuous since the expiration noted above; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, the applicant now proposes to reinstate the prior grant and obtain a new ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the New York State Department of Environmental Conservation ("DEC") recorded an active spill at this site, identified as Spill No. 90-01894; and

# MINUTES

WHEREAS, to address this spill, DEC entered into an order of consent pursuant to which a Remedial Action Plan ("RAP") with proposed remediation measures was prepared by the owner and approved by DEC on July 1, 2005; a revised RAP was approved by DEC in October 2007; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 §§ 11-411 and 11-412, for a reinstatement of a prior Board approval, an extension of term, and a legalization of changes in the site of a gasoline service station with accessory automotive uses (UG 16) in an R7-2 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received March 13, 2008"-(4) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on July 1, 2018;

THAT the lot shall be kept free of graffiti, dirt and debris;

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

THAT a new certificate of occupancy be obtained by January 1, 2009;

THAT the applicant report to DEC quarterly on the status of spill remediation until notified that no further measures or reports are necessary;

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

THAT all signage shall comply with C1 zoning 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, July 1, 2008.

## 109-07-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-

45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jeffrey Chester and Vincenzo D'Angelo.

For Opposition: Mary Walsh, Howard Nathan, Fernando Fernandez, Ananda Reza, Marion C. Molno and Tom Ryan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for decision, hearing closed.

## 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 §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 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Moshe Friedman.

For Opposition: Arnold Sadownick, M. L. , Robert Wisniewski, Brian Khnovich, Anatoliy Shukhman, Francis J. McCade and Herbert Asherman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for decision, hearing closed.

## 238-07-BZ

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O'Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

SUBJECT – Application October 23, 2007 – Variance (§72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§117-21 & §23-145), lot coverage (§117-21 & §23-145), minimum distance between windows (§117-21 & §23-711(b)) and height and setback (§117-21, §23-633 & §23-663). Student dormitory (UG 3) and faculty

# MINUTES

housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§ 42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180' west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

## COMMUNITY BOARD # 2Q

APPEARANCES –

For Applicant: Howard Goldman, Helen Marshall, Queens Borough President; William CUY Graduate School; Brent Carner, O'Connor Corp; Jay Valgora, Martin Bitterman, Michelle Jaffi, Karen Fitzgerald, Rob Faunce, Richard Mazau, Nancy Verma, Noreen O'Reilly, Matt Quigley and Francisco Jones.

For Opposition: Douglas Otto, Tom Paine, Dennis D'Amelio, Kenneth Greenberg, Tony Vaccaro and Nigel Rollings.

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for continued hearing.

## 257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections 24-522 (height, setbacks, and sky exposure plane for community facility), 24-11 (community facility lot coverage), and 24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

## COMMUNITY BOARD #11M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

## 32-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Baron Hirsch Cemetery Assn. Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 1126 Richmond Avenue, intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street, Block 1668, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Robert Gardioso.

For Opposition: Theresa Smith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

## 44-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for continued hearing.

## 66-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland, owner.

SUBJECT – Application March 28, 2008 – 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 less than the required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21<sup>st</sup> Street, east side of East 21<sup>st</sup> Street, between Avenue N and Avenue M, Block 7657, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for continued hearing.

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# MINUTES

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## 35-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lewis Garfinkel, R.A.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.  
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## 78-08-BZ

APPLICANT – Flora Edwards, Esq., for SBCSICA, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) to permit a new community facility building (South Bronx Charter School). The proposal is contrary to §§123-62 (Maximum floor area ratio for community facilities), 24-11 (Maximum floor area ratio and percentage of lot coverage) and 123-662 (b)(4) (As it relates to street wall height for all buildings in Special Mixed-Use Districts with R6, R7, R8 and R10 district designations). MX-1 (M1-2/R6A).

PREMISES AFFECTED – 611-617 East 133<sup>rd</sup> Street, Block 2546, Lot 27, Borough of Bronx.

### COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Flora Edwards, Steve Grasso, Gerald Wall, Yolanda F, Councilmember DelCarmen A.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.  
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## 144-08-BZ

APPLICANT – Rizzo Group, for William Nelville & Sons USA LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application May 14, 2008 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment on portions of the first and cellar floors. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 225 5<sup>th</sup> Avenue, easterly side of 5<sup>th</sup> Avenue between 26<sup>th</sup> Street and 27<sup>th</sup> Street, Block 856, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Kenneth Barbina, Esq.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 1:30 P.M., for decision, hearing closed.  
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*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*



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# BULLETIN

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

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40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 29

July 25, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                    |         |
|------------------------------------|---------|
| DOCKET .....                       | 455/456 |
| <b>CALENDAR</b> of August 19, 2008 |         |
| Morning .....                      | 457     |
| Afternoon .....                    | 457/458 |

# CONTENT

**MINUTES of Regular Meetings,  
Tuesday, July 15, 2008**

Morning Calendar .....459

**Affecting Calendar Numbers:**

|                            |   |
|----------------------------|---|
| 718-56-BZ                  | 741 Forest Avenue, Staten Island                |
| 841-76-BZ                  | 651 Fountain Avenue, Brooklyn                   |
| 78-79-BZ                   | 671 Fountain Avenue, Brooklyn                   |
| 1098-83-BZ                 | 147-10 Northern Boulevard, Queens               |
| 561-87-BZ                  | 2700 Jerome Avenue, Bronx                       |
| 84-91-BZ                   | 2344 Eastchester Road, Bronx                    |
| 80-07-BZ                   | 319 West 94 <sup>th</sup> Street, Manhattan     |
| 853-53-BZ                  | 2402/16 Knapp Street, Brooklyn                  |
| 467-58-BZ                  | 172-11 Northern Boulevard, Queens               |
| 579-68-BZ                  | 152-160 East 88 <sup>th</sup> Street, Manhattan |
| 406-82-BZ                  | 2411 86 <sup>th</sup> Street, Brooklyn          |
| 546-82-BZ                  | 148-15 89 <sup>th</sup> Avenue, Queens          |
| 200-00-BZ                  | 107-24 37 <sup>th</sup> Avenue, Queens          |
| 33-06-BZ                   | 1457 Richmond Road, Staten Island               |
| 302-06-BZ                  | 1791 Ocean Parkway, Brooklyn                    |
| 194-07-A                   | 1447 Rosedale Avenue, Bronx                     |
| 143-08-A                   | 43 Beach 221 <sup>st</sup> Street, Queens       |
| 146-08-A                   | 1618-1620 Broadway, Brooklyn                    |
| 141-07-A                   | 129-48 Hookcreek Boulevard, Queens              |
| 168-07-A                   | 1479 Rosedale Avenue, Bronx                     |
| 33-08-A                    | 67 Brighton 1 <sup>st</sup> Lane, Brooklyn      |
| 104-08-BZY &<br>119-08-BZY | 14/589 Carmela Court, Staten Island             |

Afternoon Calendar .....477

**Affecting Calendar Numbers:**

|                         |   |
|-------------------------|---|
| 127-07-BZ               | 19-03 75 <sup>th</sup> Street, Queens       |
| 274-07-BZ               | 1157 83 <sup>rd</sup> Street, Brooklyn      |
| 23-08-BZ                | 182-69 80 <sup>th</sup> Road, Queens        |
| 32-08-BZ                | 1126 Richmond Avenue, Staten Island         |
| 65-08-BZ                | 120-50 Springfield Boulevard, Queens        |
| 69-08-BZ                | 61-40 Mt. Olivet Crescent, Queens           |
| 85-08-BZ                | 222-89 Braddock Avenue, Queens              |
| 86-08-BZ                | 111-26 Corona Avenue, Queens                |
| 90-08-BZ                | 104-36 196 <sup>th</sup> Street, Queens     |
| 91-08-BZ                | 37-68 97 <sup>th</sup> Street, Queens       |
| 189-07-BZ               | 40-55 College Point Boulevard, Queens       |
| 220-07-BZ               | 847 Kent Avenue, Brooklyn                   |
| 243-07-BZ &<br>244-07-A | 120 John Street, Staten Island              |
| 257-07-BZ               | 3 East 101 <sup>st</sup> Street, Manhattan  |
| 291-07-BZ               | 1912 New York Avenue, Brooklyn              |
| 12-08-BZ                | 317 Lenox Avenue, Manhattan                 |
| 89-08-BZ                | 1101 Victory Boulevard, Staten Island       |
| 156-08-BZ               | 102 West 57 <sup>th</sup> Street, Manhattan |

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# DOCKET

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New Case Filed Up to July 15, 2008  
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**175-08-BZ**

141 Allen Street, Between Rivington Street and Delancy Street., Block 415, Lot(s) 24, Borough of **Manhattan, Community Board: 3**. Special Permit (73-36) to allow the operation of a phjysical culture establishment.  
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**176-08-A**

105 Beach 217th Street, East side of Beach 217th Street, 80' south of Breezy Point Boulevard, Block 16450, 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 General City Law Section 36. R4  
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**177-08-A**

515 West 23rd Street, North side of West 23rd Street, between 10th and 11th Avenue., Block 695, Lot(s) 27, Borough of **Manhattan, Community Board: 4**. Appeal seeking to vacate a partial "stop work" order by the DOB.  
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**178-08-BZ**

153 Norfolk Street, Between Oriental Boulevard and Shore Boulevard., Block 8757, Lot(s) 35, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home.  
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**179-08-BZ**

600-602 Broadway, Southeast corner of Houston Street intersecting with Broadway., Block 511, Lot(s) 16, Borough of **Manhattan, Community Board: 2**. Special Permit (73-00)  
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**180-08-A**

3236 Schley Avenue, South east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot(s) 7,108,109,110,111, Borough of **Bronx, Community Board: 10**. Construction within mapped street, contary to Section 35 of the General City Law.  
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**181-08-A**

3238 Schley Avenue, South east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot(s) 108, Borough of **Bronx, Community Board: 10**. Construction within mapped street, contary to Section 35 of the General City Law.  
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**182-08-A**

3240 Schley Avenue, South east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot(s) 109, Borough of **Bronx, Community Board: 10**. Construction within mapped street, contary to Section 35 of the General City Law.  
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**183-08-A**

3242 Schley Avenue, South east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot(s) 110, Borough of **Bronx, Community Board: 10**. Construction within mapped street, contary to Section 35 of the General City Law.  
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**184-08-A**

3244 Schley Avenue, South east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot(s) 111, Borough of **Bronx, Community Board: 10**. Construction within mapped street, contary to Section 35 of the General City Law.  
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**185-08-BZ**

170 Claremont Avenue, Corner lot located on the east side of Claremont Avenue and soutside of LaSalle Street., Block 1993, Lot(s) 43, Borough of **Manhattan, Community Board: 9**. Variance to allow the enlargement of a six-story building and installation of an elevator, contrary to bulk regulations.  
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**186-08-BZ**

3065 Atlantic Avenue, North west corner of Atlantic Avenue and Sheperd Avenue, running west 62.20' thence north 104.50' thence east 61.29; thence south 93.10' ., Block 3957, Lot(s) 45, Borough of **Brooklyn, Community Board: 5**. Special Permit (73-19) to allow a school, contrary to use regulations.  
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**187-08-BZ**

1247 38th Street, Located on the east side of 38th Street, midblock between 13th Avenue and 12th Avenue., Block 5295, Lot(s) 52, Borough of **Brooklyn, Community Board: 12**. Variance (72-21) to permit the construction of a community facility building. The proposal is contrary to ZR Section 42-00. M2-1 zoning district.  
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# DOCKET

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## **188-08-BZ**

11 Penn Plaza, Northeast corner of Madison Avenue and East 76th Street., Block 1391, Lot(s) 21, Borough of **Manhattan, Community Board: 8.** Special Permit/Variance to allow the legalization of physical culture establishment and Hotel and Residence.

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## **189-08-BZ**

232 Mercer Street, Easterly side of Mercer Street 220' north of Blecker Street., Block 532, Lot(s) 15, Borough of **Manhattan, Community Board: 2.** Special Permit (73-36) to allow the legalization of a Physical Culture Establishment in the cellar, first and second floors in the six-story mixed-use building. The proposal is contrary to ZR Section 32-10. C6-2 district.

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## **190-08-BZ**

41-43 Bond Street, Two tax lots located on the south side of Bond Street, mid-block between Lafayette Street and Bowery., Block 529, Lot(s) 29,30, Borough of **Manhattan, Community Board: 2.** Variance (§ 72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§ 42-10). M1-5B district.

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## **191-08-BZY**

1610 Avenue S, Avenue S, Block 7295, Lot(s) 3, Borough of **Brooklyn, Community Board: 15.** Extension of time to complete construction (11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

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## **192-08-A**

772 Bayside, West side of Bayside 90' north of Marshall Avenue, Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to GCL 35 and not fronting a mapped street contrary to GCL 36. R4 Zoning District.

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## **193-08-A**

125 Greaves Lane, Amboy Road-Greaves Avenue, Block 4645, Lot(s) 425, Borough of **Staten Island, Community Board: 3.**

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

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# CALENDAR

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**AUGUST 19, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 19, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **360-01-BZ**

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.

SUBJECT – Application July 1, 2008 - Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.

PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **217-03-BZ**

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 - Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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### **257-04-BZ**

APPLICANT – Cozen O'Connor Attorneys, for Boerum Place, LLC, owner.

SUBJECT – Application May 19, 2008 - Original bulk variance was granted on 8/23/05. SOC Amendment filed on 5/19/08 pursuant to ZR Sections 72-01 & 72-22 to modify the street wall with dormers and to extend the elevator bulkhead to allow ADA access to the roof. No changes proposed to floor area or any waiver previously granted by the Board. R6, R6A, C2-3 & C2-4 districts.

PREMISES AFFECTED – 252/260 Atlantic Avenue aka 83-89 Boerum Place aka 239/247 Pacific Street, east side of Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**APPEALS CALENDAR**

### **168-08-A**

APPLICANT – Cozen O'Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 - Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110' north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**AUGUST 19, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 1, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **41-08-BZ**

APPLICANT – Omnipoint Communications Inc., for Mid Queens Ltd., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application February 27, 2008 – Special Permit (§73-30) to permit a proposed 65 foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 64-35 223<sup>rd</sup> Place, Block 7658, Lot 2, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### **76-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.

SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR section 24-36. R5 district.

PREMISES AFFECTED – 621 Beach 9<sup>th</sup> Street, south of Caffney Avenue, Block 1558, Lot 15, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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**79-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Giuseppe Porretto, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) for the construction of a single family residence on a vacant lot. This application seeks to vary (23-32) for undersized lot width and lot area; (23-461) for less than the required side yards and (21-15) for a proposed lot line building which is not allowed in an R3-2 zoning district.

PREMISES AFFECTED – 117-23 132<sup>nd</sup> Street, easterly side of 132<sup>nd</sup> Street, 220; southerly of Foch Boulevard, Block 11696, Lot 55, Borough of Queens.

**COMMUNITY BOARD #12Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 15, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**718-56-BZ**

APPLICANT – Walter T. Gorman, for Exxon/Mobil Corporation

SUBJECT – Application March 31, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil) which expired on July 2, 2002; an Extension of Time to obtain a Certificate of Occupancy which expired on July 27, 2000 and an Amendment to legalize the conversion of one restroom to office space and office/sales area to an accessory convenience store in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner of North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Patrick Gorman.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of term for the continued use of a gasoline service station, which expired on July 2, 2002; an extension of time to obtain a certificate of occupancy and an amendment to legalize certain site modifications; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application for a five-year extension pending assurance from the Department of Environmental Protection that gasoline vapor is not seeping through the sewers into surrounding homes; and

WHEREAS, the site is located on the northwest corner of Forest Avenue and North Burgher Avenue, within a C2-1

(R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 2, 1957 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 July 2, 1992 for a term of ten years from the expiration of the prior grant, to expire on July 2, 2002, and then amended on July 13, 1999 to grant the applicant until July 2000 to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight during the merger of the corporate owner; and

WHEREAS, pursuant to ZR § 11-41, the Board may permit an extension of term; and

WHEREAS, the applicant seeks an amendment to legalize the conversion of one restroom to office space and office/sales to an accessory convenience store; and

WHEREAS, at hearing, the Board directed the applicant to provide information about the existing spill and to design a plan to remediate garbage storage and to remove non-complying flags and signage; and

WHEREAS, in response, the applicant represents that the New York State Department of Environmental Conservation has agreed that remediation may be discontinued to allow time for the underground storage tanks to be removed, and that all noted debris, flags, signage and guardrail conditions have been corrected; 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, dated July 2, 1957, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 2, 2002, to expire on July 2, 2012; to grant an extension of time to obtain a certificate of occupancy to January 15, 2009, and to permit certain site modifications; *on condition* that all use and operations shall substantially conform drawings filed with this application marked “Received March 20, 2008”-(5) sheets ; and *on further condition*:

THAT the term of the grant shall expire on July 2, 2012;

THAT a certificate of occupancy shall be obtained by January 15, 2009;

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

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

# MINUTES

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

(DOB Application No. 510030574)

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 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 Application: Peter Hirshman.

**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, July 15, 2008.

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## 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

APPEARANCES –

For Application: Peter Hirshman.

**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, July 15, 2008.

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## 1098-83-BZ

APPLICANT – Walter T. Gorman, P.E., Joseph M. Mattone, Estate of James J. Mannix, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application March 21, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Mobil), in C1-2/R5 zoning district, which expired on April 3, 2004 and an Amendment to legalize the conversion of the sales area to an accessory convenience store, the installation of planters, public telephone, chain link fencing atop a portion of a brick wall and the elimination of bollards on Northern Boulevard.

PREMISES AFFECTED – 147-10 Northern Boulevard, south east corner of 147<sup>th</sup> Street. Block 5016, Lot 18, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick Gorman.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of term for a previously granted special permit allowing the operation of a gasoline service station, which expired on April 13, 2004, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

WHEREAS, Community Board 7, Queens, has recommended approval of this application, with the recommendation that the hours of operation of the automotive vacuum be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 5:00 p.m.; and

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

WHEREAS, the premises is located on the southwest corner of Northern Boulevard and 147<sup>th</sup> Street; and

WHEREAS, the site is located within a C1-2 (R5) zoning district and is occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over



# MINUTES

the subject site since May 17, 1955 when, under BSA Cal. No. 736-51-BZ, the Board granted an application to permit the construction of a gasoline service station; and

WHEREAS, on April 3, 1984, under the subject calendar number, the Board granted an application to re-establish the expired variance to permit the use for a period of ten-years; and

WHEREAS, most recently, on September 19, 1995, the Board granted an additional ten-year term, to expire on April 3, 2004; and

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

WHEREAS, the applicant now proposes, to legalize the following changes to the site: a conversion of a portion of the sales area to an accessory convenience store, the addition of planters and a public telephone, and the elimination of bollards along Northern Boulevard; the applicant also proposes to install a chain link fence along the brick wall at the rear of the property; and

WHEREAS, additionally, the Board requested that the applicant provide documentation regarding the current status of the open spill report and the remediation protocol being followed on the premises; and

WHEREAS, in response, the applicant provided a statement confirming compliance with all New York State Department of Environmental Conservation (“NYSDEC”); and

WHEREAS, further, the Board directed the applicant to ensure that all signage complies with C1-2 zoning district regulations; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on April 3, 1984, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 3, 2004, to expire on April 3, 2014 to permit the noted site modifications *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked “Received March 31, 2008”-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 3, 2014;

THAT signage shall comply with C1-2 zoning district regulations;

THAT the hours of the repair shop and automotive vacuum shall be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m. and Saturday, 8:00 a.m. to 5:00 p.m.; and

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 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 App. No. 410065352)

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 561-87-BZ

APPLICANT – The Agusta Group, for 2700 Jerome Avenue Realty Corporation, owner.

SUBJECT – Application April 13, 2007 – Extension of Term/Amendment/Waiver-To permit eating and drinking. To legalize interior layout change and reduction from 53 to 50. To permit an increase in the hours of operation of the (UG12) from the 9:00pm-3:00am to 8:00pm 4:00am Wednesday thru Sunday.

PREMISES AFFECTED – 2700 Jerome Avenue, easterly side of Jerome Avenue, 221.27’ northerly of Kingsbridge Road, Block 3317, Lot 17, Borough of Bronx.

## COMMUNITY BOARD #7BX

APPEARANCES – None.

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

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application requesting a waiver of the Rules of Practice and Procedure, and a reopening for an extension of term and an amendment of a special permit under ZR § 73-241, to permit, on a site in an R8 zoning district with a C2-3 overlay, an eating and drinking establishment without limitation on entertainment which seeks to legalize an interior layout change, to reduce a parking requirement from 53 vehicles to 50 vehicles, and to permit an increase in the hours of operation from 9:00 p.m. to 3:00 a.m. to 8:00 p.m. to 4:00 a.m.; and

WHEREAS, on October 25, 1988, under the subject calendar number, the Board granted a special permit to permit a one story eating and drinking establishment without restriction on entertainment for a term of five years; and

WHEREAS, the Board subsequently approved the amendment and extension of the application; and

WHEREAS, most recently, on June 17, 2003, the Board reopened and amended the grant to permit the reconfiguration of the first floor and to extend the term of the special permit for three years from the date of its expiration April 13, 2002, to expire on April 13, 2005; and

WHEREAS, the instant application was filed on May 13, 2007; and

WHEREAS, on June 13, 2007, Board staff issued a Notice of Comments informing the applicant that the special permit for an eating and drinking establishment that permitted

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# MINUTES

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dancing and a capacity of more than 200 persons was not compliant with the provisions ZR § 73-241 which limit capacity to 200 patrons and do not permit dancing; and

WHEREAS, on October 11, 2007, Board staff issued a warning letter informing the applicant that its continued failure to respond to the Notice of Objections could result in a dismissal hearing; and

WHEREAS, on March 17, 2008, Board staff met with the applicant to discuss the feasibility of filing a new special permit application pursuant to ZR §73-244 which would allow for dancing and a capacity of more than 200 patrons; and

WHEREAS, by letter to the Board dated March 18, 2008, the applicant stated that a new special permit application pursuant to § 73-244 would be filed within four to six weeks; and

WHEREAS, on March 21, 2008, Board staff contacted the applicant to discuss the required findings of ZR § 73-244; and

WHEREAS, the applicant failed to file a special permit application pursuant to ZR § 73-244; and

WHEREAS, on June 3, 2008, the applicant was advised by Board staff to either withdraw the subject application or to modify it to comply with the provisions of ZR § 73-244, and that the application would be placed on the dismissal calendar if no action was taken, and

WHEREAS, the applicant did not provide any response; and

WHEREAS, on June 18, 2008, the Board sent the applicant a Notice of Hearing, which stated that the case had been put on the July 15, 2008 dismissal calendar; and

WHEREAS, the applicant failed to cure the deficiencies of the application; and

WHEREAS, the applicant also failed to appear at the July 15, 2008 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. 561-87-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.  
SUBJECT – Application March 13, 2008 – Extension of Term/waiver of a previously granted variance (§72-21) for the continued UG6 use (Professional Offices) in a residential building in an R4A zoning district and an Amendment to allow storage use in the attic.

PREMISES AFFECTED – 2344 Eastchester Road, east side, south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

## COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for Use Group 6 use within a residential building in an R4A zoning district, which expired on September 15, 2002; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

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

WHEREAS, the site is located on the east side of Eastchester Road, south of Waring Avenue; and

WHEREAS, Community Board 11, Bronx, recommends disapproval of this application; and

WHEREAS, the site is located within an R4A zoning district and is occupied by a two-story house with basement and attic, and a total floor area of 5,291.89 sq. ft.; and

WHEREAS, on September 15, 1992, the Board granted a variance to permit within an R3-2 zoning district, the legalization of the conversion of a two-story building with basement and attic with medical offices (Use Group 4) in the basement and residential uses on the first and second floors to professional offices (Use Group 6B); and

WHEREAS, the term for the initial variance was for ten years, which expired on September 15, 2002; 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 was not extended in a timely manner due to administrative oversight; 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 September 15, 1992, so that as amended this portion of the resolution shall read: “to extend the term of the grant for a period of ten years from September 15, 2002, to expire on September 15, 2012; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant and BSA-approved drawings filed with this application marked “Received July 1, 2008”-(5) sheets; and *on further condition*:

THAT the term of the variance shall expire on September 15, 2012;

# MINUTES

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 210019530)

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 80-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Clover Housing Development Fund Corp., owner.

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 wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), and the permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94<sup>th</sup> Street, West 94<sup>th</sup> Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

## COMMUNITY BOARD # 7M

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, Commissioner Hinkson, Commissioner Montanez and.....5

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 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, in connection with a proceeding pending in New York Supreme Court, County of New York (captioned Neighborhood in the Nineties, Inc. v. Board of Standards and Apps., Index No. 115705-2007), the applicant disclosed that it not have proof that proper notice had been performed, specifically, that residents of the subject building had been notified prior to the hearing; and

WHEREAS, therefore, in accordance with § 666(8) of the Charter and § 1-10(f) of its Rules of Practice and Procedure, the Board moved to review its October 23, 2007 decision; and

WHEREAS, a hearing in connection with the Board’s review of this application was held on May 13, 2008, after due notice in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, accordingly, this resolution supersedes the resolution dated October 23, 2007; and

WHEREAS, the Board notes that the applicant provided documentation that the residents of the building and the affected property owners received proper notification of the re-hearing; the Board received 12 forms for objection and consent from affected property owners and 25 residents and property owners provided testimony at the re-hearing, as noted below; 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 at the initial set of hearings in favor of this application; and

WHEREAS, representatives of Neighborhood in the Nineties Block Association and other local residents testified in opposition to this application (the “Opposition”); and

WHEREAS, this application is brought on behalf of The Lantern Group, which is a not-for-profit affiliate of the Clover Housing Development Fund Corporation, a not-for-profit entity which owns the property; and

WHEREAS, the site’s lot area is 7,565 sq. ft., with 75 feet of frontage on the northern side of West 94<sup>th</sup> 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

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# MINUTES

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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 54 units are occupied; and

WHEREAS, the applicant proposes to rehabilitate and enlarge the existing structure for use as a 140-unit community facility with sleeping accommodations, with one unit for an on-site superintendent; and

WHEREAS, the proposed building will have a total floor area of 45,418 sq. ft. and a total FAR of 6.0, which are permitted as of right for a community facility use, and

WHEREAS, the proposed building will have a street wall height along West 94<sup>th</sup> Street of 88 feet (85 feet is the maximum permitted); with a setback of approximately 19'-6" (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 ten-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

**ZR § 72-21 (a) – Unique Physical Conditions Finding**

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the zoning lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant represents that the variance 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 would be economically infeasible 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 proposed community facility is constructed; and

WHEREAS, the applicant asserts therefore, that (i) the existing building cannot be demolished and (ii) 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 building; 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

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# MINUTES

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regulations as well as to accommodate the programmatic space needs would far exceed its development budget, and require the relocation of the existing tenants; and

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 that the ground through sixth floors of the existing building encroach by 16'-11" into the rear yard; and

WHEREAS, the Opposition contends that the applicant has failed to establish that the building floorplate and rear yard constitute unique conditions; and

WHEREAS, the applicant submitted a survey of 48 neighboring residential properties located within a three-block radius of the subject site within the R8 zoning district indicating that only 16 buildings were characterized by dumbbell-shaped construction, of which only five also had rear yards of 13 ft. or less; and

WHEREAS, according to the survey, only one other site within the study area was owned by a not-for-profit organization, and that site was not burdened by a dumbbell-shaped configuration; and

WHEREAS, the Board notes that buildings characterized by rear yards and floorplates similar to that of the subject building constitute approximately ten percent of the buildings in the zoning district, but that no other building within the district is characterized by these burdens as well as by the programmatic needs of the subject building; and

WHEREAS, a finding of uniqueness, however, does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980); 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 20 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

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 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 of the existing building; 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 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 Opposition argues that uniqueness is limited to the physical conditions of the zoning lot and that obsolescence of a building therefore cannot fulfill the requirements of the (a) finding; and

WHEREAS, New York Courts have found that unique physical conditions under Section 72-21(a) of the Zoning Resolution refer not only to land, but to buildings as well (see Homes for the Homeless v. BSA, 7/23/2004, N.Y.L.J. citing UOB Realty (USA) Ltd. v. Chin, 291 A.D.2d 248 (1<sup>st</sup> Dep't 2002;); and, further, obsolescence of a building is well-established as a basis for a finding of uniqueness (see Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990) (condition creating hardship was land improved with a now-obsolete structure); 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 Opposition argues that the programmatic needs of a not-for-profit cannot support a uniqueness finding under section 72-21(a) of the Zoning Resolution; and

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# MINUTES

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WHEREAS, however, in numerous prior instances the Board has found that unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of a not-for-profit organization, can create practical difficulties and unnecessary hardship in developing a site in strict conformity with the current zoning (see, e.g., BSA Cal. No. 145-07-BZ, approving variance of lot coverage requirements to permit development of a medical facility; BSA Cal. No. 209-07-BZ, approving bulk variance to permit enlargement of a school for disabled children; and 215-07-BZ, approving bulk variance to permit enlargement of a YMCA); and

WHEREAS, further, under BSA Cal. No. 219-03-BZ, the Board approved the legalization of a transitional housing facility for homeless families sponsored by the not-for-profit organization Homes for the Homeless based on a finding that the programmatic needs of the organization, coupled with the physical conditions of the site created hardship; and

WHEREAS, BSA Cal. No. 219-03-BZ is the companion resolution to BSA Cal. No. 220-03-BZ, reviewed by the N.Y. County Supreme Court in Homes for the Homeless, 231 N.Y.L.J. 18 at 3, col. 3 (Sup. Ct. 2004) (N.Y. County), a case in which the proposed variance permitting expansion of an existing facility was rejected by the Board because the applicant had failed to adequately establish its programmatic need for the proposed expansion, not, as contended by the Opposition, because the Board could not consider programmatic need when making the (a) finding under ZR § 72-21; 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; thereby meeting the required finding under ZR § 72-21(a); and

## **ZR § 72-21 (b) – Financial Return Finding**

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

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

WHEREAS, the Opposition argues that the applicant must establish the (b) finding because it has purportedly been stripped of its status as a not-for-profit organization; and

WHEREAS, as evidence of its current status as a not-for-profit tax-exempt organization, the applicant supplied: (i) a certified copy of its Certificate of Incorporation pursuant to Article XI of the Private Housing Finance Law

and Section 402 of the Not-For-Profit Corporation Law of the State of New York, dated November 19, 1998; (ii) a Certificate of Good Standing executed by the Special Deputy Secretary of State of the State of New York on May 19, 2008; (iii) a report of the Charities Bureau Registry Search of the Office of the New York State Attorney General printed June 18, 2008 indicating that the applicant's annual filing required for all charitable organizations was made April, 28, 2008; (iv) a Letter of Exemption under Section 501(c)(3) of the Internal Revenue Code; as well as (v) an Exempt Organization Certificate issued by the New York State Department of Taxation and Finance, all issued to the Clover Housing Development Fund Corporation; and

WHEREAS, the Board notes that the New York State Secretary of State oversees the formation and status of not-for-profit corporations and the New York State Attorney General oversees the regulation and enforcement of such organizations (see "The Regulatory Role of the New York State Attorney General," available from <http://www.oag.state.ny.us/charities/role.pdf>); and

WHEREAS, the existence of a current Certificate of Good Standing issued by the NY Secretary of State is dispositive of the question of the status of a not-for-profit organization; and

WHEREAS, the Opposition has submitted no documents originating from either the NY Secretary of State or the NY Attorney General invalidating the May 19, 2008 Certificate of Good Standing; and

WHEREAS, the documents submitted by the Opposition that purport to prove that the applicant has lost its not-for-profit status -- Internal Revenue Bulletin 2004-11 dated March 15, 2004 ("Bulletin 2004-11"), and Internal Revenue Bulletin 2005-27 dated July 5, 2005 ("Bulletin 2005-27") (collectively, the "IRS Bulletins") -- are entirely irrelevant to the question of the applicant's standing as a not-for-profit corporation; and

WHEREAS, instead, each IRS Bulletin lists several hundred organizations that, as of the date of issuance, are said to be classified as operating foundations, rather than public charities (both classifications are constituted as not-for-profit organizations); the name of the applicant is contained in Bulletin 2004-11, but is not identified by Bulletin 2005-27; and

WHEREAS, in addition to being irrelevant to the applicant's not-for-profit status, neither IRS Bulletin is relevant to the question of whether the applicant is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, as the first page of each includes a disclaimer stating specifically that, "[t]his listing does *not* indicate that the organizations have lost their status as organizations under section 501(c)(3), eligible to receive deductible contributions" (emphasis in original); and

WHEREAS, the Board therefore finds that the applicant

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1 Bulletin 2005-27 identifies an unrelated South Carolina organization, Clover Housing and Redevelopment Services, which the Opposition may have confused with the applicant.

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# MINUTES

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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

## **ZR § 72-21 (c) – Neighborhood Character Finding**

WHEREAS, as pertains to the (c) finding 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 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 94<sup>th</sup> Street street line; and

WHEREAS, the applicant notes that the zoning regulations permit a street wall height of 85 feet, and that the wall height increase is three feet over what is permitted and is 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 a 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, the Opposition 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 approximately 75 feet from the site on the northeast corner of 94<sup>th</sup> 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 a building constructed as of right under the zoning regulations could be considerably taller than that proposed; 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 applicant represents that 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 ZR § 72-21; and

WHEREAS, the Opposition contends that the Board must consider the impact of the proposed residents on the surrounding residential community, based on its interpretation of the holding in Charisma Holding Corp. v. Zoning Bd. of Appeals; 266 A.D.2d 540 (2d Dep't 1999); and

WHEREAS, in Charisma, the Second Department upheld a zoning board's approval of a bulk variance permitting the expansion of an as of right auto repair and spray-painting business in a commercial district, but required the proposed building to be sited in an alternative location of the zoning lot to mitigate its impact on an adjacent residential district (the applicant had originally sought a location within 100 feet of a kitchen in a private home); and

WHEREAS, Charisma stands for the proposition that a zoning board can impose reasonable conditions to minimize the impact of a bulk variance for an as of right use; and

WHEREAS, consistent with Charisma, the Board evaluated the impacts of the variance on the potential light and air of surrounding buildings and on surrounding uses; and

WHEREAS, the Board finds no support within Charisma for the proposition that a zoning board must assess the purported impacts of new residents to a residential neighborhood in connection with a variance application which seeks only bulk waivers and further notes that the Opposition's submissions are bare of any legal authority for such a contention; and

WHEREAS, the applicant argues that the building will alter the "uniform character" of the neighborhood because it will be nine stories, rather the six or seven stories of the buildings on either side; and

WHEREAS, the Board notes that, at nine stories in height, the building would not be significantly taller than the adjacent seven-story buildings while remaining much shorter than the 15 to 21 story buildings located within 400 feet of the site; and

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# MINUTES

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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

## **ZR § 72-21 (d) - Self Created Hardship Finding**

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's unique physical conditions: (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, the applicant further states that these conditions originate with its 1910 construction, long predating its acquisition of the building; and

WHEREAS, the Opposition contends that the applicant's hardship is instead created by its purchase of the subject building for which extensive renovations would be necessary to meet its programmatic needs; and

WHEREAS, as noted above, the purchase of a zoning lot subject to the restriction sought be varied is specifically not a self-created hardship under ZR § 72-21(d); furthermore, New York courts have consistently held that the purchase of land burdened by obsolete improvements is not a self-created hardship (see Citizens Sav. Bank v. Bd. of Zoning Apprs., 238 A.D. 2d 874 (3d Dep't 1997); see generally, Fiore v. Zoning Bd. of Apprs. of Town of Southeast, 21 N.Y. 2d 393 (1968); Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990)

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

## **ZR § 72-21 (e) – Minimum Variance Finding**

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the Board notes that the applicant originally filed an application for a ten-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 6.0, 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

## **Adequacy of Notice**

WHEREAS, in an Article 78 action challenging the Board's October 23, 2007 approval of a variance permitting the facility, the Opposition asserted inter alia that the residents of the subject building had failed to receive notice of the proposed action and the public hearing, as required by the BSA Rules; and

WHEREAS, the Board agreed to reopen the hearing to provide an opportunity for residents of the building and of the neighborhood surrounding the proposed project to testify; and

WHEREAS, the applicant provided proof that letters of notification of the May 13, 2008 hearing, including descriptions of the proposed action, were provided to residents in conformance with BSA notification procedures; and

WHEREAS, the Opposition contends that that notice of the May 13, 2008 hearing was difficult to understand by the average layperson and, therefore, that the hearing notice was inadequate; and

WHEREAS, in a submission to the Board, the applicant points out that the first sentence of the hearing notice states clearly, "[f]or a variation from the requirements of the Zoning Resolution so as to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space"; and

WHEREAS, the applicant further states that the standard by which courts determine adequacy of a hearing notice is whether the notice in question is: (i) misleading or deceptive; and (ii) whether neighboring property owners attended the public hearings (see Brew v. Hess, 124 A.D.2d 962, 963 (3d Dep't 1986) (citing Reizel, Inc. v. Exxon Corp., 42 A.D. 2d 500, 504 (2d Dep't 1973), aff'd 36 N.Y.2d 888 (1975); and

WHEREAS, as 25 witnesses testified at the May 13, 2008 hearing, in addition to the 14 persons who testified at the hearings held August 21, 2007 and September 25, 2007, the Board finds that the notice was effective at apprising neighborhood residents of the pendency of the action and afforded them an opportunity to be heard; and

## **Fair Share Analysis**

WHEREAS, the Opposition also argues that the proposed project is a "city facility" and is thus subject to analysis under the "fair share" criteria for such facilities, in conformity with section 203 of the City Charter; and

WHEREAS, with respect to the application of fair share planning guidelines to the proposed building, the Board notes that section 203 of the Charter requires the Mayor to annually file with the City Planning Commission proposed criteria for the siting of new City facilities ("fair share criteria"); and

WHEREAS, a facility is defined by section 203 to be a city facility only if "used or occupied . . . to meet city



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# MINUTES

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needs [and] is located on real property owned or leased by the city or is operated by the city or pursuant to a written agreement on behalf of the city”; and

WHEREAS, the fair share criteria are only considered when a city agency is selecting a site for a public facility (see NYC Charter, section 204(g)), and does not apply to a private entity, such as the applicant, that is developing an as of right use of a private property; and

WHEREAS, in cases with similar facts, the courts have found that not-for-profit sponsoring organizations were not subject to fair share analysis (see West 97<sup>th</sup> Street – West 98<sup>th</sup> Street Block Association v. Volunteers of America, 190 A.D.2d 303 (1<sup>st</sup> Dep’t 1993) (fair share analysis not necessary for supportive housing project for persons with mental health problems or HIV) and Planning Board No. 4 v. Homes for the Homeless, 158 Misc.2d 184 (Sup. Ct. NY Co. 1993) (no violation of fair share criteria where project was financed and planned by HPD because facility would be operated by a not-for-profit organization and was therefore not a “city facility”); and

WHEREAS, the Opposition has provided no evidence that this project qualifies as a project subject to fair share analysis, furthermore, Board approval would not necessarily override subsequent review by other City agencies; and

WHEREAS, the Board therefore finds that the application of fair share planning principles to the proposed project is not properly before it; and

## **Application of ULURP**

WHEREAS, the Opposition also argues that the proposed project constitutes a “site selection for a capital project” and a “housing project” within the meaning of section 197-c of the City Charter which requires full review under the City’s Uniform Land Use Review Procedure (“ULURP”); and

WHEREAS, the Opposition has provided no evidence that this project qualifies for ULURP; and

WHEREAS, the Board therefore finds that the issue of ULURP is not properly before it; and

## **Adequacy of Environmental Review**

WHEREAS, the project is classified as an unlisted action pursuant to Section 617.13 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. 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 that no other significant effects upon the environment that would require an Environmental Impact

Statement are foreseeable; and

WHEREAS, the Opposition disputes the EAS’s findings and contends that the project would have significant adverse impacts on Socioeconomic Conditions; Shadows; Neighborhood Character; Hazardous Materials; Air Quality; Noise; and Public Health, and that the applicant is therefore required by the State Environmental Quality Review Act (“SEQRA”) to prepare an environmental impact statement (an “EIS”); and

WHEREAS, with respect to socioeconomic conditions, the Opposition argues that preparation of an EIS was required to evaluate the alleged social and economic impacts of the building’s potential occupancy; and

WHEREAS, neither SEQRA nor CEQR require an assessment of social impacts if an action does not change the use or intensity of a use or structure, and

WHEREAS, the proposed project would create no socioeconomic changes as it would merely continue, and actually reduce, an existing use; and the subject property has been operating under a certificate of occupancy as an SRO for at least 40 years, with a permitted occupancy of 149 units and the proposed project will develop only 140 dwelling units, a reduction in the permitted number; 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 that the Opposition argues is required; and

WHEREAS, furthermore, an assessment of social impacts is triggered by a population increase in excess of 200 persons, but not by the type of persons who are proposed to occupy a building (CEQR Technical Manual at 3B-2); and

WHEREAS, the Opposition also asserts that the proposal would cast shadows across nearby playgrounds and other properties, that the height of the building is inconsistent with neighborhood character, and that the encroachment into the rear yard would significantly reduce light and air to neighboring structures ; and

WHEREAS, the applicant states that the CEQR regulations provide that an adverse shadow impact is considered to occur when the shadow from a proposed project falls upon a publicly accessible open space, a historic landscape, or other historic resource, if the features that make the resource significant depend on sunlight, or if the shadow falls on an important natural feature and adversely affects its uses or threatens the survival of important vegetation, and that shadows on streets and sidewalks or on other buildings are not considered significant under CEQR; and

WHEREAS, the applicant further states that the EAS analyzed the potential shadow impacts on publicly accessible open space and historic resources and found that no significant impacts would occur; and

WHEREAS, the applicant represents that the elevation

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# MINUTES

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of the building relative to other mid-block buildings does not constitute an adverse environmental impact under CEQR and further notes that at nine stories in height, the building would be modestly taller than the adjacent seven-story buildings while remaining much shorter than the 15 to 21 story buildings located within 400 feet of the site; and

WHEREAS, regarding the impacts to light and air to surrounding buildings caused by the increased non-compliance of the rear yard, the applicant notes that as of right construction of a 12-story structure would have more significant impacts on light and air than the proposed building; and

WHEREAS, with respect to hazardous materials and noise impacts, the Opposition argues that demolition of the building during construction would expose existing residents to lead paint, asbestos, toxic mold and bacteria and to excessive and prolonged noise impacts; and

WHEREAS, the applicant states that the EAS detected lead-based paints and asbestos-containing materials and these materials will be removed prior to and during construction in accordance with all applicable federal, State and City regulations; and

WHEREAS, the applicant further states that the based on the CEQR Manual, the project's construction impacts would likely be considered as temporary short-term impacts, as the development is not a large-scale action with a long construction period; further noise is not expected to be significant as construction vehicles and equipment would adhere to local and federal requirements for noise emission control; and

WHEREAS, with respect to public health impacts, the Opposition argues that demolition during construction would release rodents and other vermin into the surrounding neighborhood; and

WHEREAS, the applicant states that the CEQR Manual requires an assessment of a project only if it would attract vermin, which the proposed project does not, and that standard pest control procedures will be employed during construction; and

WHEREAS, the applicant states that the EAS was prepared in accordance with the NYC CEQR Manual; and

WHEREAS, the EAS prepared for the subject action indicated that the project would fall below the initial thresholds for each of the 20 environmental impact categories and that no significant impact would occur for each technical area; and

WHEREAS, the applicant states that no EIS would be needed if screening or detailed analyses show that no significant impact would occur; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment and therefore, that an EIS is not required; 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 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 6.0, 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;

THAT lead-based paints and asbestos-containing materials be removed prior to and during construction in accordance with all applicable federal, State and City regulations;

THAT construction vehicles and equipment adhere to local and federal requirements for noise emission control;

THAT standard pest control procedures will be employed during construction; and

THAT the Department of Buildings must 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 15, 2008.

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**853-53-BZ**

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, Owner, Exxon Mobil Coperati, Lessee.

SUBJECT – Application May 13, 2008 – Extension of Term/waiver to permit the continued operation of a gasoline service station (Mobil) which expired on October 23, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on April 1, 1996 in R3-2/C2-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, South west corner of Avenue X. Block 7429, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

# MINUTES

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

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

## 467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application April 16, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Exxon Mobil) in an R3-2 zoning district which expired on May 21, 1999.

PREMISES AFFECTED – 172-11 Northern Boulevard, north side blockfront between 172<sup>nd</sup> Street and Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

## 579-68-BZ

APPLICANT – Seldon Lobel, P.C., for Lexington Towers Company Successor II, L.P., owners; Swift Parking, LLC, lessees.

SUBJECT – Application April 25, 2008 – Extension of Term, to permit the operation of a transient parking garage in the cellar of a building located within a C1-8X zoning district originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED–152-160 East 88<sup>th</sup> Street, southeast corner of the intersection formed by East 88<sup>th</sup> Street and Lexington Avenue, Block 1516, Lot 52, Borough of Manhattan.

### COMMUNITY BOARD #8M

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

## 406-82-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Adolf Clause & Theodore Thomas, owners; Hendel Products,

lessee.

SUBJECT – Application April 29, 2008 – Extension of Term/waiver for a Special Permit (§73-243) Eating and Drinking Establishment (McDonald's) with accessory drive-thru which expired on January 18, 2008; and an Extension of Time to obtain a Certificate of Occupancy which expired on January 1, 2006 in an C1-3/R05 zoning district.

PREMISES AFFECTED –2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

## 546-82-BZIII

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for continued hearing.

## 200-00-BZIII

APPLICANT – Eric Palatnik, P.C., for Plans 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 37<sup>th</sup> Avenue aka 37-16 108<sup>th</sup> Street, southwest corner of 108<sup>th</sup> Street and 37<sup>th</sup> Avenue, Block 1773, Lot 10, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

# MINUTES

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**33-06-BZII**

APPLICANT – Rampulla Associates Architects, owner; Carroll’s Garden Florist Corp., lessee.

SUBJECT – Application March 5, 2008 – Amendment to a previously-approved variance to allow the relocation of the approved commercial building to a different portion of the zoning lot. R1-2 district.

PREMISES AFFECTED – 1457 Richmond Road, north side Richmond Road from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Philip Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for decision, hearing closed.

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**302-06-BZ**

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Inst.

SUBJECT – Application April 10, 2008 – Reopening for an Amendment (§§72-01 and 72-22) to allow a small increase in floor area and floor area ratio.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner of Avenue R, between Ocean Parkway and East 7<sup>th</sup> Street, Block 6663, Lot 46, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 22, 2008, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

**194-07-A**

APPLICANT – Rothkrug Rothkrug & Spector, for Elite III Contractor’s Inc., owner.

SUBJECT – Application August 8, 2007 – Appeal seeking 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. R5 Zoning District.

PREMISES AFFECTED – 1447 Rosedale Avenue, Cross Bronx Expressway Service Road N and Rosedale Avenue,

Block 3895, Lot 77, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a single-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, recommends disapproval of the appeal; and

WHEREAS, certain neighbors testified in opposition to the appeal (“the Opposition”); and

WHEREAS, the applicant states that the subject site consists of an approximately 667 sq. ft. lot at the intersection of the Cross Bronx Expressway Service Road North and Rosedale Avenue; and

WHEREAS, the applicant proposes to develop the site with a three-story two-family home with 1,470 sq. ft. of residential floor area; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, the proposed home complies with the former zoning district parameters; and

WHEREAS, however, on May 9, 2007 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the “Park Stratton Rezoning,” which rezoned the site to R5; and

WHEREAS, the home does not comply with the R5 district parameters as to the maximum permitted floor area, parking, lot coverage, residential density and front yard; 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, 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, DOB has confirmed that New Building Permit No. 201109549 (hereinafter, the “Construction Permit”) was lawfully issued to the owner by DOB on April 25, 2007, prior to the Rezoning Date; and

WHEREAS, thus, the Board finds that the permits were validly issued by DOB to the owner of the subject premises and were in effect until the Rezoning Date; and

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# MINUTES

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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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) stands for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 had completed site excavation, footings and foundations and backfilled the site; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, an affidavit from the general contractor, concrete pour tickets, and accounting summaries; and

WHEREAS, the general contractor states that the excavation, fill removal, foundations and backfilling of the site were completed on May 9, 2007; and

WHEREAS, the Board concludes that, based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, the Board also notes that the site preparation, excavation and foundation work at the site indisputably occurred prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Rezoning Date, and that said work 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 \$47,940; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices and accounting reports; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself and for a project of this size; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$47,940 associated with pre-Rezoning Date project costs that would result if this appeal were denied is significant; and

WHEREAS, the inability to construct the proposed building would mean that no portion of these expenditure could be recouped; and

WHEREAS, the applicant represents that a complying home would be uninhabitable due to the narrow lot width, which would result in a maximum building width of less than 4'-0" after providing the required 10'-0" front yard and 5'-0" side yard along the northerly lot line; and

WHEREAS, the Board agrees that the limitations of any complying construction, and the \$47, 940 of actual expenditures and outstanding fees 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, at hearing, the Opposition argued that the subject application should be denied because work was performed by the owner in violation of an outstanding Stop Work Order issued May 2, 2007 by the Department of Buildings; and

WHEREAS, the Board observes that it can only consider representations of work performed and expenditures made pursuant to a valid permit in a determination as to whether the owner has a common law vested right to complete construction under the Prior Zoning; and

WHEREAS, the applicant represents that with respect to the validity of the permit and the work completed thereunder, none of the violations giving rise to the stop work order affected the validity of the permits or approval of the work completed at the site; and

WHEREAS, the record indicates a Notice of Violation was issued by DOB related to a failure by the owner to provide for the protection of employees on the site and for failing to safeguard the abutting sidewalk; and

WHEREAS, a submission by DOB states that an inspection performed on May 2, 2007 found an unshored excavation and an incomplete foundation with concrete footings in place and that concrete was poured to correct an unsafe condition, and was not contrary to the Stop Work Order; and

WHEREAS, the applicant represents that the pouring

# MINUTES

of concrete on May 2, 2007 had the effect of curing the violations; and

WHEREAS, furthermore, the applicant has submitted documentation indicating that the required shoring was scheduled to be delivered and installed at the site on May 2, 2007, and represents that the scheduled installation would have led to the lifting of the Stop Work Order and the completion of the foundations by the Rezoning Date; and

WHEREAS, the applicant further represents that backfilling work was also performed prior to the Rezoning Date under authority of a DOB inspector on May 3, 2007; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, the serious loss projected, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction had accrued to the owner of the premises as of the Rezoning Date; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 201109549, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy in conformance with DOB Permit No. 201109549, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 143-08-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Nora Cahill, lessee.

SUBJECT – Application May 13, 2008 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of the private disposal system contrary to DOB policy. R4 Zoning district. PREMISES AFFECTED – 43 Beach 221<sup>st</sup> Street, east side of Beach 221<sup>st</sup> Street, 100’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 30, 2008, acting on Department of Buildings Application No. 410106497, reads in pertinent part:

“A1- The street giving access to the existing building altered 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 altered does not have at least 8% of the total perimeter of the building fronting space is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is contrary to Department of Building policy;” and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in the *City Record*, with continued hearing on July 15, 2008, then to closure and decision on this same date; and

WHEREAS, by letter dated, May 23, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 30, 2008, acting on Department of Buildings Application No. 410106497 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 13, 2008” – 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 DOB shall review the proposed plans to ensure that it complies with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 146-08-A

APPLICANT – Fire Department of the City of New York  
OWNER: 1620 LLC DBAPK International c/o Jacob Ullman

Lessee: Plastic Kitchens Corp.

SUBJECT – Application May 16, 2008 – Application seeking to modify Certificate of Occupancy No. 84836 to require additional fire protection in the form of an automatic

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# MINUTES

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wet sprinkler system for the entire building under the authority under Section 27-4265. C8-2 Zoning District.

PREMISES AFFECTED – 1618-1620 Broadway, Hopkinson Avenue, Block 144, Lot 4, Borough of Brooklyn.

## COMMUNITY BOARD #16BK

### APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Appeal granted.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for automatic wet sprinklers in the entire building; and

WHEREAS, the order issued from the Fire Commissioner to the property owner, dated March 5, 2008, reads in pertinent part:

“You are hereby directed and required to comply with the following ORDER within thirty (30) days:

- 1) Install an approved automatic wet sprinkler system throughout the entire building, arranged and equipped per Title 27, Chapter 1, and 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 July 1, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, the subject site is located within a C8-2 zoning district; and

WHEREAS, the site is occupied by a three-story with cellar commercial building; and

WHEREAS, the first floor is occupied with Use Group 6 offices and storage and the cellar, second and third floors are used for storage, which are both permitted uses in the zoning district; and

WHEREAS, the site is operated by Plastics Kitchen Corporation; and

WHEREAS, the Board notes that the site is the subject

of prior Board grants under BSA Cal. Nos. 137-37-SA, 140-37-S, and 751-45-A, which were associated with the use, fire safety, and boiler operation and precede the current Building Code; and

WHEREAS, the current Certificate of Occupancy No. 84836, dated November 3, 1937, does not reflect that sprinklers are required; and

WHEREAS, the Fire Department performed inspections of the building on September 22, 2007 and January 24, 2008 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 entire building must be fully sprinklered in order to bring the building into compliance with the Building Code; and

WHEREAS, ultimately, as noted above, the Fire Commissioner issued an order dated March 5, 2008, which reflected the determination that the owner must install automatic sprinklers in the entire building within 30 days; and

WHEREAS, the Fire Department asserts that its request is reasonable and necessary in the interest of public safety due to the following existing conditions, which limit access and external water penetration: (1) the three-story and cellar building is non-fireproof; (2) the upper floors are congested with large quantities of stored goods, leaving little open space; (3) the cellar occupies the entire building footprint, but does not provide exterior access; (4) all windows have been replaced with steel plating; and (5) a portion of the building is adjacent to an elevated train line which obstructs third-floor access; and

WHEREAS, the Fire Department further states that a serious potential for collapse exists throughout all floors and the roof, which could further compromise the safety of adjacent buildings and the elevated train; 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 building, (2) that the plans be approved by DOB, and (3) that the plans be filed with the Sprinkler Install Unit; and

WHEREAS, the Board agrees with the Fire Department that, given the use of the building and the inability to provide ventilation through any other means, automatic sprinklers are required in the entire building as per the Building Code; 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, by letter dated June 23, 2008 the owner agreed to install a sprinkler configuration, in consultation with DOB, which would satisfy the Fire Department’s requirements; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the

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# MINUTES

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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 April 18, 2008, seeking the modification of the Certificate of Occupancy No. 84836 is granted.

Adopted by the Board of Standards and Appeals, July 15, 2008.

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## 141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.  
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

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## 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Lyra Altman.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 10 A.M., for continued hearing.

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## 33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> Lane, a/k/a 209-213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane, 63.19'W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to

September 16, 2008, at 10 A.M., for continued hearing.

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## 104-08-BZY thru 119-08-BZY

APPLICANT – Anthony J. Tucci, for Carmel Homes LLC, owner.

SUBJECT – Application April 23, 2008 – Extension of time (§11-332) to complete construction and obtain a Certificate of Occupancy under the prior district regulations. R3X zoning district Series cases 104-08-BZY thru 119-08-BZY  
PREMISES AFFECTED – 14/589 Carmela Court, Mill Road, Block 4690, Lots 129, 128, 127, 126, 120, 121, 122, 123, 124, 125, 110, 111, 112, 113, 114, 115, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Anthony Tucci.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.



# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JULY 15, 2008  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**ZONING CALENDAR**

**127-07-BZ**

**CEQR #07-BSA-091Q**

APPLICANT – Gerald J. Caliendo, R.A., for Maric Mechanical, Incorporated, owner.

SUBJECT – Application May 18, 2007 – Variance (§72-21) to allow the enlargement of a legal, non-conforming warehouse and office building (UG16); proposal increases the degree of non-conformance (contrary to §52-31) and non-compliance (contrary to §54-31). Proposal is therefore contrary to regulations for use (§22-00), front yard (§23-45), side yard (§23-466), rear yard (§23-47), FAR (§23-141) and wall height (§ 23-631). R4 district.

PREMISES AFFECTED – 19-03 75<sup>th</sup> Street, southeast corner of Hazen Street and 75<sup>th</sup> Street, Block 943, 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, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, July 15, 2008.

**274-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Abdo Balickioglu, owner.

SUBJECT – Application November 29, 2007 – Special Permit (§73-522) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141) and side yards (§23-461) in an R3X zoning district.

PREMISES AFFECTED – 1157 83<sup>rd</sup> Street northern side of 83<sup>rd</sup> Street between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue, Block 6301, Lot 54, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 15, 2007 acting on Department of Buildings Application No. 302312771, reads in pertinent part:

“1) Proposed floor area and OSR contrary to ZR § 23-141 (a)

2) Proposed side yards are contrary to ZR § 23-461”; 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 and side yards, contrary to ZR §§ 23-141(a) and 23-461(a); and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2008, and then to decision on July 15, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 83<sup>rd</sup> Street, between 11<sup>th</sup> Avenue and 12<sup>th</sup> Avenue; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 2,377 sq. ft. (0.594 FAR); and

WHEREAS, the premises are 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 2,377 sq. ft. (0.594 FAR), to 3,163 sq. ft. (0.79 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 60 percent (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with widths of 6’-1½” and 3’-10” (side yards with a total width of 13’-0” and a minimum width of 5’-0” each are required); and

WHEREAS, at hearing, the Board directed the applicant to confirm whether the space at the lower level should be included in floor area calculations; and

WHEREAS, in response, the applicant obtained a reconsideration from DOB regarding classification of floor area in the basement/cellar level stating that it is not counted as floor area; and

WHEREAS, additionally, the Board noted that the proposed perimeter wall must be reviewed and approved by DOB; and

# MINUTES

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 R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio and side yards, contrary to ZR §§ 23-141(a), 23-46 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 30, 2008"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,163 sq. ft. (0.79 FAR), an open space ratio of 60 percent, one side yard with a minimum width of 6'-1½", one side yard with a minimum width of 3'-10", and a rear yard with a minimum depth of 14'-5", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height;

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 15, 2008.

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**23-08-BZ**  
**CEQR #08-BSA-049Q**

APPLICANT – Sheldon Lobel, P.C., for Bokharian Communities Center, Inc., owner.

SUBJECT – Application February 1, 2008 – Variance (§72-21) to permit the construction of a community facility building (Use Group 4). The proposal is contrary to §§24-10 and 25-30. R1-2 district.

PREMISES AFFECTED – 182-69 80<sup>th</sup> Road, located at the northwest corner of the intersection of 80<sup>th</sup> Road and Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

## COMMUNITY BOARD #8Q

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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated January 23, 2008, acting on Department of Buildings Application No. 402618431, reads, in pertinent part:

"In an R1-2 zoning district, the proposed Community Facility Building:

- (1) Violates ZR section 24-10 as the proposed floor area would exceed maximum permitted floor area;
  - (2) Violates ZR section 25-30 as less than the required parking spaces would be provided";
- and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R1-2 zoning district, a proposed two-story and cellar Use Group 4 synagogue building, which does not comply with floor area regulations and parking requirements for community facilities, contrary to ZR §§ 24-10, and 25-30; and

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, with continued hearings on May 20, 2008 and June 24, 2008 and then to decision on July 15, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends disapproval of the application; and

WHEREAS, State Senator Frank Padavan submitted testimony recommending disapproval of the application; and

WHEREAS, neighborhood residents submitted written and oral testimony in opposition to the application (the "Opposition"), citing concerns with the bulk of the building, traffic, parking, site drainage and noise; and

WHEREAS, this application is being brought on behalf of the Bokharian Communities Center, a non-profit religious entity (the "Synagogue"); and

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# MINUTES

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WHEREAS, the subject premises is located on the northwest corner of the intersection of 80<sup>th</sup> Road and Chevy Chase Street, and is currently vacant; and

WHEREAS, the proposal provides for a two-story and cellar synagogue building with the following parameters: an FAR of 0.92 (0.50 FAR is the maximum permitted), and no parking spaces (23 are required); with Use Group 4 synagogue use space on the first and second floors and on the cellar level; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to accommodate religious services for 440 persons; and (2) to provide separate space for men and women during religious services; and

WHEREAS, the applicant states that the proposed amount of space would provide a permanent location for the growing congregation which has been leasing space at a nearby synagogue for three years; and

WHEREAS, the applicant also states that it is religious tradition to provide separate space for men and women during religious services; 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, the applicant represents that a complying building would be inadequate to accommodate the size of the congregation and would not permit the creation of a women's balcony on the second floor; and

WHEREAS, the applicant states that the requested floor area waiver enables the Synagogue to have the second floor worship space, and

WHEREAS, the applicant further represents that worship space which separates men and women is also critical to its religious practice, thus necessitating the requested waiver of the floor area limitation; and

WHEREAS, the applicant states that the size of the site and the height limitations of the district do not permit surface or below-grade parking to be accommodated on the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned 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 states that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the only bulk waiver is to floor area ratio, to permit a building that can accommodate the size of the congregation, and that the building otherwise complies with all the yard, height and setback requirements of the zoning district; and

WHEREAS, the radius diagram and photographs submitted by the applicant indicate that the site abuts a one story commercial building fronting on Union Turnpike, a major thoroughfare, and that Union Turnpike is characterized by a mix of commercial and residential uses similar in size to the proposed building; and

WHEREAS, the Opposition contends that that the proposed building would have a significant impact on the surrounding community, because the proposed FAR of 0.92 will be built on a single zoning lot; while a building approved under BSA Cal. No. 240-03-BZ permitting an FAR of 1.13 was proposed for two zoning lots; and

WHEREAS, the Board notes that because FAR is proportional to the size of a zoning lot, a building with an FAR of 1.13 would exceed the floor area of the subject building by approximately 23 percent on each zoning lot, and would consequently result in a higher ratio of total building floor area to lot size than the proposed building; and

WHEREAS, as to traffic and parking impacts, a submission by the applicant indicates that approximately 96 percent of the congregants live within three-quarters of a mile from the premises; and

WHEREAS, the applicant represents that traffic and parking demand would be minimal as congregants are close enough to walk to services and are not permitted to drive to worship at on religious holidays, Fridays, or Saturdays – the synagogue's peak usage periods; and

WHEREAS, the applicant further represents that the subject site will not be used for commercial catering, thereby further limiting traffic demand; and

WHEREAS, the applicant initially stated that a parking study conducted during morning hours indicated that more than 100 on-street parking spaces were available within a 400'-0" radius of the subject site; and

WHEREAS, the Opposition testified that available parking was inadequate to meet current demand and that the applicant's parking study had failed to evaluate parking availability on the streets in which the proposed Synagogue would create the greatest parking demand, or during evening hours, when demand from the Synagogue would be most likely to conflict with that of neighboring homeowners; and

WHEREAS, the Board directed the applicant to provide a traffic study that evaluated parking availability between the hours of 6:00 p.m. and 8:00 p.m. on streets located to the south of Union Turnpike within a one-quarter mile radius of the site; and

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# MINUTES

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WHEREAS, a revised traffic study submitted by the applicant indicated that a total of 336 on-street parking spaces are located within the study area, of which at least 188 spaces were available between 6:00 a.m. and 8:00 a.m., and at least 100 spaces were available between 6:00 and 8:00 p.m.; and

WHEREAS, the applicant represents that parking demand by congregants would be limited to morning services attracting an average of ten members daily and bi-monthly life-cycle events that attract between 30 to 40 members and guests; and

WHEREAS, the applicant further represents that the number of available on-street parking spaces far exceeds the expected demand by members and guests of the synagogue; and

WHEREAS, at hearing, the Opposition also raised concerns with potential storm run-off caused by the proposed paving of the front and side yards; and

WHEREAS, in response, the Board directed the applicant to provide a landscaped strip at least 3'-0" wide along the lot lines; and

WHEREAS, at hearing, the Opposition also raised concerns regarding noise impacts from roof-mounted mechanical equipment; and

WHEREAS, the Board directed the applicant to provide baffling and to ensure that roof-mounted mechanical units are code-compliant; and

WHEREAS, the Board also directed the applicant to direct all lighting away from residential uses; and

WHEREAS, the applicant submitted revised plans indicating that baffling will screen the mechanical units, a 3'-0" landscaped strip will screen off the Synagogue from neighboring properties and absorb storm run-off, and lighting will be directed away from residential uses; and

WHEREAS, at hearing and in a submission to the Board, the Opposition argues that the proposed building is inconsistent with the neighborhood character; and

WHEREAS, the applicant states that the only waiver is to floor area ratio, that the building otherwise complies with all the yard, height and setback requirements of the zoning district and is consistent with the height of nearby buildings; 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 notes that the height is consistent with permitted height for the district, and that the front yard and side yards meet or exceed the minimum

requirements of the district; and

WHEREAS, the Board 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 Section 617.2(ak) 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. 08BSA049Q, dated February 15, 2008; 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 R1-2 zoning district, a proposed two-story and cellar Use Group 4 synagogue, which does not comply with floor area regulations, and parking requirements for community facilities, contrary to ZR §§ 24-10, and 25-30, *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 June 23, 2008" – 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 include a maximum floor area ratio of 0.92 as reflected on the BSA-approved plans;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT accessory uses shall not include the utilization of a room or other space for the operation of a business engaged

# MINUTES

in preparing or serving food or beverages for functions, occasions or events;

THAT a 3'-0" wide landscaped strip of landscaping be provided along the lot lines as shown on the BSA-approved plans;

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 15, 2008.

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## 32-08-BZ

### CEQR #08-BSA-057R

APPLICANT – Slater & Beckerman, LLP, for Baron Hirsch Cemetery Assn. Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 1126 Richmond Avenue, intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street, Block 1668, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Superintendent, dated February 12, 2008, acting on Department of Buildings Application No. 510026473, reads in pertinent part:

“Proposed monopole 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 telecommunications pole (non-

accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS, a public hearing was held on this application on June 3, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 1, 2008, and then to decision on July 15, 2008; and

WHEREAS, certain community members raised concern that proper notification had not been performed; and

WHEREAS, in response, the Board directed the applicant to confirm that proper notification had been performed, which it did to the Board’s satisfaction; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the City conduct a health study on the effects of the tower on the community and that no other entity other than the applicant, New York City, use the tower; and

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a cemetery; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment that will be located within the basement of an existing building immediately adjacent to the pole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 further represents that the height of the pole 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

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# MINUTES

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WHEREAS, the applicant provided an alternative site analysis, which reflects that the proposed site location within the center of the necessary coverage area; 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-057R, dated February 19, 2008; 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 R3-2 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless

communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 19, 2008"- (3) sheets; and *on further condition*;

THAT the telecommunications pole will be used by the NYCWiN system or for governmental purposes; any proposal from a non-municipal or non-governmental entity seeking to collocate additional equipment at the site must be reviewed and approved by the Board;

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 15, 2008.

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## **65-08-BZ CEQR #08-BSA-071Q**

APPLICANT – Slater & Beckerman, LLP, for MBU Bridge Home, Inc., n/k/a Community Bridge Home, Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 28, 2008 – Special Permit (§73-30) to permit, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications ("DoITT") New York City Wireless Network ("NYCWiN"). R3A zoning district. PREMISES AFFECTED – 120-50 Springfield Boulevard, northwest corner of 121<sup>st</sup> Avenue and Springfield Boulevard, Block 12694, Lot 56, Borough of Queens.

### **COMMUNITY BOARD #12Q**

#### APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated March 27, 2008, acting on Department of Buildings Application No. 410076509, reads in pertinent part:

"Unipole in a R3-2 district requires the issuance of a Special Permit by the Board of Standards and Appeals. Refer to BSA ZR 73-30;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3A zoning district, the

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# MINUTES

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proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a two-and-a-half-story community facility building; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment, located within a fenced area immediately adjacent to the pole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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, at hearing, the Board questioned whether the location of the pole within the site, adjacent to two lots occupied by residential use, could be relocated closer to the Springfield Boulevard frontage; and

WHEREAS, in response, the applicant agreed to relocate the pole to a location at the corner of Springfield

Boulevard and 121<sup>st</sup> Avenue near to the street line, although the associated equipment shed will be located at the rear of the site along the western property line; 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-071Q, dated March 28, 2008; 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 R3A zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless

# MINUTES

communications, which is contrary to ZR § 22-21, *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 1, 2008"-(4) 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2008.

## 69-08-BZ

### CEQR #08-BSA-072Q

APPLICANT – Slater & Beckerman, LLP, for United States Columbarium Company, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application March 31, 2008 – Special Permit (§73-30) to permit in an R4 district, a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications ("DoITT") New York City Wireless Network ("NYCWiN"). R4 zoning district.

PREMISES AFFECTED – 61-40 Mt. Olivet Crescent, northwest corner of 62<sup>nd</sup> Avenue and Mt. Olivet Crescent, Block 2767, Lot 1, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Superintendent, dated March 28, 2008, acting on Department of Buildings Application No. 410078892, reads in pertinent part:

"Monopole in a R4 district requires the issuance of Special Permit by the Board of Standards and Appeals. Refer to BSA ZR 73-30;" 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 telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this

application on July 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a –two-story crematorium and mausoleum; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWiN) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a pole with a height of 90 feet designed as a flagpole with internally-mounted antennas and related equipment, located alongside the pole and in the basement of the adjoining building; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

WHEREAS, the applicant further represents that the height of the pole 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



# MINUTES

development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-072Q, dated March 31, 2008; 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 R4 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received March 31, 2008"-(3) sheets; and *on further condition*;

THAT the telecommunications pole will be used by the NYCWiN system or for governmental purposes; any proposal from a non-municipal or non-governmental entity seeking to collocate additional equipment at the site must be reviewed and approved by the Board;

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 15, 2008.

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## 85-08-BZ

### CEQR #08-BSA-076Q

APPLICANT – Slater & Beckerman, LLP, for Braddock Avenue Owners, Inc., owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications ("DoITT") New York City Wireless Network ("NYCWiN"). R4 zoning district.

PREMISES AFFECTED – 222-89 Braddock Avenue, northwest corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

### COMMUNITY BOARD #13Q

#### APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 26, 2008, acting on Department of Buildings Application No. 410002198, reads in pertinent part:

"Communication facility exceeds the 400 square feet allowed under TPPN #5/98 and therefore will require a Special Permit from the Board of Standards and Appeals as per section 73-30 ZR;" 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 telecommunications facility, which consists of three panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner

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# MINUTES

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Montanez and Commissioner Ottley-Brown; and

WHEREAS, the proposed telecommunications facility will be located on the roof of a six-story multi-family residence; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of three panel antennas and related equipment for public utility wireless communications; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, 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 facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility 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 further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility 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 facility 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 NYCWiN system is designed to streamline and enhance public safety and public service operations; 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. 08-BSA-076Q, dated April 9, 2008; 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 6NYCRR 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 telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 9, 2008"-(5) 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2008.

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**86-08-BZ**  
**CEQR #08-BSA-077Q**

APPLICANT – Slater & Beckerman, LLP, for Tuchman

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# MINUTES

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Associates II, LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”). R6 zoning district.

PREMISES AFFECTED – 111-26 Corona Avenue, apx. 200’ east of Saultell Avenue, Block 1972, Lot 38, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Robert Gaudio.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 26, 2008, acting on Department of Buildings Application No. 410012025, reads in pertinent part:

“Proposed communication facility exceeds the 400 square feet allowed under Technical Policy and Procedure Notice (“TPPN”) No. 5 of 1998 and therefore will require a special permit from the Board of Standards and Appeals as per ZR § 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R6 zoning district, the proposed construction of a telecommunications facility that consists of three panel antennas and two dish antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 4, Queens, recommends approval of this application, citing concerns about potential health risks associated with cell towers and data transmissions antennas; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the proposed telecommunications facility will be located at a site which is occupied by a six-story health care retirement facility; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network

designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of three panel antennas and two dish antennas and related equipment for public utility wireless communications; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for non-accessory radio antennas such as those within the proposed telecommunications facility, 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 antennas have been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility 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 further represents that the height of the antennas are the minimum necessary to provide the required wireless coverage, and that the antennas 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 antennas 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. 08-BSA-077Q, dated April 9, 2008; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on

# MINUTES

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 R6 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received April 9, 2008"-(6) sheets; and on further condition;

THAT any fencing 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 15, 2008.

## 90-08-BZ

### CEQR #08-BSA-080Q

APPLICANT – Slater & Beckerman, LLP, for BNS Properties LLC, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit (§73-30) to permit a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications ("DoITT") New York City Wireless Network ("NYCWIn"). R3X zoning district.

PREMISES AFFECTED – 104-36 196<sup>th</sup> Street, northwest corner of Hollis Avenue and 196<sup>th</sup> Street, Block 10891, Lot 21, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Robert Gaudio.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated March 27, 2008, acting on Department of Buildings Application No. 410002189, reads in pertinent part:

"Proposed communication facility exceeds the 400 square feet allowed under Technical Policy and Procedure Notice ("TPPN") No. 5 of 1998 and therefore will require a special permit from the Board of Standards and Appeals as per ZR § 73-30;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3X zoning district, the proposed construction of a telecommunications facility that consists of three panel antennas and two dish antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the proposed telecommunications facility will be located at a site which is occupied by a six-story multiple dwelling building; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of three panel antennas and two dish antennas and related equipment for public utility wireless communications; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as those within the proposed telecommunications facility, provided it finds "that the proposed location, design, and method of operation of such tower will not have a

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# MINUTES

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detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the antennas have been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility 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 further represents that the height of the antennas are the minimum necessary to provide the required wireless coverage, and that the antennas 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 antennas 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. 08-BSA-080Q, dated April 14, 2008; 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 R3X zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received April 14, 2008”-(7) sheets; and on further condition;

THAT any fencing 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 15, 2008.

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**91-08-BZ  
CEQR #08-BSA-081Q**

APPLICANT – Slater & Becker, LLP, for NAND Limited Partnership, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 14, 2008 – Special Permit (§73-30) to permit, a non-accessory radio facility as part of the New York City Department of Information Technology and Telecommunications “(DoITT”) New 666 York City Wireless Network (“NYCWIn”). R6A zoning district.

PREMISES AFFECTED – 37-68 97<sup>th</sup> Street, northwest corner of 97<sup>th</sup> Street and 38<sup>th</sup> Avenue, Block 1759, Lot 30 Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Robert Gaudio.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated March 27, 2008, acting on Department of Buildings Application No. 402611893, reads in pertinent part:

“Proposed communication facility exceeds the 400

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# MINUTES

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square feet allowed under Technical Policy and Procedure Notice (“TPPN”) No. 5 of 1998 and therefore will require a special permit from the Board of Standards and Appeals as per ZR § 73-30;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R6A zoning district, the proposed construction of a telecommunications facility that consists of three panel antennas and three dish antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 15, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the proposed telecommunications facility will be located at a site which is occupied by a six-story multiple dwelling building; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City’s public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of three panel antennas and three dish antennas and related equipment for public utility wireless communications; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as those within the proposed telecommunications facility, 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 antennas have been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility 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 further represents that the height of the antennas are the minimum necessary to provide the required wireless coverage, and that the antennas 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 antennas 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. 08-BSA-081Q, dated April 14, 2008; 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 R6A zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received April 14, 2008”-(5) sheets; and *on further condition*;

THAT any fencing 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;

# MINUTES

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 15, 2008.

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## 189-07-BZ

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.  
SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

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## 220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Elba Cornier.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for continued hearing.

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## 243-07-BZ/244-07-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application October 29, 2007 – Variance (§72-

21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (§23-141); less than the minimum front yards (§23-45) and less than the required amount of parking (§23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Marie Wausnock and Vikki Palmer.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for continued hearing.

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## 257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

### COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Gordon J. Davis, Ken Davis, John Morrison and Mustaja Abadaw.

For Opposition: Melissa Mark Viverito, Joanne Seminara, Gorman Reilly, Joel Meyers, George Sarkissian, Raymond Plumey, Elizabeth Manus, Betto June Raqhael, Elizabeth Ashley, Lo Van Der Valk, Stephanie Low and Cleha Zacharias.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

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## 291-07-BZ

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to §24-35 (side

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# MINUTES

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yards), §24-391 (rear yard), §24-34 (front yard), and §24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Eric Palatnik

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for continued hearing.

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**12-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Empire State Development Corp., owner; Harlem Center, LLC, lessee.

SUBJECT – Application January 3, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on a portion of the cellar and ground floor in a ten-story commercial building. The proposal is contrary to §32-10. C4-7 district.

PREMISES AFFECTED – 317 Lenox Avenue, a/k/a 105 W. 125<sup>th</sup> Street, west side of Lenox Avenue, between 125<sup>th</sup> Street and 126<sup>th</sup> Street, Block 1910, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #10M**

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

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**89-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Majorie Wilpon, owner.

SUBJECT – Application April 11, 2008 – Special Permit (§73-125) to allow a medical office (UG 4) in an existing one-story commercial office building, allowed by prior variance. R3X (HS) district.

PREMISES AFFECTED – 1101 Victory Boulevard, northwest corner of Victory Boulevard and Melrose Avenue, Block 247, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.

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**156-08-BZ**

APPLICANT – Friedman & Gotbaum, LLP, for Hilton Resorts Corporation, owner; Spa Chakra, LLC, lessee.

SUBJECT – Application June 5, 2008 – Special Permit

pursuant to ZR Section 73-36 to allow the proposed Physical Culture Establishment on a portion of the ground floor of a new hotel. The proposal is contrary to ZR Section 32-10. The premises is located in a C5-3 zoning district.

PREMISES AFFECTED – 102 West 57<sup>th</sup> Street, Southerly side of West 57<sup>th</sup> Street, 150 feet west of Sixth Avenue, Block 1009, Lots 37 & 39, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Lori Cuisinier.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 30

July 31, 2008

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### CONTENTS

|                                    |         |
|------------------------------------|---------|
| DOCKET .....                       | 495     |
| <b>CALENDAR</b> of August 26, 2008 |         |
| Morning .....                      | 496     |
| Afternoon .....                    | 496/497 |

# CONTENTS

**MINUTES of Regular Meetings,  
Tuesday, July 22, 2008**

Morning Calendar .....498

**Affecting Calendar Numbers:**

|               |   |
|---------------|---|
| 853-53-BZ     | 2402/16 Knapp Street, Brooklyn                  |
| 615-57-BZII   | 154-11 Horace Harding Expressway, Queens        |
| 579-68-BZ     | 152-160 East 88 <sup>th</sup> Street, Manhattan |
| 406-82-BZ     | 2411 86 <sup>th</sup> Street, Brooklyn          |
| 286-86-BZ     | 100 7 <sup>th</sup> Avenue, Brooklyn            |
| 151-90-BZ     | 115-49 118 <sup>th</sup> Street, Queens         |
| 268-06-BZ     | 80-35 Pitkin Avenue, Queens                     |
| 302-06-BZ     | 1791 Ocean Parkway, Brooklyn                    |
| 546-82-BZIII  | 148-15 89 <sup>th</sup> Avenue, Queens          |
| 16-92-BZ      | 115 King Street, Brooklyn                       |
| 340-03-BZ     | 408 Greenwich Street, Manhattan                 |
| 728-29-BZ     | 154-04 Horace Harding Expressway, Queens        |
| 713-55-BZ     | 181-05 Horace Harding Expressway, Queens        |
| 7-04-BZ       | 2208 Boller Avenue, Bronx                       |
| 180-07-BZ     | 47 West 13 <sup>th</sup> Street, Manhattan      |
| 68-08-A       | 135-23 82 <sup>nd</sup> Avenue, Queens          |
| 251-07-A thru |   |
| 254-07-A      | 63/65 Houston Street, Staten Island             |
| 34-08-A       | 144 North 8 <sup>th</sup> Street, Brooklyn      |

Afternoon Calendar .....506

**Affecting Calendar Numbers:**

|            |   |
|------------|---|
| 143-07-BZ  | 6404 Strickland Avenue, Brooklyn                |
| 282-07-BZ/ |   |
| 283-07-BZ  | 774 Schenck Avenue, Brooklyn                    |
| 36-08-BZ   | 1177 East 23 <sup>rd</sup> Street, Brooklyn     |
| 80-08-BZ   | 1073 East 24 <sup>th</sup> Street, Brooklyn     |
| 144-08-BZ  | 225 5 <sup>th</sup> Avenue, Manhattan           |
| 268-07-BZ  | 1644 48 <sup>th</sup> Street, Brooklyn          |
| 271-07-BZ  | 213-219 West 23 <sup>rd</sup> Street, Manhattan |
| 42-08-BZ   | 182 Girard Street, Brooklyn                     |
| 44-08-BZ   | 1015 East 23 <sup>rd</sup> Street, Brooklyn     |
| 59-08-BZ   | 591 Forest Avenue, Staten Island                |
| 66-08-BZ   | 1497 East 21 <sup>st</sup> Street, Brooklyn     |
| 84-08-BZ   | 67-24 Main Street, Queens                       |
| 165-08-BZ  | 11 Penn Plaza, Manhattan                        |
| 167-08-BZ  | 253 5 <sup>th</sup> Avenue, Manhattan           |

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# DOCKET

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New Case Filed Up to July 22, 2008  
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**194-08-BZ**

432 Lafayette Street, Westerly side of Lafayette Street 229' 11" south of Astor Place., Block 545, Lot(s) 38, Borough of **Manhattan, Community Board: 2**. Special Permit (73-19) to allow a Use Group 3 school on the first floor of an existing four-story mixed-use building. The proposal is contrary to ZR Section 42-10. M1-5B district.  
-----

**195-08-BZ**

1350 East 27th Street, West side of East 27th Street between Avenue N and Avenue M., Block 7662, Lot(s) 72, Borough of **Brooklyn, Community Board: 14**. Special Permit for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (23-141); less than the required rear yard (23-47) and less than the required side yard (23-461) in an R-2 zoning district.  
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**196-08-BZ**

792 Tenth Avenue, North east corner of Tenth Avenue and West 53rd Street., Block 1063, Lot(s) 1, Borough of **Manhattan, Community Board: 4**.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**AUGUST 26, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 26, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **218-58-BZII**

APPLICANT – Vassalotti Associates Architects, LLP, for Norman Dawson, owner.

SUBJECT – Application June 3, 2008 – Extension of Term for an existing gasoline service station (Exxon), in a C1-2/R-2 zoning district, which expired on July 29, 2008.

PREMISES AFFECTED – 77-40 Hewlett Street, west side, 80.02' south of 77<sup>th</sup> Road, Block 8555, Lots 60 & 61, Borough of Queens.

**COMMUNITY BOARD #13Q**

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### **705-68-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Lanide Realty Corporation, owner; City Auto Corporation, lessee.

SUBJECT – Application March 27, 2008 – Extension of Term/waiver for a (UG8) parking lot in an R4-1 zoning district which expired on April 27, 2007.

PREMISES AFFECTED – 88-14/22 182<sup>nd</sup> Street, 128' south of the intersection of Hillside Avenue and 182<sup>nd</sup> Street, Block 9917, Lots 7, 11, 143, Borough of Queens.

**COMMUNITY BOARD #12Q**

-----

### **164-99-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Ivan Duque, owner.

SUBJECT – Application March 20, 2008 – Extension of Term/waiver for a (UG12) eating and drinking establishment without restrictions on entertainment, in a C2-3/R-6 zoning district, which expired on August 15, 2006; an Amendment to the seating layout on the first and second floors, relocation of the bar on the second floor and the addition of two storage rooms in the cellar.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, north side of Roosevelt Avenue, 22' east of the intersection of 79<sup>th</sup> Street and Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**APPEALS CALENDAR**

### **96-08-A**

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Mary Jo and William d'Ecclesiis, lessee.

SUBJECT – Application April 17, 2008 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to Section 35 of the General City Law. R4 Zoning district.

PREMISES AFFECTED – 208 Oceanside Avenue, north side of Oceanside Avenue 49.27' east of mapped Beach 203<sup>rd</sup> Street, Block 16350, Lot p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **150-08-A**

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Kari And Michael Fitzsimmons, lessees.

SUBJECT – Application May 29, 2008 – Proposed reconstruction and enlargement of an existing single family home and the upgrade of an existing non-conforming private disposal system within the bed of a mapped street contrary to General City Law Section 35 and the Department of Buildings Policy.R4 Zoning District.

PREMISES AFFECTED – 331 Hillside Avenue, intersection of Hillside Avenue and the mapped Beach 182<sup>nd</sup> Street, Block 16340, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**AUGUST 26, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, August 26, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **94-08-BZ**

APPLICANT – Law Offices of Howard Goldman, LLC, for ZTI Corp., owner; Pitkin Managers, LLC, lessee.

SUBJECT – Application April 16, 2008 – Variance (§72-21) to waive all the required accessory parking (23 spaces) for the residential portion of a mixed-use redevelopment of an existing theatre building; contrary to § 25-00. C4-3 district.

PREMISES AFFECTED – 1501 Pitkin Avenue, between Legion Street and Saratoga Avenues, Block 3492, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

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# CALENDAR

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## **145-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Faige Neuman and Stephen Neuman, owner.

SUBJECT – Application May 16, 2008 – 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); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1121 East 28<sup>th</sup> Street, east side of East 28<sup>th</sup> Street, between Avenue K and Avenue L, Block 7628, Lot 37, Borough of Brooklyn.

**COMMUNITY BOARD # 14BK**

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## **148-08-BZ**

APPLICANT – Dennis D Dell’Angelo, for Michael Hass, owner.

SUBJECT – Application May 28, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); less than the required side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1383 East 27<sup>th</sup> Street, east side of East 27<sup>th</sup> Street, 60’ north of Avenue N, Block 7663, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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## **155-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 22, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**853-53-BZ**

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC,  
Owner, Exxon Mobil Coperati, Lessee.

SUBJECT – Application May 13, 2008 – Extension of  
Term/waiver to permit the continued operation of a gasoline  
service station (Mobil) which expired on October 23, 1999  
and an Extension of Time to obtain a Certificate of  
Occupancy which expired on April 1, 1996 in R3-2/C2-2  
zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, South  
west corner of Avenue X. Block 7429, Lot 10, Borough of  
Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Application granted on  
condition

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure and an extension of term  
for the continued use of a gasoline service station, which  
expired on October 23, 1999, and an extension of time to  
obtain a certificate of occupancy, which expired on April 1,  
1996; and

WHEREAS, a public hearing was held on this  
application on July 1, 2008 after due notice by publication in  
*The City Record*, with a continued hearing on July 15, 2008,  
and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had site  
and neighborhood examinations by Commissioner Hinkson  
and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn,  
recommends disapproval of this application; and

WHEREAS, the site is located on the southwest corner  
of Knapp Street and Avenue X, in a C2-2 (R3-2) zoning  
district; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since June 22, 1954 when, under the subject  
calendar number, the Board granted a variance to permit the

premises to be occupied by a gasoline service station with  
accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended  
and the term extended by the Board at various times; and

WHEREAS, most recently, the grant was extended on  
May 1, 1990 for a term of ten years from the expiration of  
the prior grant, to expire on October 23, 1999, and then  
amended on March 28, 1995 to grant the applicant until  
April 1, 1996 to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that a certificate  
of occupancy was not obtained by the stipulated date due to  
administrative oversight during the merger of the corporate  
owner; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and

WHEREAS, based upon the above, the Board finds  
that the requested extension of term and 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, dated June 22, 1954, so that as  
amended this portion of the resolution shall read: “to extend  
the term for ten years from October 23, 1999, to expire on  
October 23, 2009, and to grant a six-month extension of time  
to obtain a certificate of occupancy, to expire on January 22,  
2009; *on condition* that all use and operations shall  
substantially conform to plans filed with this application  
marked “Received May 13, 2008”-(5) sheets; and *on further  
condition*:

THAT the term of the grant shall expire on October 23,  
2009;

THAT the above condition shall appear on the certificate  
of occupancy;

THAT a certificate of occupancy shall be obtained by  
January 22, 2009;

THAT all conditions from the prior resolution not  
specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 310091708)

Adopted by the Board of Standards and Appeals July  
22, 2008.

**615-57-BZII**

APPLICANT – Sheldon Lobel, P.C., for Cumberland  
Farms, Incorporated, owner.

SUBJECT – Application June 19, 2008 – Extension of Time  
to obtain a Certificate of Occupancy and waiver of the rules  
for a Gasoline Service Station (Exxon) which expired on  
October 9, 2007 in an C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding  
Expressway, north side of Horace Harding Expressway

# MINUTES

between Kissena Boulevard and 154<sup>th</sup> Place, Block 6731, Lot 1, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian for Josh Rinesmith.

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired on October 9, 2007; and

WHEREAS, a public hearing was held on this application on June 24, 2008 after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, the site is located on the north side of Horace Harding Expressway between Kissena Boulevard and 154<sup>th</sup> Place, in a C1-3 (R5B) zoning district; 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 to permit the reconstruction of a gasoline service station with accessory services; 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 January 9, 2007, for a period of ten years, to expire on June 5, 2013, with a condition that a certificate of occupancy be obtained by October 9, 2007; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to there being multiple open applications for the subject premises at DOB, which needed to be closed or withdrawn; and

WHEREAS, based upon the above, 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 January 14, 1958, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on January 22, 2009; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 22, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 400032255)

Adopted by the Board of Standards and Appeals July 22, 2008.

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## 579-68-BZ

APPLICANT – Seldon Lobel, P.C., for Lexington Towers Company Successor II, L.P., owners; Swift Parking, LLC, lessees.

SUBJECT – Application April 25, 2008 – Extension of Term, to permit the operation of a transient parking garage in the cellar of a building located within a C1-8X zoning district originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED–152-160 East 88<sup>th</sup> Street, southeast corner of the intersection formed by East 88<sup>th</sup> Street and Lexington Avenue, Block 1516, Lot 52, Borough of Manhattan.

## COMMUNITY BOARD #8M

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a previously granted special permit allowing the operation of a transient parking garage in the cellar of a building, which expired on May 16, 2008; and

WHEREAS, a public hearing was held on this application on July 15, 2008, after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises is located on the southeast corner of the intersection formed by Lexington Avenue and East 88<sup>th</sup> Street; and

WHEREAS, the site is located within a C1-8X zoning district and is occupied by a 15-story multi-family mixed-use residential/commercial building with a transient parking garage located in the building’s cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 18, 1969 when, under the subject calendar number, the Board granted an application to permit transient parking for a maximum of 50 percent of the number of parking spaces permitted on the certificate of occupancy for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended several times; and

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# MINUTES

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WHEREAS, most recently, on July 20, 1999, the Board granted an additional ten-year term, to expire on May 16, 2008; and

WHEREAS, applicant now requests an additional ten-year term; and

WHEREAS, the applicant does not propose any changes to the physical layout of the parking garage; and

WHEREAS, the applicant also does not propose any changes to the number of parking spaces permitted in the garage; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 18, 1969 so that as amended this portion of the resolution shall read: “to extend the term for ten years from May 16, 2008, to expire on May 16, 2018 to permit the operation of a transient parking garage *on condition* that that the use and operation of the site shall conform to the previously approved plans associated with this grant; and *on further condition*: THAT the term of this grant shall expire on May 16, 2018;

THAT signage shall comply with C1 zoning district regulations;

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 provisions from prior grants 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.”

Adopted by the Board of Standards and Appeals, July 22, 2008.

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## 406-82-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Adolf Clause & Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application April 29, 2008 – Extension of Term/waiver for a Special Permit (§73-243) Eating and Drinking Establishment (McDonald's) with accessory drive-thru which expired on January 18, 2008; and an Extension of Time to obtain a Certificate of Occupancy which expired

on January 1, 2006 in an C1-3/R05 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of term for an accessory drive-through, which expired on January 18, 2008, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 15, 2008, after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examination by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the is located on the east corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> street, within a C1-3 (R5) zoning district; and

WHEREAS, the site is operated as a McDonald's's eating and drinking establishment; and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board adopted a resolution granting the applicant a special permit for the installation of an accessory drive-through facility for an existing eating and drinking establishment; and

WHEREAS, the special permit was subsequently extended at various times and expired on January 18, 2008; and

WHEREAS, the applicant currently seeks an extension of term and extension of time to obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the proposed five-year extension of term and a six-month 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 *reopens* and *amends* the resolution, dated January 18, 1983, 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 five years, to expire on January 18, 2013, and an extension of six months to obtain a certificate of occupancy, to expire on January 22, 2009; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:



# MINUTES

THAT the grant shall expire on January 18, 2013;

THAT the above condition and all relevant conditions from prior grants shall appear on the certificate of occupancy; and

THAT a certificate of occupancy shall be obtained by January 22, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 310120142)

Adopted by the Board of Standards and Appeals, July 22, 2008.

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## 286-86-BZ

APPLICANT – Sheldon Lobel, P.C., for 808 Union Street, LLC, owner.

SUBJECT – Application April 14, 2008 – Extension of Term filed pursuant to §72-01 and §72-22 to allow the continued use of a Physical Cultural Establishment previously granted pursuant to §72-21 of the zoning resolution. The site is located in a R6A/C1-3 zoning district.

PREMISES AFFECTED – 100 7<sup>th</sup> Avenue, southwest corner of the intersection formed by Seventh Avenue and Union Street, Block 957, Lot 33, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for, an extension of term for a previously granted variance allowing the operation of a physical cultural establishment, which expired on April 27, 2009; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, Community Board 6, Brooklyn, has recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez and Commissioner Ottley-Brown;

and

WHEREAS, the premises is located on the southwest corner of Seventh Avenue and Union Street; and

WHEREAS, the site is located within a C1-3 (R6A) zoning district and is occupied by a three-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 27, 1999 when, under the subject calendar number, the Board granted a variance to permit the use of the cellar of the subject building by a PCE; and

WHEREAS, applicant now requests an additional ten-year term; and

WHEREAS, the applicant now proposes, that no changes are sought and that the PCE will continue to operate within the parameters of the former grant; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on April 27, 1999, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 27, 2009, to expire on April 27, 2019 *on condition* that there are no physical alterations to the site layout and that business on the site shall continue to operate within the parameters of the former grant as filed with this application, marked “Received April 14, 2008”-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 27, 2019;

THAT signage shall comply with C1-3 zoning district regulations;

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 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, July 22, 2008.

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## 151-90-BZ

APPLICANT – Mitchell S. Ross, for Mega Real Estate Management, Incorporated, owner.

SUBJECT – Application March 13, 2008 – Amendment to allow legalization of existing conventional office use by amending resolution to remove condition limiting occupancy to governmental office use only previously granted by the Board. Located in a R3-2 zoning district.

PREMISES AFFECTED – 115-49 118<sup>th</sup> Street, 115-70

# MINUTES

Lefferts Boulevard, East side of 118th Street, 240' north of Sutter Avenue, Block 11711, Lot 18, Borough of Queens.

## COMMUNITY BOARD #10Q

### APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Application granted on condition

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for an amendment to legalize existing general office use (Use Group 6) and to eliminate the condition limiting occupancy to strictly governmental office use as previously granted by the Board; and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in *The City Record*, with a continued hearing on July 1, 2008, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 10, Queens, recommends approval of this application on condition that (1) no Use Group 6 use other than office be permitted and that that be noted on the certificate of occupancy, (2) signage be limited in size and be non-illuminated, (3) the existing large sign be removed, and (4) no trucks park overnight at the site; and

WHEREAS, the subject site is located on a through lot with frontage on 118<sup>th</sup> Street and Lefferts Boulevard, between Sutter Avenue and Rockaway Boulevard, in an R3-2 zoning district; and

WHEREAS, the site is occupied by a two-story with basement building with a front entrance on 118<sup>th</sup> Street; and

WHEREAS, on June 25, 1991, the Board permitted the conversion of the existing building at this site from a school and synagogue (Use Group 3), to governmental offices (Use Group 6); and

WHEREAS, a condition of the grant was that the office use be limited to governmental tenants; and

WHEREAS, the applicant represents that the previous tenant, the Board of Education Committee on Special Education, canceled its lease agreement due to a change in policy by the Department of Education that no longer permits rental in buildings with total floor area less than 35,000 square feet; and

WHEREAS, the applicant represents that there will be no change in floor area as a result of the new use, and that no food or drink is proposed to be sold on the premises; and

WHEREAS, at hearing, the Board directed the applicant to remove the large illuminated sign at the site; and

WHEREAS, in response, the applicant provided photographs reflecting that the illuminated sign in front of the

building has been removed; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to remove the condition limiting occupancy to strictly governmental office use is appropriate with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on June 25, 1991, so that as amended this portion of the resolution shall read: “to permit general office uses under Use Group 6, *on condition* that the use and operation of the site shall comply with all BSA-approved plans, filed with this application marked “Received March 13, 2008” (5) sheets and “June 17, 2008”-(2) sheets; and *on further condition*:

THAT no food or drink shall be sold on the premises;  
THAT there be no signage on the Lefferts Boulevard frontage and that the signage on 118<sup>th</sup> Street not be illuminated and be limited to what is reflected on the BSA-approved plans;

THAT the above condition 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. 401465650)

Adopted by the Board of Standards and Appeals, July 22, 2008.

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## 268-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Mokom Sholom Cemetery Association, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 24, 2008 – Reopening for an Amendment to previously approved Special Permit (§73-30) to permit a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWIn”).

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150’ east of 80<sup>th</sup> Street, Lot 9141, Lot 20, Borough of Queens.

## COMMUNITY BOARD #10Q

### APPEARANCES –

For Applicant: Carole Slater, Slater & Beckerman.

**ACTION OF THE BOARD** – Application granted on condition

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

# MINUTES

WHEREAS, this is an application for a reopening and an amendment to a previously approved special permit for a non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (DoITT), New York City Wireless Network (NYCWIn); and

WHEREAS, a public hearing was held on this application on July 1, 2008, after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 10, Queens, has recommended approval of this application; and

WHEREAS, the subject site is bounded by Liberty Avenue to the north, Pitkin Avenue to the south, 80<sup>th</sup> Street to the east and 84<sup>th</sup> Street to the west, within an R4 zoning district; and

WHEREAS, the site is occupied by Mokom Sholom Cemetery; and

WHEREAS, on February 27, 2007, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-30, for a non-accessory radio and communications tower with a height of 82 feet at the premises; and

WHEREAS, the proposed telecommunications facility is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to provide rich graphical information and real-time video from and to mobile workforces of the City's public safety and public service agencies, thereby allowing faster decision-making and better coordinated emergency responses; and

WHEREAS, the applicant now proposes to construct the non-accessory radio and communications tower, to a height of 94 feet with internally-mounted antennas and related equipment located within a fenced area at the site; and

WHEREAS, the Board notes that no other changes are being made to the original grant other than the extension of the telecommunications pole to a height of 94 feet; and

WHEREAS, based upon its review of the record, the Board finds that the requested reopening and amendment to permit the extension of the telecommunications pole to a height of 94 feet is appropriate with the conditions set forth below; and

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted February 27, 2007, so that as amended this portion of the resolution shall read: "to permit an extension of the telecommunications pole to a height of 94 feet, *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 April 24, 2008"- (5) sheets; and *on further condition*:

THAT any fencing 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 22, 2008.

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## 302-06-BZ

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Inst.

SUBJECT – Application April 10, 2008 – Reopening for an Amendment (§§72-01 and 72-22) to allow a small increase in floor area and floor area ratio.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner of Avenue R, between Ocean Parkway and East 7<sup>th</sup> Street, Block 6663, Lot 46, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to an existing variance, which permitted the enlargement of an existing yeshiva and synagogue building; and

WHEREAS, a public hearing was held on this application on July 15, 2008, after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommended approval of this application; and

WHEREAS, the through-block site is located on the north side of Avenue R, with frontage on Ocean Parkway and East Seventh Street, within an R6A zoning district partially within the Special Ocean Parkway District (OP) and partially within the Ocean Parkway Sub-district; and

WHEREAS, the subject site is occupied by a four-story 48,685 sq. ft. yeshiva and synagogue building with an FAR of 1.96; and

WHEREAS, on June 12, 2007, under the subject calendar number, the Board granted a variance, pursuant to

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# MINUTES

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ZR § 72-21, to permit the enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which did 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 applicant represents that prior to commencing construction, it discovered that the floor area calculations for the existing and proposed building are erroneous and reflect the following mistakes: (1) the 1,658 sq. ft. of floor area associated with an existing fourth floor mezzanine was not included; and (2) only a portion of the lower level can be classified as cellar and the remainder is classified as basement, which increases the zoning floor area by 4,673.5 sq. ft.; and

WHEREAS, the first, second, third, and fourth floors and the third floor mezzanine also reflect deviations from the actual existing and proposed floor area calculations and have been revised; and

WHEREAS, the applicant does not propose to make any changes to the BSA-approved plans, except to replace the page which reflects the revised floor area summary; and

WHEREAS, the applicant requests to make the following amendments to the prior grant and floor area calculations: (1) to add 4,673.5 sq. ft. of floor area for the basement, (2) to add 1,658 sq. ft. of floor area for the fourth floor mezzanine, (3) to revise the existing building's floor area from 56,544.4 sq. ft. (2.28 FAR) to 46,685 sq. ft. (1.96 FAR), and (4) to revise the proposed building's floor area from 66,148 sq. ft. (2.67 FAR) to 68,233 sq. ft. (2.75 FAR); and

WHEREAS, as to the floor area, the applicant represents that at the time of the original application, all of the original plan sheets had not been drafted to the same scale, which resulted in erroneous floor area calculations; as noted, the calculations for the existing building had initially exceeded what was actually there and had not properly included the basement or fourth floor mezzanine; and

WHEREAS, the applicant represents that, subsequent to the grant, when a thorough analysis of the plans was performed, the correct floor area calculations for the existing and proposed buildings were determined; and

WHEREAS, the applicant now asks to be permitted to modify the floor area calculations to reflect the accurate existing and proposed conditions; and

WHEREAS, the applicant notes that the current request does not reflect an increase in the size of the approved building, but rather reflects a correction of errors so that the plans and design contemplated by the Board may be approved; 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, accordingly, the Board agrees that all of the requested revisions 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 Appeals reopens and amends the resolution, said resolution having been adopted on June 12, 2007, so that as amended this portion of the resolution shall read: "to permit a correction to the floor area calculations noted on the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked "Received July 10, 2008" – one (1) sheet and "Received May 29, 2008" – four (4) sheets and "Received April 10, 2008" – four (4) sheets 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. 301275046)

Adopted by the Board of Standards and Appeals, July 22, 2008.

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**546-82-BZIII**

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES – Pasquale Carpentiere.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 10 A.M., for continued hearing.

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**16-92-BZ**

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §72-01 and §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.

# MINUTES

## COMMUNITY BOARD #6BK

### APPEARANCES –

For Applicant: Elizabeth Safian.

For Opposition: Loris Sones, Molly Rouzie and Risha G.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 10 A.M., for continued hearing.

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## 340-03-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, by Howard S. Weiss, Esq., for 408

SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #1M

### APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 10 A.M., for an adjourned hearing.

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## 728-29-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Exxon Mobil Franchisee, lessee.

SUBJECT – Application June 27, 2008 – Extension of Time to obtain a Certificate of Occupancy and Waiver of the rules for a UG16 Gasoline Service Station (Mobil), in an R-4 zoning district, which expired on May 15, 2003.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, Block 6744, Lot 71, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Patrick C. Gorman.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for decision, hearing closed.

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## 713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a gasoline service station (Mobil), in a C2-2/R3-2 zoning district, which expired on May 22, 2003.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side blockfront between Utopia Parkway and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.

## COMMUNITY BOARD #11Q

### APPEARANCES –

For Applicant: Patrick C. Gorman.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 1:30 P.M., for decision, hearing closed.

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## 7-04-BZ

APPLICANT – Lawrence Whiteside, for Reverend Doctor Sheldon E. Williams, owner.

SUBJECT – Application June 26, 2008 – Extension of Time to Complete Construction of a UG4 Church/Community Outreach Center (Co-Op City Baptist Church), in an R3A zoning district, which expired June 8, 2008.

PREMISES AFFECTED – 2208 Boller Avenue, north side of Erskine Place, from Boller Avenue to Hunter Avenue, Block 5135, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #10BX

### APPEARANCES –

For Applicant: Lawrence Whiteside and Rev. Dr.

Sheldon W. Williams.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

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## 180-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 47 Development, LLC, owner; Ritual Spa LLC dba Silk Day Spa, lessee.

SUBJECT – Application June 12, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted PCE (Silk Day Spa), in a C6-2/C6-2M zoning district, which expired on May 20, 2008.

PREMISES AFFECTED – 47 West 13<sup>th</sup> Street, north side of West 13<sup>th</sup> Street, between Fifth and Sixth Avenues, Block 577, Lot 15, Borough of Manhattan.

## COMMUNITY BOARD #2M

### APPEARANCES –

For Applicant: Jordan Most.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

## 68-08-A

APPLICANT – Sheldon Lobel, P.C., for N.J.A. Ventures, LLC, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior R6A zoning. R5D Zoning District.

PREMISES AFFECTED – 135-23 82<sup>nd</sup> Avenue, between 135<sup>th</sup> Street and 138<sup>th</sup> Street (aka Hoffman Avenue), Block 9669, Lot 30, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 1:30 P.M., for decision, hearing closed.

## 251-07-A thru 254-07-A

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner

SUBJECT – Application November 2, 2007 – 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.

PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: James E. Scott, Kim McEvoy, Joan Wojcik and Tricia Ryan on behalf of Councilmember McMahan.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

## 34-08-A

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth (“NAG”) and People’s Firehouse, Inc. (“PFI”).

OWNER: North Seven Associates LLC

SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR 23-142 and ZR 12-10 which fails to provide adequate open space on the zoning lot to support the Building’s floor area.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 29, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JULY 22, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

## ZONING CALENDAR

### 143-07-BZ

APPLICANT – Moshe M. Friedman, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application May 30, 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 §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 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Moshe Friedman.

For Opposition: Arnold Sadownick, M. L., Robert Wisniewski, Brian Khnovich, Anatoliy Shukhman, Francis J. McCade and Herbert Asherman.

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 19, 2008, acting on Department of Buildings Application No. 302279488 reads, in pertinent part:

“Proposed synagogue contrary to:

- ZR 23-111(a), 23-141(a) Floor Area, Floor Area Ratio
- ZR 24-521 Front Wall

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# MINUTES

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- ZR 24-35 Side Yard
- ZR 24-521 Sky Exposure Plane
- ZR 24-31 Parking;” and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site within an R2 zoning district, the construction of a three-story and cellar synagogue, with an accessory religious-based preschool (Use Group 4) which does not comply with the requirements for front and side yards, floor area and floor area ratio, front wall height, sky exposure plane and parking contrary to ZR §§ 23-111(a), 23-141(a), 24-35, 24-521, and 24-31; and

WHEREAS, the application is brought on behalf of Chabad House of Canarsie, Inc. (“Chabad House” and the “Synagogue”), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on January 15, 2008 after due notice by publication in the *City Record*, with continued hearings on March 18, 2008 and July 1, 2008, and then to decision on July 22, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends disapproval of this application; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing concerns with impacts on neighborhood character and parking and with potential construction impacts (the “Opposition”); and

WHEREAS, the subject site is located on the southeast corner of Strickland Avenue and East 64th Street in the Mill Basin section of Brooklyn and is occupied by a one-story home; and

WHEREAS, the subject lot has a lot area of 5,922 sq. ft. and is located within an R2 zoning district; and

WHEREAS, as originally proposed, the three-story building (UG 4) was to have the following parameters: 10,528 sq. ft. of floor area and an FAR of 1.78, a lot coverage of approximately 64.6 percent, a front wall height of 43’-0” on Strickland Avenue and 34’-0” on 64<sup>th</sup> Avenue, a front yard of 5’-0” on Strickland Avenue and a front yard of 7’-0” on East 64<sup>th</sup> Street, no side yard on the eastern lot line, and a complying side yard of 26’-0” on the southern lot line; and

WHEREAS, the applicant revised the proposal during the hearing process, the current proposal provides for: floor area of 9,197 sq. ft., an FAR of 1.53; a lot coverage of 55.1 percent, a front wall height of 39’-0” on Strickland Avenue and 30’-0” on East 64<sup>th</sup> Street, a complying front yard of 15’-0” on Strickland Avenue and a front yard of 6’-0” on East 64<sup>th</sup> Street, a side yard of 3’-0” on the eastern lot line, and a side yard of 23’-0” on the southern lot line; and

WHEREAS, the relevant zoning district regulations are as follows: (i) a maximum FAR of 0.50; (ii) a front wall height of 25’-0”; (iii) two side yards with minimum widths of at least 8’-0” and 9’-6”, respectively; (iv) two front yards with minimum depths of 15’-0” each; and (v) a minimum of 12

parking spaces; and

WHEREAS, the proposed building will have the following program: (1) a mikva, playroom, kitchen, social room, mechanical space, and storage in the cellar; (2) synagogue space and rabbi’s office on the first floor; (3) women’s sanctuary and weekend sanctuary space on the second floor; and (4) classrooms on the third floor; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Chabad House, which includes its mission to provide a larger synagogue for its growing congregation, a mikva, a pre-school for religious and secular education, and a morning program for seniors; and

WHEREAS, the applicant represents that Chabad House has a congregation of approximately 280 adults; and

WHEREAS, the applicant represents that a complying building would be inadequate to accommodate the size of the congregation and would not permit the creation of separate entrances for men and women, or a women’s balcony on the second floor; and

WHEREAS, the applicant states that the requested floor area waiver enables the Synagogue to have the second floor worship space; and

WHEREAS, the applicant further represents that worship space which separates men and women is also critical to its religious practice, thus necessitating the requested waiver of the floor area limitation; and

WHEREAS, the proposed building will also allow Chabad House to offer religious-based education for up to 41 pre-school aged children; and

WHEREAS, the applicant also states that a complying building would be unable to accommodate the characteristic façade that distinguishes the Lubavitch Chasidic synagogues; the applicant provided photographs of numerous Lubavitch synagogues with similar facades located within the United States and other countries; and

WHEREAS, based upon the above, the Board finds that the aforementioned 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 Board acknowledges that Chabad House, as a religious and 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, 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, religious institutions are entitled to locate on their property facilities for other uses that are reasonably associated with their overall purposes and a preschool has

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# MINUTES

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been found to constitute such a use. See Uni. Univ. Church v. Shorten, 63 Misc.2d 978, 982 (Sup. Ct. 1970); 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 floor area, wall height, yards, and parking: (1) the site's soil and water conditions; and (2) the site's corner location and width; and

WHEREAS, as to the site's soil and water conditions, the applicant states that soil borings indicate the presence of sand and silt throughout the site, and an underground water table was measured to a depth of 12 feet; and

WHEREAS, the applicant represents that the noted soil conditions and high water table together constrain its ability to locate program uses below-grade, and, in order to accommodate the required program on the upper floors, within a building height that is compatible with the neighboring context, the ceiling height has been limited to 8'-0"; and

WHEREAS, the applicant states that the size of the site, the height limitations of the district and the high water table of the property do not permit surface or below-grade parking to be accommodated on the site; and

WHEREAS, the Opposition raised concerns with the water table and its consequential potential for flooding during excavation for construction of the Synagogue; and

WHEREAS, the Board notes that the owner would be required to observe all Building Code requirements relevant to construction of the proposed synagogue; and

WHEREAS, as to the site's corner location and size, the applicant states that it is required to provide two front yards with minimum depths of 15'-0", and two side yards, with minimum widths of 9'-6" and of 8'-0", respectively; and

WHEREAS, the applicant notes that these requirements would result in a complying building with a width of 24'-0", 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 FAR, floor area, height, and yard parameters and allow for efficient floor plates that will accommodate Chabad House's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant states that in addition to facilitating an efficient floor plate, the waivers also allow the building'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 Chabad House, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Chabad House 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, at hearing, the Board asked the applicant to provide a survey of nearby front yards to support the initial request for a 5'-0" front yard on Strickland Avenue; and

WHEREAS, the applicant provided a survey indicating that only three out of 23 surveyed sites had front yards of ten feet or less; and

WHEREAS, the applicant subsequently modified the proposal to provide a complying front yard on Strickland Avenue and to provide a 3'-0" side yard on the eastern lot line; the current proposal now also complies with lot coverage requirements; and

WHEREAS, the Board notes that the proposed use is as of right and agrees that the proposed three-story with cellar building is compatible with the neighborhood context; and

WHEREAS, as to traffic and parking impacts, a submission by the applicant indicates that approximately 82 percent of the congregants live within three-quarters of a mile from the premises; and

WHEREAS, the applicant represents that traffic and parking demand would be minimal as congregants are close enough to walk to services and are not permitted to drive to worship on religious holidays, Fridays, or Saturdays – the Synagogue's peak usage periods; and

WHEREAS, the applicant initially stated that a parking study conducted during evening hours indicated that approximately 200 on-street parking spaces were available within a two-block radius of the subject site; and

WHEREAS, the Opposition testified that available parking was inadequate to meet current demand and that the applicant's parking study had failed to evaluate parking availability on the streets during morning hours, when demand from the Synagogue would be most likely to conflict with that of a neighboring public school; and

WHEREAS, the Board directed the applicant to provide a traffic study that evaluated parking availability between the hours of 7:00 a.m. and 8:00 a.m. on streets within a two-block radius of the site; and

WHEREAS, a revised traffic study submitted by the applicant indicated that a total of 313 on-street parking spaces are located within the study area, of which at least 143 spaces were available between 7:00 a.m. and 8:00 a.m., and at least 197 spaces were available between 6:00 p.m. and 8:00 p.m.; and

WHEREAS, the applicant represents that parking demand by congregants would be limited to morning services attracting an average of 50 members daily, and to bi-monthly life-cycle events; and

WHEREAS, the applicant further represents that the number of available on-street parking spaces far exceeds the expected demand by members and guests of the Synagogue;



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# MINUTES

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and

WHEREAS, at hearing, the adjacent owner raised concerns about the unbroken façade of the synagogue's wall on its eastern lot line; and

WHEREAS, the Board directed the applicant to add windows to the side wall to create a condition that is more compatible with the residential context; and

WHEREAS, in response, the applicant agreed to install glass blocks in the side wall; and WHEREAS, during the hearing process, the length of the building was reduced to 90'-0"; and

WHEREAS, the Board notes that a maximum building depth of 100'-8" is permitted as of right; 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 soil conditions and corner location of the site, which render it unsuitable for an as of right development which can accommodate its programmatic needs; 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, as originally proposed the building was to have: 10,528 sq. ft. of floor area and an FAR of 1.78, a lot coverage of approximately 64.6 percent, a front wall height of 43'-0" on Strickland Avenue and 34'-0" on 64<sup>th</sup> Avenue, a front yard on Strickland Avenue of 5'-0", and no side yard on the eastern lot line; and

WHEREAS, in response to concerns raised by the Board during the hearing process, the proposal was modified to reduce the degree of waivers requested; the current proposal provides for: 9,197 sq. ft. of floor area, an FAR of 1.53; a lot coverage of 55.1 percent, a front wall height of 39'-0" on Strickland Avenue and 30'-0" on East 64<sup>th</sup> Street, a complying front yard on Strickland Avenue of 15'-0", and a side yard of 3'-0" on the eastern lot line; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow Chabad House 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(ak); 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. 07BSA093K, dated November 29, 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 application under ZR § 72-21 to permit, within a site located within an R2 zoning district, the construction of a three-story and cellar synagogue with accessory religious-based preschool (Use Group 4), which does not comply with the requirements for side yard, floor area and floor area ratio, front wall height, sky exposure plane, and parking contrary to ZR §§ 23-111(a), 23-141(a), 24-35, 24-521, 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 July 2, 2008" – (12) sheets; and *on further condition*:

THAT, the proposed synagogue shall have floor area of 9,197 sq. ft.; an FAR of 1.53; a front wall height of 39'-0" on Strickland Avenue and 30'-0" on East 64<sup>th</sup> Street; front yards of 15'-0" on Strickland Avenue and 6'-0" on East 64<sup>th</sup> Street; a side yard of 3'-0" on the eastern lot line; and one parking space; and

THAT any change in ownership or use of the building shall be reviewed and approved by the Board;

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 aforementioned condition be noted on the approved plans and 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 22, 2008.

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# MINUTES

## 282-07-BZ & 283-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 774 Schenck Properties, LLC, owner.

SUBJECT – Application December 17, 2007 – Variance (§72-21) to allow two (2) two-family, two-story detached homes; contrary to front yard requirements (§23-45). R5 district.

PREMISES AFFECTED – 774 Schenck Avenue, a/k/a 764 Schenck Avenue and 825 Hendrix Street, Linden Boulevard and Hendrix Avenue, Block 4330, Lot 28C, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

### APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Gary Brown.

**ACTION OF THE BOARD** – Application granted on condition

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 27, 2007, acting on Department of Buildings Application No. 310045064, reads in pertinent part:

“Proposed residential building, garage and open parking space within required front yard is contrary to section 23-45 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the construction of two two-story two-family homes that do not comply with front yard requirements, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on May 20, 2008, after due notice by publication in *The City Record*, with a continued hearing on June 24, 2008, and then to decision on July 22, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, certain community members provided written and oral testimony in opposition to the proposal, citing concerns about compatibility with neighborhood character; and

WHEREAS, the site is a vacant through lot, with frontage on Schenck Avenue, Hendrix Street and Linden Boulevard, with a length of 200 feet and a width of 25 feet; and

WHEREAS, the proposed buildings will each have the following non-complying parameter: one side yard on the Linden Boulevard frontage with a depth of 3’-0” (two front yards with depths of 10’-0” each are the minimum required); and

WHEREAS, further, the proposed homes will each provide one complying front yard with a depth of 20’-0”, and one complying side yard with a depth of 5’-0” and a 20’-0” side yard at the rear, which together provide a complying minimum distance between buildings of 40’-0”; and

WHEREAS, the current proposal reflects for each two-story two-family home: a floor area for each of 1,840 sq. ft., a wall height of 19’-0”, a total height of 25’-0”, and two parking spaces; the total FAR on the site is proposed to be 0.74; all of these parameters comply with zoning district regulations; and

WHEREAS, the applicant states that the site cannot be developed without a variance, due to its narrow width, 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 site in compliance with underlying district regulations: the corner lot’s narrow width of 25 feet; and

WHEREAS, as to the lot’s width, the applicant notes that without front yard waivers, the site could not feasibly be developed; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot was owned separately and apart from all adjacent lots on December 15, 1961 and on the date of the application; and

WHEREAS, the Board notes that there is an adverse possession claim from someone who has occupied the lot at certain times, against the owner; the Board notes that this claim is not within its jurisdiction and can only be resolved in another forum; and

WHEREAS, the applicant notes that, given the narrow width and position as a corner lot, the provision of two front yards and would result in an uninhabitable home with a width of 10’-0”; and

WHEREAS, the applicant notes that within a 400-ft. radius of the site, there are no other corner lots of comparable size, which have development potential; there are, however, two corner lots with widths of 5’-0”, which resulted from the historic widening of Linden Boulevard; and

WHEREAS, additionally, there are a number of interior lots with different yard requirements that have widths in the range of 20’-0” to 25’-0”, but the majority of them are occupied by homes built prior to December 15, 1961; and

WHEREAS, the applicant notes that many of the existing homes in the area have pre-existing non-complying yards; and

WHEREAS, the Board agrees that the front yard waiver is necessary in order to construct habitable homes; and

WHEREAS, thus, the Board finds that the aforementioned unique physical condition creates 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 condition, there is no reasonable possibility that a complying and viable building

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# MINUTES

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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 home complies with all R5 zoning district regulations aside from the front yard requirement, and that the proposed bulk and height is compatible with the other residential buildings in the immediate vicinity; and

WHEREAS, specifically, the applicant proposes to provide complying front yards on the Schenck Avenue and Hendrix Avenue frontages where there is a context for front yards; and

WHEREAS, the Board notes that the applicant initially proposed to provide a wide curb cut on Linden Boulevard, which is a heavily-trafficked street, but re-designed the parking so as to eliminate any curb cut on Linden Boulevard and, instead to provide individual curb cuts for each home on the Schenck Avenue and Hendrix Avenue frontages, respectively; and

WHEREAS, based 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, the Board notes that the one front yard waiver 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 makes the required findings under ZR § 72-21, to permit, within an R5 zoning district, the construction of a two two-story two-family homes that do not comply with front yard requirements, 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 April 2, 2008"-- seven (7) sheets; and *on further condition*:

THAT the parameters of the proposed homes are each as follows: one side yard of 5'-0" along the northern lot line, one side yard of 20'-0" along the shared lot line, one front yard of 10'-0" along the Schenck Avenue and Hendrix Avenue frontages, respectively, and one front yard of 3'-0", along the Linden Boulevard frontage; 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, July 22, 2008.

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## 36-08-BZ

APPLICANT – Lewis Garfinkel, R.A., for Antoninette Mizrachi, owner.

SUBJECT – Application February 21, 2008 – 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)); side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1177 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street, 130' north of Avenue L, Block 7623, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis Garfinkel.

For Opposition: Samuel M. Rotenberg.

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 11, 2008, acting on Department of Buildings Application No. 310077403, reads in pertinent part:

- "1) Proposed plans are contrary to ZR 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
- 2) Proposed plans are contrary to ZR 23-141(b) in that the proposed Open Space Ratio (OSR) is less than required 150%.
- 3) Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".
- 4) Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-

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# MINUTES

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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 yard and rear yard, contrary to ZR §§ 23-141(a), 23-141(b), 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in *The City Record*, with continued hearings on May 13, 2008, and June 24, 2008, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the application, citing concerns about compatibility with neighborhood character; and

WHEREAS, the subject site is located on the east side of East 23<sup>rd</sup> Street, between Avenue L and Avenue K; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with floor area of 1,794 sq. ft. (0.60 FAR); and

WHEREAS, the premises are 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 1,794 sq. ft. (0.60 FAR), to 2,994 sq. ft. (1.0 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 53 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 3'-10" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required) and a second side yard with a width of 5'-10" will be provided, which is permitted under the narrow lot provisions; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board asked the applicant to document the nearby front yard conditions; and

WHEREAS, in response, the applicant provided a map with photographs, which reflect that there are four homes on the subject block with a front yard depth of 15'-0", including one across the street; 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, open space ratio, side yard, and rear yard, contrary to ZR §§ 23-141(a), 23-141(b), 23-461(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 February 21, 2008"-(1) sheet, "April 29, 2008"-(8) sheets and "July 8, 2008"-(1) sheet; and *on further condition*:

THAT the floor area of the attic is limited to 480 sq. ft.;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,994 sq. ft. (1.0 FAR), an open space ratio of 53 percent, one side yard with a minimum width of 3'-10", one side yard with a minimum width of 5'-10", and a rear yard with a minimum depth of 22'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the floor area of the attic;

THAT DOB shall review and approve any porches;

THAT DOB shall review and approve the proposed off-street parking space;

THAT DOB shall confirm that the portions of the existing building noted to be retained on plan sheets A-2 dated February 21, 2008 and A-3, A-4, A-10 and A-11, dated April 29, 2008, shall be retained;

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 DOB shall review and approve the front and rear porches,

THAT the Department of Buildings must 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

# MINUTES

22, 2008.

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**80-08-BZ**

**APPLICANT** – Dennis D. Dell’Angelo, for Joseph Leshkowitz, owner.

**SUBJECT** – Application April 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary the open space ratio and floor area (§23-141); side yards (§23-46) and rear yard requirement (§23-47) in an R-2 zoning district.

**PREMISES AFFECTED** – 1073 East 24<sup>th</sup> Street, east side of East 24<sup>th</sup> Street, 175’ north of Avenue K, Block 7606, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**APPEARANCES** –

For Applicant: Dennis D. Dell’Angelo.

**ACTION OF THE BOARD** – Application granted on condition

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 7, 2008, acting on Department of Buildings Application No. 310091735, reads in pertinent part:

- “1) Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to sec. 23-141 of the NYC zoning resolution.
- 2) Proposed horizontal enlargement provides less than the required side yards contrary to sec. 23-46 of the NYC zoning resolution and less than the required rear yard contrary to sec. 23-47 of the NYC 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, side yards and rear yard, contrary to ZR §§ 23-141, 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 24<sup>th</sup> Street, between Avenue J and Avenue K; and

WHEREAS, the subject site has a total lot area of

3,750 sq. ft., and is occupied by a single-family home with floor area of 2,247 sq. ft. (0.58 FAR); and

WHEREAS, the premises are 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 2,247 sq. ft. (0.594 FAR), to 2,683.6 sq. ft. (0.72 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 78 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 3’-1/2” (side yards with a minimum width of 5’-0” each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-10” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the Board notes that a greenhouse is subject to DOB approval and requested that the applicant revise drawings to show the proposed greenhouse in dotted lines with a notation regarding approval from DOB; and

WHEREAS, in response, the applicant provided revised drawings reflecting the greenhouse notation; and

WHEREAS, the Board notes that the proposed total floor area includes 145.5 sq. ft. to be allocated to the greenhouse, if it is approved, and which will be subtracted from the total floor area calculation if the greenhouse is not approved; 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, 23-46 and 23-47; *on condition* that all work shall substantially conform to drawings as they

# MINUTES

apply to the objections above-noted, filed with this application and marked "Received July 8, 2008"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 2,683.6 sq. ft. (0.72 FAR), an open space ratio of 78 percent, one side yard with a minimum width of 3'-1/2", and a rear yard with a minimum depth of 20'-10", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the proposed greenhouse;

THAT DOB shall review and approve the perimeter wall height and compliance with the sky exposure plane;

THAT the 145.5 sq. ft. of floor area associated with the proposed greenhouse shall be subtracted from the total floor area if the greenhouse is not approved;

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 22, 2008.

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## 144-08-BZ

APPLICANT – Rizzo Group, for William Nelville & Sons USA LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application May 14, 2008 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment on portions of the first and cellar floors. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 225 5<sup>th</sup> Avenue, easterly side of 5<sup>th</sup> Avenue between 26<sup>th</sup> Street and 27<sup>th</sup> Street, Block 856, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Kenneth Barbina, Esq.

**ACTION OF THE BOARD** – Application granted on condition

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 9, 2008, acting on Department of Buildings Application No. 103925219, reads in pertinent part:

"Proposed physical culture establishment use is contrary to section 32-10 of the zoning resolution. Physical culture establishment use is permitted by special permit;" 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 development of a physical culture establishment (PCE) in the cellar and on the first floor of a 13-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 1, 2008 after due notice by publication in *The City Record*, and then to decision on July 22, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 5, Manhattan, recommended approval of this application, conditioned on the consent of the applicant to increase staffing between the hours of 11:00 p.m. to 6:00 a.m.; and

WHEREAS, the subject site is located on the east side of Fifth Avenue, between East 26<sup>th</sup> Street and East 27<sup>th</sup> Street; and

WHEREAS, the proposed PCE will occupy a total of approximately 22,291 sq. ft. of floor space in the cellar and on the first floor; and

WHEREAS, the PCE will be operated as 24 Hour Fitness USA; and

WHEREAS, the applicant represents that the services at the PCE will include (1) cardio equipment, (2) free weights, (3) weight machines, (4) personal training services, and (5) a variety of fitness classes and instruction including but not limited to yoga, pilates and aerobics; and

WHEREAS, the hours of operation will be: daily, 24 hours a day; and

WHEREAS, at hearing, the Board asked the applicant to provide details of the sound attenuation measures at the PCE; and

WHEREAS, in response, the applicant provided a plan devised by project architects regarding sound attenuation measures at the premises; and

WHEREAS, further, the applicant notes that all classes will be held in the cellar and that residential use begins in the second floor; 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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# MINUTES

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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 617.2 (ak); 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. 08BSA088M, dated June 16, 2008; 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 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 establishment of a physical culture establishment in the cellar and on the first floor of a 13-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 July 2, 2008"-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 22, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT sound attenuation measures shall be installed and maintained per the sound attenuation plan;

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 prior to the issuance of any permits, DOB shall

review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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 22, 2008.

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**268-07-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Perlow, Councilman Felda, Abraham Biderman, Stanley Rieder, Israel Lefkowitz, Jerry Bleier and other.

For Opposition: Randy Mastro.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for an adjourned hearing.

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**271-07-BZ**

APPLICANT – The Rizzo Group, for Mitchell Marks, owner; Club Ventures II, LLC., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (PCE) in the C2-7A portion of the zoning district. A variance is also requested to allow the PCE use in the 22'3" portion of the site in the R8A zoning district. The proposal is contrary to §§ 22-10 and 32-18.

PREMISES AFFECTED – 213-219 West 23<sup>rd</sup> Street, north side of 23<sup>rd</sup> Street between Seventh and Eighth Avenues, Block 773, Lot 34, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Kenneth Barbina

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for continued hearing.

# MINUTES

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**42-08-BZ**

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b)) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.  
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**44-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for decision, hearing closed.  
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**59-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue,

Block 154, Lot 140, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for continued hearing.  
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**66-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland, owner.

SUBJECT – Application March 28, 2008 – 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 less than the required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21<sup>st</sup> Street, east side of East 21<sup>st</sup> Street, between Avenue N and Avenue M, Block 7657, Lot 12, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for decision, hearing closed.  
-----

**84-08-BZ**

APPLICANT –Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; L & M Service Station, lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§§11-411, 11-412 & 73-01 (d)) to reinstate and amend the variance granted under Cal No. 410-48-BZ for an automotive service station with accessory uses located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 67-24 Main Street, a/k/a 68-12 Main Street, West side Street 315.5' north of 68th Drive, Block 6486, Lot 38, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for continued hearing.  
-----

**165-08-BZ**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP; for Vornado Office Management LLC, owner; Bally Sports Club, Incorporated, lessee.

SUBJECT – Application June 18, 2008 – Special Permit (§73-36) to allow a physical culture establishment on four levels in an existing 26-story building. The proposal is contrary to ZR section 32-10. C6-6 & C6-4.5 MiD districts.



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# MINUTES

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PREMISES AFFECTED – 11 Penn Plaza, a/k/a 166 West 32nd Street, south side of West 32nd Street between Seventh and Sixth Avenues. Block 807, Lot 1, Borough of Manhattan

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for postponed hearing.

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**167-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Profile Enterprises, L.P., owner; for Garden Retreat Spa, LLC, lessee.

SUBJECT – Application June 19, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the second floor of an existing seven-story building. The proposal is contrary to ZR section 32-10. C5-2 district.

PREMISES AFFECTED – 253 5<sup>th</sup> Avenue, northeast corner of the intersection formed by 5<sup>th</sup> Avenue and West 28<sup>th</sup> Street, Block 858, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 31

August 7, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                      |     |
|--------------------------------------|-----|
| DOCKET .....                         | 520 |
| <b>CALENDAR</b> of September 9, 2008 |     |
| Morning .....                        | 521 |
| Afternoon .....                      | 521 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, July 29, 2008**

Morning Calendar .....522

**Affecting Calendar Numbers:**

728-29-BZ            154-04 Horace Harding Expressway, Queens  
713-55-BZ            181-05 Horace Harding Expressway, Queens  
709-55-BZ III        2000 Rockaway Parkway, Brooklyn  
788-89-BZ            187-17 Jamaica Avenue, Queens  
24-96-BZ             213 Madison Street, Manhattan  
360-01-BZ            2228 Gerritsen Avenue, Brooklyn  
48-08-A               126 Oceanside Avenue, Queens  
49-08-A               305 Hillside Avenue, Queens  
104-08-BZY thru    14/589 Carmela Court, Mill Road, Staten Island  
  119-08-BZY  
266-07-A             1610 Avenue S, Brooklyn  
34-08-A               144 North 8<sup>th</sup> Street, Brooklyn  
47-08-A               7228 Thursby Avenue, Queens  
95-08-A               6701 Bay Parkway, Brooklyn

Afternoon Calendar .....528

**Affecting Calendar Numbers:**

109-07-BZ            33-57 59<sup>th</sup> Street, Queens  
114-07-BZ            7-05 152<sup>nd</sup> Street, Queens  
58-08-BZ             614-632 West 58<sup>th</sup> Street, Manhattan  
134-06-BZ            241-15 Northern Boulevard, Queens  
201-07-BZ            2317 Ralph Avenue, Brooklyn  
245-07-BZ            220 Water Street, Brooklyn  
248-07-BZ            32-15 60<sup>th</sup> Street, Queens  
9-08-BZ               555 Foster Road, Staten Island  
35-08-BZ             1856 East 24<sup>th</sup> Street, Brooklyn  
39-08-BZ             77 Richmond Hill Road, Staten Island  
51-08-BZ             511 Avenue R, Brooklyn  
61-08-BZ             439 86<sup>th</sup> Street, Brooklyn  
67-08-BZ             3842 Bedford Avenue, Brooklyn  
93-08-BZ             112-12, 112-18, 112-24 Astoria Boulevard, Queens

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# DOCKET

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New Case Filed Up to July 29, 2008

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**197-08-BZ**

341/349 Troy Avenue, Corner of Troy Avenue and Carroll Street, Block 1407, Lot(s) 1, Borough of **Brooklyn, Community Board: 9**. Variance to allow a four-story and penthouse, contrary to use regulations.

-----  
**198-08-BZ**

268 Park Avenue South, West side of Park Avenue South at East 21st Street., Block 850, Lot(s) 39, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow the legalization of a physical culture establishment.

-----  
**199-08-BZ**

400 East Fordam Road, Intersection of Webster Avenue and East Fordham Road, Block 3033, Lot(s) 12, Borough of **Bronx, Community Board: 6**. Special Permit (73-00) in pursuant of (73-36) to allow the operation of a physical culture establishment.

-----  
**200-08-A**

171 Bayside Drive, South side of Bayside Drive., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**SEPTEMBER 9, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 9, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**719-56-BZ**

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**115-94-BZ**

APPLICANT – Martyn & Don Weston, for Irma Poretsky, owner.

SUBJECT – Application June 16, 2008 – (§11-411) Extension of Term/Waiver for an Automotive Repair Shop located in an R6 zoning district which expired on July 30, 2006.

PREMISES AFFECTED – 2470-2480 Bedford Avenue, 60 feet north of Clarendon Road, Block 5167, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**APPEALS CALENDAR**

**191-08-BZY**

APPLICANT – Stuart A. Klein, for 1610 Avenue S, LLC, owner.

SUBJECT – Application July 14, 2008 – Extension of time to complete construction (11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**SEPTEMBER 9, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 9, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**11-07-BZ**

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§ 72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§ 22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41<sup>st</sup> Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**158-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Kay Robyn Askenazi and Shay Ashkenazi, owners.

SUBJECT – Application June 6, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (23-141); less than the minimum side yards (23-461) and less than the minimum rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1814 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue R and Avenue S, Block 6832, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**179-08-BZ**

APPLICANT – Rizzo Group, for 600 Broadway Partners, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 22, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the fourth, fifth, and sixth floors in a six-story building. The proposal is contrary to ZR Section 42-10. M1-5 district.

PREMISES AFFECTED – 600 Broadway, southeast corner of Houston Street, Block 511, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 29, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**728-29-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Exxon Mobil Franchisee, lessee.

SUBJECT – Application June 27, 2008 – Extension of Time to obtain a Certificate of Occupancy and Waiver of the rules for a UG16 Gasoline Service Station (Mobil), in an R-4 zoning district, which expired on May 15, 2003.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, Block 6744, Lot 71, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Patrick C. Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment seeking an extension of time to obtain a certificate of occupancy, which expired on March 25, 2003; and

WHEREAS, a public hearing was held on this application on July 22 2008 after due notice by publication in *The City Record*, and then to decision on July 29, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson; and

WHEREAS, the site is located on the south side of the Horace Harding Expressway at the corner formed by the Horace Harding Expressway and Kissena Boulevard, in an R4 zoning district; and

WHEREAS, the site is currently occupied by 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 to permit the construction and operation of a gasoline station on the site; 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 15, 2001, for a period of ten years, to expire on March 19, 2010, with a condition that a certificate of occupancy be obtained by May 25, 2003; and

WHEREAS, the applicant represents that a construction permit application was filed under DOB Application No. 401196969, but work was not completed; and

WHEREAS, the applicant has filed plans pursuant to DOB Application No. 410058663, which will replace DOB Application No. 401196969; and

WHEREAS, at hearing, the Board requested that the applicant revise the plans to indicate that site lighting will be directed away from adjacent properties; and

WHEREAS, in response, the applicant submitted revised plans indicating that all lighting shall be directed downwards and away from neighboring properties; and

WHEREAS, based upon the above, 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 April 15, 1958, so that as amended this portion of the resolution shall read: “to permit a six-month extension of time to obtain a certificate of occupancy, to expire on January 29, 2009; *on condition* that all use and operations shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 27, 2008”-(3) sheets and “July 22, 2008”-(2)sheets; and *on further condition*

THAT a certificate of occupancy shall be obtained by January 29, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application No. 410058663)

Adopted by the Board of Standards and Appeals July 29, 2008.

**713-55-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a gasoline service station (Mobil), in a C2-2/R3-2 zoning district, which expired on May 22, 2003.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side blockfront between Utopia Parkway and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

# MINUTES

For Applicant: Patrick C. Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired on May 21, 2003; and

WHEREAS, a public hearing was held on this application on July 1, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 22, 2008, and then to decision on July 29, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the site is located on the north side of the Horace Harding Expressway between Utopia Parkway and 182<sup>nd</sup> Street, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956, when, under the subject calendar number, the Board granted a variance to permit the occupation of the premises by a gasoline station and accessory uses; 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 21, 2002, for a period of ten years, to expire on December 11, 2011, with a condition that a certificate of occupancy be obtained by May 21, 2003; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy in part because a landscaped area had been paved over contrary to the BSA-approved plans; and

WHEREAS, on January 31, 2005, at the applicant's request, the Board issued a letter to the Department of Buildings, stating no objection to the paved area; and

WHEREAS, based upon the above, 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 December 11, 1956, so that as amended this portion of the resolution shall read: "to permit a six-month extension of time to obtain a certificate of occupancy, to expire on January 29, 2009; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 29, 2009;

THAT all conditions from the prior resolution not

specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(NB No. 3323)

Adopted by the Board of Standards and Appeals July 29, 2008.

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## 709-55-BZIII

APPLICANT – Walter T. Gorman, P.E., for L M T Realty Company, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application May 27, 2008 – Extension of Time to obtain a Certificate of Occupancy, in a C1-2/R4 zoning district, for a gasoline service station (Mobil) which expired on January 9, 2003; waiver of the rules and an Amendment to legalize existing condition contrary to previous approved plans.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lot 68, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

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## 788-89-BZ

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mark McArthy.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for decision, hearing closed.

-----

# MINUTES

## 24-96-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§ 11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 10 A.M., for continued hearing.

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## 360-01-BZ

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.

SUBJECT – Application July 1, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.

PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant:

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for postponed hearing.

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## APPEALS CALENDAR

### 48-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Kathleen Brunton, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to GCL Section 36 and partially located within the bed of a mapped street contrary to GCL Section 35. R4 Zoning District.

PREMISES AFFECTED – 126 Oceanside Avenue, north side Oceanside Avenue, 220.50' east of Beach 207<sup>th</sup> Street, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Application granted.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 11, 2008, acting on Department of Buildings Application No. 410013694 reads, in pertinent part:

“A1- The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law;

A2- the site and building is not fronting on an official mapped street, therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 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 the building fronting directly upon a legally mapped street or frontage space and is contrary to Section 27-291 of the Administrative Code;” and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in the *City Record*, with continued hearings on July 1, 2008 and July 29, 2008 and then to closure and decision on this same date; and

WHEREAS, by letters dated June 2, 2008 and June 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 28, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections ; and

WHEREAS, by letter dated July 24, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated February 11, 2008, acting on Department of Buildings Application No. 410013694 is modified by the power vested in the Board by Section 35/36 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 4, 2008”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; 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;



# MINUTES

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 29, 2008.

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## 49-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Charles & Kim Thompson, lessee.  
SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and located within mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 305 Hillside Avenue, east side Newport Walk, 110/19’ south of Oceanside Avenue, Block 16340, Lot 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 12, 2008, acting on Department of Buildings Application No. 410013685 reads, in pertinent part:

“A1- The proposed enlargement is on a site located partially in the bed of a mapped street, therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law;

A2- the site and building is not fronting on an official mapped street therefore; no permit or Certificate of Occupancy can be issued as per Article 3, Section 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 the building fronting directly upon a legally mapped street or frontage space and is contrary to Section 27-291 of the Administrative Code”; and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in the *City Record*, with continued hearings on July 1, 2008 and July 29, 2008 then to closure and decision on this same date; and

WHEREAS, by letters dated June 2, 2008 and June 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 28, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 24, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated February 12, 2008, acting on Department of Buildings Application No. 410013685, is modified by the power vested in the Board by Section 35/36 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 4, 2008 ”-(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 29, 2008.

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## 104-08-BZY thru 119-08-BZY

APPLICANT – Anthony J. Tucci, for Carmel Homes LLC, owner.

SUBJECT – Application April 23, 2008 – Extension of time (§11-332) to complete construction and obtain a Certificate of Occupancy under the prior district regulations. R3X zoning district Series cases 104-08-BZY thru 119-08-BZY  
PREMISES AFFECTED – 14/589 Carmela Court, Mill Road, Block 4690, Lots 129, 128, 127, 126, 120, 121, 122, 123, 124, 125, 110, 111, 112, 113, 114, 115, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Anthony Tucci.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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# MINUTES

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Commissioner Montanez.....5

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, the Board notes that while separate applications were filed for each of 16 properties, in the interest of convenience, the cases were heard together and the record is the same for each of the applications; and

WHEREAS, a public hearing was held on this application on July 15, 2008, after due notice by publication in *The City Record*, and then to decision on July 29, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject premises are located on the west side of Mill Road, between Aviston Street and Dugdale Street; and

WHEREAS, the premises is currently located within an R3X zoning district, but were formerly located within an R3-2 zoning district; and

WHEREAS, the development complies with the former R3-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the "Enactment Date"), the City Council voted to adopt a rezoning of the area, which rezoned the sites to R3X; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows 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 had expired and construction was still ongoing, the applicant sought 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, on April 25, 2006, under BSA Cal Nos. 374-05-BZY thru 399-05-BZY, the Board approved a two-year extension under ZR § 11-332 to complete construction of 26 townhouses, after determining that all subject building permits were lawfully issued and that substantial completion of the development had been performed and substantial expenditures were incurred; and

WHEREAS, the two-year extension to complete construction expired on April 25, 2008; and

WHEREAS, the applicant completed construction and received certificates of occupancy for ten of the original 26 townhouses which were addressed by the Board's grant; and

WHEREAS, because the two-year time limit granted by the Board under ZR § 11-332 has expired and construction of the remaining 16 townhouses, is still ongoing, the applicant seeks a second two-year extension of term allowable under ZR § 11-332; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the 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. 500592637-01-NB, 500592646-01-NB, 500592655-01-NB, 500592664-01-NB, 500592726-01-NB, 500592717-01-NB, 500592708-01-NB, 500592691-01-NB, 500592682-01-NB, 500592673-01-NB, 500592780-01-NB, 500592771-01-NB, 500592762-01-NB, 500592753-01-NB, 500592744-01-NB, and 500592735-01-NB, (hereinafter, the "New Building

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# MINUTES

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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 were timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR §11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR §11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR §11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, 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 framing and stairs for each of the townhouses, as well as the majority of all remaining work items associated with storm drainage, windows, roofing, plumbing, electrical, and interior finishes and appliances; and

WHEREAS, in support of this statement the applicant has submitted the following: approved building plans; an affidavit from the general contractor describing the work done and estimate of the time remaining to obtain a certificate of occupancy; construction documents indicating the work completed; breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the development’s interior and exterior showing complete framing and stairs; 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, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,279,660, or approximately 70 percent, of the \$1,820,800 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, 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; and

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 500592637-01-NB, 500592646-01-NB, 500592655-01-NB, 500592664-01-NB, 500592726-01-NB, 500592717-01-NB, 500592708-01-NB, 500592691-01-NB, 500592682-01-NB, 500592673-01-NB, 500592780-01-NB, 500592771-01-NB, 500592762-01-NB, 500592753-01-NB, 500592744-01-NB, 500592735-01-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 July 29, 2010.

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## **266-07-A**

APPLICANT – Stuart A. Klein, for 1610 Ave S LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### **COMMUNITY BOARD # 15BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

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## **34-08-A**

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth (“NAG”) and People’s Firehouse, Inc. (“PFI”).

OWNER: North Seven Associates LLC

SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR §23-142 and ZR §12-10 which fails to provide adequate open space on the zoning lot to support the Building’s floor area.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100’ east of Berry Street, Block 2319,

# MINUTES

Lot 11, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

### APPEARANCES –

For Applicant: Kevin Christopher Shea, Councilmember Tony Avella, Kate Spaulding, Philip De Paulo, Doris Vila Lidet, Peter Gillespre, Kailin Husayko, Stephanie Trayer and B. Ersiberg.

For Opposition: Peter Geis and Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

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### 47-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50' west of intersection with Beach 72<sup>nd</sup> Street, Bock 16066, Lot 46, Borough of Queens.

## COMMUNITY BOARD #14Q

### APPEARANCES –

For Applicant: Trevis Saugage.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 10 A.M., for continued hearing.

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### 95-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for 6701 Realty, LLC, owner.

SUBJECT – Application April 16, 2008 – An appeal seeking a determination that the property owner has acquired common law vested right to continue development under the prior C4-3 zoning district regulations. C4-2A zoning district.

PREMISES AFFECTED – 6701 Bay Parkway, southeast corner of the intersection of Bay Parkway and West 8<sup>th</sup> Street, Block 6576, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

### APPEARANCES –

For Applicant: Marvin Mitzner.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JULY 29, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 109-07-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

## COMMUNITY BOARD #2Q

### 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 31, 2007, acting on Department of Buildings Application No. 402055878, reads in pertinent part:

- ZR 23-141(b) Lot coverage exceeds the maximum
- ZR 23-45(a) Front yard required 10' provided 0'
- ZR 23-461(a) Side yard(s) required 13' (5' & 8') provided 0'
- ZR 22-00 Zero lot line buildings are not permitted in R5 district"; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a two-story single-family home that exceeds the maximum lot coverage, is built to the lot line and does not provide the required front and side yards, contrary to ZR §§ 23-141(b), 23-45(a), 23-461(a) and 22-00; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in *The City Record*, with continued hearings on April 1, 2008, May 6, 2008, June 3, 2008 and July 1, 2008, and then to decision on July 29, 2008; and

WHEREAS, the premises and surrounding area had site

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# MINUTES

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and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, citing concerns about potential incompatibility with neighborhood character; and

WHEREAS, members of the Woodside Triangle Block Association and other local residents testified in opposition to this application, citing concerns with the loss of open space and street trees; and

WHEREAS, the site is located on a triangular property bounded by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street in an R5 zoning district; and

WHEREAS, the site has 75.94 feet of frontage on 59<sup>th</sup> Street, 67.92 feet of frontage on 60<sup>th</sup> Street and 33.96 feet of frontage on 34<sup>th</sup> Avenue, and a total lot area of 1,150 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home with approximately 1,436 sq. ft. of floor area (1.25 FAR) and one off-street parking space; and

WHEREAS, the proposed home will provide a lot coverage of 86 percent, be built to the lot line along 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, and has no front yard or side yards; and

WHEREAS, the zoning regulations require a front yard with a minimum depth of 10'-0"; two side yards with minimum widths of 5'-0" and 8'-0", respectively, and limit lot coverage to a maximum of 55 percent; and

WHEREAS, the applicant states that the front yard, side yard, lot coverage and lot line 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 narrow triangular shape of the subject lot; and

WHEREAS, the applicant states that the three streets bounding the subject lot form a nearly perfect right triangle which is only 34'-4" at its widest point; and

WHEREAS, the applicant represents that it is the only triangular-shaped lot found within a 400 foot radius surrounding the subject site; and

WHEREAS, the applicant represents that without the requested front yard, side yard, lot coverage and lot line waivers, no habitable building could be built on the site; 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, side yard, lot coverage and lot line 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, at hearing, local residents testified that the site was used by them as a de facto park and that the building of a home would thereby cause the loss of a neighborhood recreational resource; and

WHEREAS, the applicant states that the site is a vacant lot with a continuous history of private ownership which is zoned for residential development and, further, that the use of the site by neighborhood residents has established no claim of right under the law; and

WHEREAS, the Board notes that any dispute as to the ownership of the site can be resolved in another forum; and

WHEREAS, at hearing, local residents raised issues with the accuracy of the survey and plot plan; and

WHEREAS, the applicant submitted a revised site plan depicting all curbs and utilities indicated on the architectural survey; and

WHEREAS, at hearing, local residents also raised concerns with the loss of mature trees resulting from the excavation and construction of a home on the site; and

WHEREAS, the applicant states that two trees within and adjoining the property must be removed to accommodate the home, and that the other existing trees on the site will be retained; and

WHEREAS, the applicant submitted a revised plot indicating the trees to be retained and removed, as well as the additional landscaping to be provided pursuant to the recently adopted Street Tree Planting text amendment to the Zoning Resolution; 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, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow triangular shape; and

WHEREAS, the applicant further states that these conditions originate with the mapping of 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street bounding the subject lot; and

WHEREAS, at hearing, local residents contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variances to build a habitable home; and

WHEREAS, as noted above, the purchase of a zoning lot subject to the restriction sought to be varied is specifically not a self-created hardship under ZR § 72-21(d); and

# MINUTES

WHEREAS, the Board therefore finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant complies with the R5 zoning district regulations for use, floor area, FAR, height, setback, and 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 R5 zoning district, the proposed construction of a, to permit, within an R5 zoning district, the proposed construction of a two-story single-family home that exceeds the maximum lot coverage, is built to the lot line and that does not provide the required front and side yards contrary to ZR §§ 23-141(b), 23-45(a), 23-461(a) 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 July 16, 2008”–(8) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,436 sq. ft. of floor area (1.25 FAR), a wall height of 18’-11” ; a total height of 26-5” , and one off-street parking space, 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 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 29, 2008.

## 114-07-BZ

### CEQR #07-BSA-081Q

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 – 7-05 152<sup>nd</sup> Street, 152<sup>nd</sup> 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.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 10, 2007, acting on Department of Buildings Application No. 402470526, reads, in pertinent part:

“Provide special use permit from the Board of Standards and Appeals as per ZR 42-31 Use Group 3 (School)” ; and

WHEREAS, this is an application under ZR § 73-19 to permit, on a site partially within an M1-1 zoning district and partially within an R2A zoning district, the proposed operation of a daycare center (Use Group 3); and

WHEREAS, a public hearing was held on this application on October 2, 2007, after due notice by publication in the *City Record*, with continued hearings on November 27, 2007, January 15, 2007, April 1, 2008, May 20, 2008 and then to decision on July 29, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns about traffic safety; and

WHEREAS, the Queens Borough President recommends disapproval of this application; and

WHEREAS, City Council Member Tony Avella recommends disapproval of this application, citing the same concerns as the Community Board; and

WHEREAS, certain neighborhood residents testified in opposition to the school (the “Opposition”) citing concerns with traffic and the lack of parking; and

WHEREAS, the application is brought on behalf of and will be operated by Kiddie Academy, a private daycare operator; and

WHEREAS, the site is located on the east side of 152<sup>nd</sup> Street at the intersection with Powell’s Cove Boulevard; and

WHEREAS, the majority of the site is located within an M1-1 zoning district (with a sliver along the southern property line within an R2A zoning district) and has a lot area of 8,221.6 sq. ft.; it is currently vacant; and

WHEREAS, the Board notes that because the width of the portion of the site within the R2A zoning district is less than 25 feet, the entire site is subject to the regulations of the M1-1 zoning district, in which a daycare center classified as a Use Group 3 school, such as that proposed, is not permitted as

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# MINUTES

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of right; and

WHEREAS, the applicant proposes to construct a three-story building for use as a daycare center with a floor area of 11,253 sq. ft. (1.38 FAR) and offices (Use Group 6) with a floor area of 3,834 sq. ft. (0.47 FAR) for a total floor area of 15,087 sq. ft. (1.85 FAR); and

WHEREAS, the first and second floors will be occupied by the daycare center and the third floor will be occupied by an independent office tenant; the cellar will be occupied by 18 parking spaces; and

WHEREAS, the office use is as of right and only the daycare use requires a special permit pursuant to ZR § 73-19; all the proposed building parameters are as of right; and

WHEREAS, the applicant states that the proposed daycare use meets the ZR § 12-10 definition of school, as it is will operate “under a permit issued pursuant to Section 47.03 of the New York City Health Code;” and

WHEREAS, the proposed daycare center will accommodate a maximum of 190 children and 30 employees; and

WHEREAS, the applicant represents that the proposed daycare center meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as of right, sufficient to meet the programmatic needs of the school; and

WHEREAS, specifically, a site with a lot area of approximately 22,500 sq. ft. would be required to accommodate a daycare center of 11,253 sq. ft. as of right in the adjacent R2A zoning district; and

WHEREAS, the applicant represents that there are not available sites within the adjacent R2A zoning district where construction of a new daycare would be feasible; and

WHEREAS, in support of this assertion, the applicant submitted a land use map and photographs, which reflect that all the sites within the adjacent R2A zoning district are developed and could not accommodate the proposed use; and

WHEREAS, the Opposition asserts that there are potential alternative development sites; and

WHEREAS, at hearing, the applicant stated that there were formerly two vacant lots in the vicinity, which are both currently under development for residential use; and

WHEREAS, additionally, the applicant stated that other sites identified by the Opposition were not within the immediate area and did not serve the daycare center’s programmatic need of attracting students from the surrounding area; and

WHEREAS, the applicant maintains that the results of the site search shows that there is no practical possibility of obtaining a site of adequate size for the school in a nearby zoning district where it is permitted as of right; and

WHEREAS, the evidence submitted into the record

reflects that all adequately-sized sites in the community are developed; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, as noted, the land use map reflects that the site directly abuts an R2A zoning district which includes a sliver of the subject site along its southern lot line, where the proposed use would be permitted as of right; the entire site has a width of 87 feet and is thus less than 87 feet from the R2A zoning district at its furthest point; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that adequate separation from noise: traffic and other adverse effects of the surrounding M1-1 zoning district is provided in that (1) there is minimal traffic on the street due to it being located at a dead-end; (2) the site abuts a residential use on one side and a proposed commercial office building on the other; (3) there is a drop in elevation at the rear of the site, which creates a distance between the proposed building and any adjacent use at the rear; and (4) the applicant proposes the use of sound-attenuating window and wall construction; and

WHEREAS, further, the applicant notes that although the majority of the site is within an M1-1 zoning district, the area is primarily developed with residential uses and commercial uses such as Use Group 6 offices, which are compatible with the proposed daycare center; and

WHEREAS, the area south of the site, within the adjacent R2A zoning district is occupied with single-family homes; and

WHEREAS, the applicant has submitted evidence supporting the above assertions; and

WHEREAS, the Board accepts that the conditions on nearby sites and the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of any the uses within the M1-1 zoning district surrounding the site; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that, although there will be certain peak periods at the beginning and end of the day, the child drop-offs/pick-ups will be spread over a 12-hour period; and

WHEREAS, at hearing, the Board directed the applicant to analyze alternate design options, which could

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# MINUTES

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aid traffic circulation directly in front of the building and ease any potential congestion; and

WHEREAS, in response, the applicant redesigned the site plan to include a lay-by, which allows for at least three cars to temporarily pull off the street in a parallel direction while loading and unloading children at the site; and

WHEREAS, the applicant provided a letter from the Department of Transportation (DOT), which states that the lay-by will be permitted; and

WHEREAS, during the hearing process, the applicant revised the plans to add four parking spaces within the parking facility to be reserved for pick-up/drop-off; and

WHEREAS, the applicant also performed a parking survey which reflects the availability of between eight and 33 off-street parking spaces on 152<sup>nd</sup> Street, between Tenth Avenue and Powell's Cove Boulevard and along Powell's Cove Boulevard, between 152<sup>nd</sup> Street and 151<sup>st</sup> Street during the peak hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.; and

WHEREAS, additionally, DOT provided a letter which states that it foresees being able to grant a request to install signs which state "No Parking 7:00 a.m. to 4:00 p.m. School Days" in front of the daycare facility to insure that the lay-by area is not obstructed by cars not associated with it; and

WHEREAS, as per the special permit requirements, the Board referred the application to DOT's Child Safety Unit; and

WHEREAS, in response, DOT provided a letter, which states that the number of students – from 134 to a maximum of 190 – does not meet the minimum threshold of 250 students to warrant a safe route to school map with pavement markings and school signs; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the school; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, neighborhood residents testified as to a lack of available parking in the area surrounding the school and raised concerns with the demand for staff parking for the school; and

WHEREAS, the applicant notes that there is no parking requirement for the proposed use located in an M1-1 zoning district and that only eight parking spaces would be required if it were instead located in the adjacent R2A zoning district; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence

in the record supports the findings required to be made under ZR § 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. 07BSA081Q, dated May 4, 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 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 2007 Environmental Assessment Statement (EAS); January 2008 Phase II Workplan and Construction Health and Safety Plan (CHASP); June 2008 Remedial Action Plan (RAP) and CHASP; July 8, 2008 RAP Addendum, March 26, 2008 and July 1, 2008 Industrial Source Analysis, and an April 4, 2008 Ambient Noise Survey; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality, and Noise; and

WHEREAS, DEP has determined the RAP/CHASP to be acceptable and determined that there would not be any potential air quality and noise impacts on the subject proposal; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a daycare center (Use Group 3), on a site partially within an M1-1 zoning district and partially within an R2A 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 December 20, 2007" – six(6) sheets and "Received April 11, 2008" – one(1) sheet; and *on further condition*:



# MINUTES

THAT any change in the use, occupancy, or operator of the daycare facility space requires review and approval by the Board;

THAT the space occupied by the daycare facility is limited to a floor area of 11,253 sq. ft. and eight onsite parking spaces;

THAT the use and occupancy of the space associated with the special permit and the proposed daycare center use shall be restricted to such use;

THAT a lay-by will be provided, as reflected on the BSA-approved plans;

THAT prior to the issuance of any permit, the applicant must satisfy DOB's requirements for establishing the proposed use as a Use Group 3 school, pursuant to ZR §§12-10 and 73-19;

THAT accordingly, the proposed bulk of the building is to be reviewed and approved by DOB;

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA approved plans;

THAT as proposed in the RAP, upon completion of the construction activities, a Closure Report certified by a Professional Engineer or Architect shall be submitted to DEP for review and approval;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 29, 2008.

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## 58-08-BZ

### CEQR #08-BSA-067M

APPLICANT – Fried, Frank Harris, Shriver & Jacobson LLP, Waldo Hutchins & J.P. Morgan Chase Bank Trustee for Estate of Francis S. Appleby, owner; The Durst Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit (§73-19) to allow the development of a six-story school (U.G 3) on a vacant site. The proposal is contrary to §42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58<sup>th</sup> Street, Twelfth Avenue, West 57<sup>th</sup> Street, West 58<sup>th</sup> Street, Eleventh Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 7, 2008, acting on Department of Buildings Application No. 110085568 reads, in pertinent part:

“The proposed 6 story building containing community facility (UG 3 School) in an M1-5 zoning district is not permitted as of right and is contrary to section 42-10”; and

WHEREAS, this is an application under ZR § 73-19 to permit, within a site partially within an M1-5 zoning district and partially within a C4-7 zoning district, the proposed development of a pre-school through 12<sup>th</sup> grade independent school (UG 3); and

WHEREAS, the application is brought on behalf of the Durst Organization, the building will be occupied by Nations Academy (“Nations Academy” and the “School”), an independent school to be owned and operated by Cities School Network, Inc. (“CSN”), a not-for-profit organization; and

WHEREAS, a public hearing was held on this application on May 20, 2008, after due notice by publication in the *City Record*, with a continued hearing on June 24, 2008 and then to decision on July 29, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application subject to the following conditions: (1) that certain traffic safety and community benefit recommendations be required; (2) that sanitation trucks and charter buses no longer park on West 58<sup>th</sup> Street; and (3) that a bus stop for shuttle buses be established; and

WHEREAS, certain neighborhood residents testified in opposition to the school citing concerns with traffic and child safety; and

WHEREAS, the site is a through-lot mid-block parcel bounded by 58<sup>th</sup> Street on the north and 57<sup>th</sup> Street on the south, located 270 feet west of Eleventh Avenue; and

WHEREAS, the site is located partially within an M1-5 zoning district and partially within a C4-7 zoning district and has a total lot area of 59,246 sq. ft.; and

WHEREAS, the subject site is currently a vacant lot; and

WHEREAS, the applicant proposes to build a six-story and cellar mixed-use building with a total floor area of 235,000 sq. ft. and an FAR of 4.0 for the building's footprint; and

WHEREAS, the subject site occupies the mid-block portion of a 160,666 sq. ft. zoning lot comprising the entirety of Block 1105; and

WHEREAS, the applicant represents that Block 1105 was rezoned in 2001 to facilitate its development as a General

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# MINUTES

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Large Scale Development, which also included approvals of: (i) a special permit pursuant to ZR §§ 13-562 and 74-52 to allow an attended parking garage with a maximum capacity of 399 spaces in the mid-block portion of the block; and (ii) the establishment of an envelope for development of the zoning lot (collectively, the “2001 Approvals”); and

WHEREAS, the terms of the 2001 Approvals and an associated restrictive declaration also require retail use long the West 57<sup>th</sup> Street frontage of the mid-block portion of Block 1105, and the widening of West 58<sup>th</sup> Street to 38’-0” to provide two 11-foot wide travel lanes and two eight-foot wide curbside lanes; and

WHEREAS, the building is proposed to include the following uses: (i) a school (UG 3) on the first through sixth floors for children in pre-school through 12<sup>th</sup> grades; (ii) ground-floor retail space; and (iii) a 399-car below-grade parking garage; and

WHEREAS, the proposed parking garage and 16,500 sq. ft. ground floor retail space (0.28 FAR); are contemplated by the 2001 Approvals and are not before the Board; and

WHEREAS, the school is proposed to have a floor area of 218,500 sq. ft. (FAR of 3.7); 101,000 sq. ft. (fronting the north side of West 57<sup>th</sup> Street) is within a C4-7 zoning district and 117,500 (fronting the north side of 58<sup>th</sup> Street) is within an M1-5 district where such use is not permitted; and

WHEREAS, this is an application pursuant to ZR § 73-19 to permit the development of a school located within an M1-5 zoning district; and

WHEREAS, the School represents that it complies in all respects with the height and setback envelope established by the 2001 Approvals; and

WHEREAS, the applicant represents that the special permit request is necessitated by the need to provide an integrated global curriculum to serve the growing population of families who are internationally mobile, as well as local families seeking an independent school for their children; and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1-5 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as of right, sufficient to meet the programmatic needs of the school; and

WHEREAS, the proposed building will serve an estimated 1,750 students from pre-school through 12<sup>th</sup> grade, distributed among an Early Childhood Center, Lower School and Upper School; and

WHEREAS, the applicant represents that the school hours will be Monday through Friday from 8:00 a.m. to 3:45 p.m.; and

WHEREAS, the School’s program includes classrooms, art studios, gymnasiums, an auditorium, cafeteria, administrative offices, and a rooftop athletic field;

and

WHEREAS, the applicant states that a six-story building with floor area of at least 220,000 sq. ft., high ceilings, and the ability to create column free space for gymnasiums and assembly space is necessary to accommodate Nations Academy’s program; and

WHEREAS, the applicant represents that the program of Nations Academy also requires several floor plates of at least 60,000 sq. ft. to enable the siting of its gymnasium space and theater adjacent to their respective support spaces; and

WHEREAS, the applicant further states that large floor plates are also necessary to cluster certain classrooms and functional rooms and areas to allow for the efficient functioning of the Early Childhood Center, Lower School and Upper School; and

WHEREAS, the applicant represents that most of the families likely to be served by the school live on the Upper West Side and the Upper East side of Manhattan; and

WHEREAS, thus, the applicant undertook a search for an adequately sized development site or existing buildings within the area bounded by Canal Street on the south, the Astoria waterfront on the east, and 141<sup>st</sup> Street on the north; and

WHEREAS, the applicant states that the feasibility of five Manhattan buildings located at 2350 Fifth Avenue, 5030 Broadway, 550-580 Washington Street, 200 Fifth Avenue and 636 Eleventh Avenue was fully evaluated; and

WHEREAS, each of the five buildings was found to be either geographically remote and not readily accessible by public transportation, structurally unsuitable, or economically infeasible; and

WHEREAS, in addition to the subject site, the applicant states that it also evaluated the feasibility of four vacant or largely vacant sites: three Manhattan sites located on Eleventh Avenue between 42<sup>nd</sup> Street and 43<sup>rd</sup> Street, Tenth Avenue between 42<sup>nd</sup> Street and 41<sup>st</sup> Street, and Eleventh Avenue between 53<sup>rd</sup> Street and 54<sup>th</sup> Street, respectively; and a site located within the Queens West development in Long Island City, Queens at 46-15 Center Boulevard; and

WHEREAS, the applicant states further that none of the alternative vacant or largely vacant sites were found to be able to accommodate the School; and

WHEREAS, the applicant maintains that the results of the site search shows that there is no practical possibility of obtaining a site of adequate size for the school in a district where it is permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant states that the southern portion of the project site is located within a C4-7 zoning district in which a school would be permitted as of right;

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# MINUTES

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accordingly the school will be located not more than 400 feet from the boundary of a district in which a school is permitted as of right; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating exterior wall and window construction; and

WHEREAS, the applicant further states that the school design will include double-glazed windows and a dedicated outdoor air system of ventilation to achieve interior noise levels that comply with the standards set forth in the New York City CEQR Technical Manual; and

WHEREAS, the applicant further states that the school will face 58<sup>th</sup> Street, which is lightly trafficked, and where a Consolidated Edison facility generates limited noise or other adverse effects; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant has submitted a school safety plan addressing measures necessary for the safety of students and staff traveling to and from the school; and

WHEREAS, the applicant states that a modal trip analysis projects that approximately 37 percent of the students will travel to school by subway, 15.5 percent will arrive by school bus, 7.1 percent will arrive by public bus, 13.7 percent by private car, 6.7 percent by taxi; and the remaining 20 percent will arrive by bicycle, by foot or by ferry; and

WHEREAS, the applicant represents that West 58<sup>th</sup> Street, where the School's main entrance is sited, attracts relatively little vehicular traffic because it is dominated by a Consolidated Edison facility with few employees and because drivers cannot gain access to Route 9A from its western terminus; and

WHEREAS, the applicant further represents that the roadbed of West 58<sup>th</sup> Street between Eleventh and Twelfth Avenues will be widened from 34'-0" to 38'-0" concurrently with the construction of the school, thereby allowing the development of a drop off lane which is separate from the eastbound travel lane; and

WHEREAS, the applicant states that safety to students entering and leaving the School will be further enhanced by

the provision of a designated entrance for the pre-school which is separate from the entrance for the entrance for the upper and lower school, thereby spreading out vehicle drop off and pick up points; and

WHEREAS, the School will further prohibit vehicle drop off and pick up of students at its secondary entrance located on 57<sup>th</sup> Street; and

WHEREAS, in addition, the applicant states that it is applying to the New York City Department of Transportation to create a no-standing zone during School hours at the designated drop off/ pick up points; and

WHEREAS, the New York City Department of Transportation ("DOT") has conducted a traffic safety review of the subject proposal; and

WHEREAS, the Board notes that DOT has also begun preparations for the installation of signs and markings at intersections surrounding the School; and

WHEREAS, Community Board 4, Manhattan recommended that traffic monitors also assist children crossing 58<sup>th</sup> Street at 11<sup>th</sup> Avenue on the way to and from the School; and

WHEREAS, in response to the Community Board's request, a submission by Nations Academy states that during peak drop off and pick up hours, a school traffic coordinator will assist with the loading and unloading of children from vehicles and will coordinate staff providing assistance to pedestrian students crossing the intersection of 58<sup>th</sup> Street and Eleventh Avenue; and

WHEREAS, Community Board 4, Manhattan also recommended that measures be taken to protect students crossing in front of the entrance to the parking garage to be built on the site, and the parking lot to the east of the School; and

WHEREAS, in response, the applicant agreed to place warning signs at the entrance and exit to the garage marking the area as a school crossing zone with a maximum speed of five miles per hour, and to place moveable physical barriers on either side of the parking garage and at the parking lot entrance; and

WHEREAS, Community Board 4, Manhattan had recommended additional traffic control measures including: (i) changing pedestrian crossing times on Eleventh Avenue between 48<sup>th</sup> Street and 57<sup>th</sup> Street; (ii) relocating parking by sanitation trucks and charter buses on West 58<sup>th</sup> Street; (iii) establishing a bus stop for shuttle buses; and (iv) installing articulated safety controls at the entrance to an adjacent storage facility; and

WHEREAS, a response by the applicant indicates that the allotted crossing times for red and green lights meet the standards required for both adults and children; however, the Board notes that none of the afore-mentioned recommendations are within the control of the applicant, nor within the Board's jurisdiction; and

WHEREAS, the Board finds that the movement of the traffic through the street on which Nations Academy is located can be controlled so as the protect children going to and from the school; and

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# MINUTES

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WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, Community Board 4, Manhattan, requested that the applicant comply with certain community benefit recommendations, including the sponsorship of a job fair and the provision of financial aid to students residing in adjacent community districts; and

WHEREAS, although such recommendations exceed the scope of the Board's jurisdiction, the applicant has agreed to comply with them; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617(ak); 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. 08BSA067M, dated July 28, 2008; and

WHEREAS, the EAS documents that the proposed school 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 Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection ("DEP") has reviewed the following submissions by the applicant: Petroleum Spill Reports 95-01523, 96-07862, and 98-10172, subsequent spill investigations, and proposed remedial measures submitted to the New York State Department of Environmental Conservation ("DEC"); and a February 2008 EAS; a June 1998 Phase I Environmental Site Assessment Report; a March 14, 2008 Spill Closure Work Plan; a May 29, 2008 update to the Spill Closure Work Plan; and Air Quality and Noise Response submissions dated May 7, 2008 and July 3, 2008; and

WHEREAS, the latter submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, with respect to Hazardous Materials; a

Spill Closure Work Plan Update was approved by DEC on June 4, 2008 requiring certain remediation measures pertaining to the petroleum spill conditions on the site; and

WHEREAS, prior to the issuance of any building permits, and prior to any additional construction activities at the site, the development of a Supplemental Remedial Action Plan ("RAP") and a Construction Health and Safety Plan ("CHASP") approved by DEP is required to ensure that necessary remedial measures are undertaken so that the proposed action does not result in a significant adverse impact on human health and the environment from the identified soil and groundwater contamination; and

WHEREAS, subsequent to DEP approval of the RAP and CHASP, a Remedial Closure Report certified by a Professional Engineer, must be submitted to DEP showing that all remedial requirements have been properly implemented before proceeding with construction; and

WHEREAS the issuance of a Notice to Proceed under the "E" Designation for the subject property is contingent on DEP approval of the supplemental RAP and CHASP, and the issuance of a Notice of Satisfaction is contingent on DEP approval of a Remedial Closure Report; and

WHEREAS, with respect to air quality, a stationary source screening analysis for the heating, ventilating, and air conditioning equipment (HVAC) of the proposed project was performed pursuant to the CEQR Technical Manual; and

WHEREAS, to avoid potential significant air quality impacts to the surrounding area, the stationary source screening analysis determined that the School's stack must be set back a minimum of 187 feet from the 12th Avenue lot line, if the School is heated by No. 2 fuel oil, and at least 151 feet from the 12th Avenue lot line if the School is heated by natural gas; and

WHEREAS, the chemical spill analysis determined that the School's fume hood exhaust must be placed at least 65 feet away from the 12<sup>th</sup> Avenue lot line to avoid any potentially significant air quality impacts from spills in the School's laboratory; and

WHEREAS, the site is located approximately 255 feet from the 12<sup>th</sup> Avenue lot line and, therefore, is not anticipated to result in potentially significant adverse air quality impacts from chemical spills or from stationary sources if No. 2 oil or natural gas is used to heat the building; and

WHEREAS, an industrial source screening analysis shows that the students and staff of the School would not be impacted by the New York City Department of Sanitation garage located at 639-645 West 55<sup>th</sup> Street, or by other surrounding manufacturing/industrial uses; and

WHEREAS, with respect to noise, as the proposed project would be a sensitive receptor, a noise monitoring study was conducted to determine the level of window/wall attenuation required to achieve an acceptable interior noise levels; and

WHEREAS, according to the noise monitoring study, double glazed windows would be required to achieve a 35

# MINUTES

dBA of attenuation for each building façade, and a dedicated outdoor air system (DOAS) is required for ventilation in order to maintain a closed-window condition; and

WHEREAS, as the site has an “E” designation for noise (E-103), before construction can begin the applicant must demonstrate that the windows achieve the required attenuation values and that the ventilation equipment is consistent with the equipment identified by the EAS; and

WHEREAS, the noise monitoring study found that the mechanical system and rooftop playground of the proposed building would not result in any significant adverse noise impacts at neighboring sensitive receptor locations; and

WHEREAS, the applicant has agreed to install double glazed windows that achieve a 35 dBA of attenuation for each building façade and a DOAS, therefore, the proposed project is not anticipated to result in significant adverse noise impacts; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a school serving children from pre-school through 12th grade (Use Group 3), located partially within an M1-5 zoning district and partially within a C4-7 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, with Drawing A-0 marked “Received July 29, 2008”-(1)sheet and Drawings A-1 through A-7 marked “Received May 6, 2008”-(7)sheets and Drawings A-8 through A-10 marked “Received March 3, 2008”-(3)sheets; and *on further condition*:

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA approved plans;

THAT prior to the issuance of any building permits, and prior to any additional construction activities at the site, the New York City Department of Environmental Protection (“DEP”) must approve a supplemental Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”);

THAT DEP shall be contacted to coordinate the timing and completion of field testing and soil remediation activities;

THAT a dedicated outdoor air system and double glazed windows on each facade capable of achieving a 35 dBA of attenuation shall be provided;

THAT the School’s stack shall be set back a minimum of 187 feet from the 12<sup>th</sup> Avenue lot line;

THAT heating, ventilating, and air conditioning (HVAC) equipment shall be fueled by natural gas, or No. 2 fuel oil;

THAT the issuance of a permanent certificate of occupancy be conditioned on the securing of a charter allowing operation of the School pursuant to the requirements of the New York State Education Law;

THAT the certificate of occupancy shall state that the number of students is limited to 1,750;

THAT construction shall be completed within four years of the date of the grant;

THAT a drop-off/pick-up area shall be maintained in front of the school on West 58<sup>th</sup> Street;

THAT the applicant shall provide a dedicated employee to coordinate assistance to students entering and leaving the building at 58<sup>th</sup> Street during the hours of 7:30 a.m. and 9:00 a.m. and 2:30 p.m. and 4:30 p.m.;

THAT, subsequent to construction of the school, and while the subject property is being used as a school, no application for grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, beyond that performed for the current project, shall be submitted to or accepted from the Department of Buildings, until such activities have been coordinated with 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) only.

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## **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: Council Member Tony Avella, Marc Bresky, Marie Marsina, Elliott Socci, Stuart Hersh and Joseph Hellmann.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

# MINUTES

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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 §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.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for deferred decision.

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## 245-07-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Hawthorne Village, LLC, owner.

SUBJECT – Application October 30, 2007 – Variance (§ 72-21) to allow the residential conversion of an existing five-story industrial building. Proposed project will contain 147 dwelling units, ground floor retail space and 59 accessory parking spaces. Proposal is contrary to use regulations (§ 42-00). M1-2 district.

PREMISES AFFECTED – 220 Water Street, between Water and Bridge Streets, Block 41, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Chris Wright and Jack Freeman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 248-07-BZ

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to (§ 23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.

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## 9-08-BZ

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§ 72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§ 107-42); to vary side yards (§ 23-462) and front yards (§ 23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for continued hearing.

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## 35-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Phil Rampulla.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.

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## 39-08-BZ

APPLICANT – Eric Palatnik, P.C., for Kenbar Development, owner; Synergy Fitness, lessees.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of the subject building. The proposal is contrary to section 32-10. C2-1 district.

PREMISES AFFECTED – 77 Richmond Hill Road, middle of the Ken-Bar Plaza shopping center on Richmond Hill Road, Block 2380, Lot 500, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

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# MINUTES

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## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 51-08-BZ

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR §24-11 (lot coverage, FAR, & open space), §24-382 (required rear yard equivalent), §24-522 and §23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Francis R. Angelino, Joan Krevin, Harpert Dhaliwal and Michael Hidary.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.

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## 61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86<sup>th</sup> Street, LLC, owner; TSI Bay Ridge 86<sup>th</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR section 32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86<sup>th</sup> Street, north side of 86<sup>th</sup> Street and east of 4<sup>th</sup> Avenue, Block 6035, Lot 64, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Nicholas Kalliasros.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.

-----

## 67-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Jack M. Skaba, owner.

SUBJECT – Application March 31, 2008 – Special Permit (§73-622) for the enlargement of an existing single family

residence. This application seeks to vary open space, lot coverage and floor area (§23-141); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3842 Bedford Avenue, west side of Bedford Avenue, Block 6807, Lot 22, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.

-----

## 93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Adam W. Rothkrug and Mary C.

For Opposition: James Blake.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 32-34

August 29, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

**CHRISTOPHER COLLINS**, *Vice-Chair*

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

**Roy Starrin**, *Deputy Director*

**Margaret P. Stix**, *Counsel*

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|                        |  |
|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                       |         |
|---------------------------------------|---------|
| DOCKET .....                          | 542/543 |
| <b>CALENDAR</b> of September 16, 2008 |         |
| Morning .....                         | 544     |
| Afternoon .....                       | 544/545 |



---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, August 19, 2008**

Morning Calendar .....546

**Affecting Calendar Numbers:**

|              |   |
|--------------|---|
| 467-58-BZ    | 172-11 Northern Boulevard, Queens                             |
| 826-86-BZII  | 269/10 Grand Central Parkway, Queens                          |
| 827-86-BZII  | 270-10 Grand Central Parkway, Queens                          |
| 828-86-BZII  | 271-10 Grand Central Parkway, Queens                          |
| 200-00-BZIV  | 107-24 37 <sup>th</sup> Avenue aka 37-16 108th Street, Queens |
| 7-04-BZ      | 2208 Boller Avenue, Bronx                                     |
| 33-06-BZII   | 1457 Richmond Road, Staten Island                             |
| 180-07-BZ    | 47 West 13 <sup>th</sup> Street, Manhattan                    |
| 360-01-BZ    | 2228 Gerritsen Avenue, Brooklyn                               |
| 217-03-BZ    | 142 Pennsylvania Avenue, Brooklyn                             |
| 257-04-BZ    | 252/260 Atlantic Avenue, Brooklyn                             |
| 265-07-A     | 57 West 70 <sup>th</sup> Street, Manhattan                    |
| 68-08-A      | 135-33 82 <sup>nd</sup> Avenue, Queens                        |
| 39-07-A      |   |
| thru 40-07-A | 3248, 3250, Wicham Avenue, Bronx                              |
| 230-07-BZY   | 90-22 176 <sup>th</sup> Street, Queens                        |
| 168-08-A     | 63 Brighton 2 <sup>nd</sup> Place, Brooklyn                   |

Afternoon Calendar .....558

**Affecting Calendar Numbers:**

|             |  |
|-------------|--|
| 281-06-BZ & |  |
| 282-06-A    | 232 Beaumont Street, Brooklyn                |
| 189-07-BZ   | 40-55 College Point Boulevard, Queens        |
| 12-08-BZ    | 317 Lenox Avenue, Manhattan                  |
| 37-08-BZ    | 100 Merrill Avenue, Staten Island            |
| 156-08-BZ   | 102 West 57 <sup>th</sup> Street, Manhattan  |
| 51-07-BZ    | 70-44 to 58 Kissena Boulevard, Queens        |
| 119-07-BZ   | 443 39 <sup>th</sup> Street, Brooklyn        |
| 171-07-BZ   | 167 Norfolk Street, Brooklyn                 |
| 205-07-BZ   | 53-20 72 <sup>nd</sup> Place, Queens         |
| 238-07-BZ   | 5-11 47 <sup>th</sup> Avenue, Queens         |
| 257-07-BZ   | 3 East 101 <sup>st</sup> Street, Manhattan   |
| 291-07-BZ   | 1912 New York Avenue, Brooklyn               |
| 41-08-BZ    | 64-35 223 <sup>rd</sup> Place, Queens        |
| 76-08-BZ    | 621 Beach 9 <sup>th</sup> Street, Queens     |
| 78-08-BZ    | 611-617 East 133 <sup>rd</sup> Street, Bronx |
| 79-08-BZ    | 117-23 132 <sup>nd</sup> Street, Queens      |
| 102-08-BZ   | 103 Beachview Avenue, Staten Island          |

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# DOCKET

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New Case Filed Up to August 19, 2008  
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**201-08-BZ**

40-38 216th Street, Between 215th Place and 216th Street, approximately 200 ft. south of 40th Avenue., Block 6290, Lot(s) 70, Borough of **Queens, Community Board: 11.** Variance to allow a one-story commercial building, contrary to use regulations.  
-----

**202-08-BZY**

131 Second Place, Northwest corner of Second Place and Smith Street., Block 459, Lot(s) 24, Borough of **Brooklyn, Community Board: 6.** Extension of time (11-331) to complete construction of a minor development commenced prior to a text amendment on July 23, 2008. R6 Zoning district.  
-----

**203-08-BZ**

1245 East 23rd Street, Located on the east side of East 23rd Street between Avenue L and Avenue M., Block 7641, Lot(s) 26, Borough of **Brooklyn, Community Board: 14.** Special Permit (73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (23-141); side yards (23-461) and less than the minimum rear yard (23-47).  
-----

**204-08-A**

26 Roosevelt Walk, West side of Roosevelt Walk 488.46' south of the mapped Oceanside Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home located within the bed of mapped street contrary to General City Law Section 35. R4 Zoning District.  
-----

**205-08-A**

32 Tioga Walk, West side of Tioga Walk, north of 6th Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home located within the bed of mapped street contrary to General City Law Section 35. R4 Zoning District.  
-----

**206-08-BZ**

737 Elvira Avenue, Southeastern side of Elvira Avenue between Reads Lane and Annapolis Street., Block 15578, Lot(s) 8, Borough of **Queens, Community Board: 14.** Variance to permit the enlargement of an existing yeshiva, contrary to use regulations.  
-----

**207-08-BZ**

40-69 94th Street, Northern corner of the intersection formed by 41st Avenue and 94th Street., Block 1587, Lot(s) 1, Borough of **Queens, Community Board: 7.** Variance to permit an enlargement of a day care center, contrary to bulk regulations.  
-----

**208-08-BZ**

2117-2123 Avenue M, Northwest corner of Avenue M and East 22nd Street, Block 7639, Lot(s) 1 & 3 (tent 1), 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 ratio (23-141) and less than the minimum side yard (23-461) in an R-2 zoning district.  
-----

**209-08-A**

184-198 10th Street, Brooklyn, New York 11215, Block 1014, Lot(s) 43, 44, Borough of **Brooklyn, Community Board: 6.** Application to modify Certificate of Occupancy to permit the Fire Department to require additional fire protection (automatic Wet sprinkler) throughout the entire commercial structure under the authority of Section 27-4265 of the Administrative Code.  
-----

**210-08-BZ**

130-15 89th Road, North side of 89th Road, approximately 125 feet east of 130th Street., Block 9338, Lot(s) 147, Borough of **Queens, Community Board: 9.** Variance to allow the conversion and enlargement of an existing community facility, contrary to use regulations.  
-----

**211-08-A**

434 Oceanside Avenue, North side of Oceanside Avenue at the intersection of mapped Beach 211th Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** Proposed reconstruction and enlargement of existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing legal non conforming private disposals.  
-----

**212-08-A**

131 Second Place, Northwest corner of Second Place and Smith Street., Block 459, Lot(s) 24, Borough of **Brooklyn, Community Board: 6.** Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior zoning district regulations. R6 zoning district.  
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# DOCKET

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**213-08-A**

68 Hillside Avenue, South side of Hillside Avenue 172.10 east of mapped Beach 178th Street., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street and not fronting on a mapped street contrary to General City Law Section 36. R4 Zoning.

-----

**214-08-BZ**

1855 East 24th Street, East side 305'0" north of Avenue S between Avenue R and Avenue S., Block 6830, Lot(s) 64, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing family residence. This application seeks to vary floor area, lot coverage and open space (23-141); less than the minimum side yard (23-461) and less than minimum required rear yard (23-47) in an R.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**SEPTEMBER 16, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 16, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**182-85-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.  
SUBJECT – Application November 19, 2007 – Extension of Term/Waiver of a previously granted Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment (Fox Glass), in an R6B zoning district, which expired on September 9, 2006.  
PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.  
**COMMUNITY BOARD #7BK**

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**183-85-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.  
SUBJECT – Application November 9, 2007 – Extension of Term/waiver of a previously granted Variance (§72-21) for the operation of a (UG16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, in an R6B zoning district, which expired on November 18, 2006.  
PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.  
**COMMUNITY BOARD #7BK**

-----

**605-86-BZ**

APPLICANT – Anthony M. Salvati, Architects, for Bernard Wechsler, owner.  
SUBJECT – Application November 19, 2007 – Extension of Term of a Variance (§72-21) previously granted for a (UG4) two story medical office building in an R5B(BR) zoning district which expired on March 31, 2007; an Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 1998 and a Waiver of the rules.  
PREMISES AFFECTED – 7606 7<sup>th</sup> Avenue, southeast corner of 76<sup>th</sup> Street and 7<sup>th</sup> Avenue, Block 5953, Lot 31, Borough of Brooklyn.  
**COMMUNITY BOARD #10BK**

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**APPEALS CALENDAR**

**176-08-A**

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Elizabeth Conlon, lessee.  
SUBJECT – Application July 7, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to General City Law Section 36. R4.  
PREMISES AFFECTED – 105 Beach 217<sup>th</sup> Street, east side Beach 217<sup>th</sup> Street, 80' south of Breezy Point Boulevard, Block 16450, p/o Lot 400, Borough of Queens.  
**COMMUNITY BOARD #14Q**

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**SEPTEMBER 16, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 16, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**178-07-BZ**

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.  
SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.  
PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

-----

**135-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.  
SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.  
PREMISES AFFECTED – 71-52 172<sup>nd</sup> Street, northwest corner of the intersection of 73<sup>rd</sup> Avenue and 172<sup>nd</sup> Street, Block 6959, Lot 1, Borough of Queens.  
**COMMUNITY BOARD #8Q**

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# CALENDAR

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**157-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Waterfront Owners, LLC, owners.

SUBJECT – Application June 5, 2008 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.

PREMISES AFFECTED – 365 Bay Street, east side of Bay Street between Grant Street and St. Julian Place, Block 488, Lot 71, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**208-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt and 2123 Avenue M, LLC, owner.

SUBJECT – Application August 11, 2008 – 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) and less than the minimum side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22<sup>nd</sup> Street, Block 7639, Lot 1 & 3 (tent 1), Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, AUGUST 19, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**467-58-BZ**

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application April 16, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Exxon Mobil) in an R3-2 zoning district which expired on May 21, 1999.

PREMISES AFFECTED – 172-11 Northern Boulevard, north side blockfront between 172<sup>nd</sup> Street and Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an extension of term for the continued use of a gasoline service station, which expired on May 1, 1999; and

WHEREAS, a public hearing was held on this application on June 3, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 15, 2008, and then to decision on August 19, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Montanez; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of Northern Boulevard between 172<sup>nd</sup> Street and Utopia Parkway, in an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1958 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a 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, the grant was extended on July 18, 1990 for a term of ten years from the expiration of the prior grant, to expire on December 4, 1999; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, the applicant represents that the delay in bringing an application for an extension of term was partially caused by management changes subsequent to the corporate merger of Exxon/Mobil; and

WHEREAS, at hearing, the Board raised concerns with the site's maintenance and appearance and requested that the applicant provide a solid PVC fence to replace a deteriorated portion of existing masonry wall at the northeast corner of the property; and

WHEREAS, in response, the applicant provided revised plans indicating a new 7'-0" high PVC fence to replace the deteriorated masonry wall; and

WHEREAS, at hearing, the Board requested that the applicant provide a narrative of the remediation efforts regarding New York State Department of Environmental Conservation ("DEC") Spill No. 0009063; and

WHEREAS, in response, the applicant provided a description of the Revised Remediation Action Plan for Spill No. 0009063 and the associated DEC monitoring plan; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 16, 1958, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 4, 1999, to expire on December 4, 2009, and to grant a period of one year to obtain a certificate of occupancy, to expire on August 19, 2009; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received April 16, 2008"- (4) sheets and "July 27, 2008"- (2) sheets; and *on further condition*:

THAT the term of the grant shall expire on December 4, 2009;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by August 19, 2009;

THAT landscaping shall be maintained as shown on the BSA-approved plans;

THAT the site shall be well-maintained;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals August

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# MINUTES

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19, 2008.

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## 826-86-BZII

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to legalize additional transmitting equipment on the roof and to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application dismissed for lack of prosecution

**THE VOTE TO DISMISS** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application seeking a waiver of the Rules of Practice and Procedure and a reopening of a special permit pursuant to ZR § 73-11 to permit non-accessory radio towers and transmitting equipment on an existing building, and an extension of term, an extension in the time to obtain a certificate of occupancy, and an amendment to legalize additional transmitting equipment and to eliminate a condition requiring a new certificate of occupancy; and

WHEREAS, the special permit was initially granted on March 29, 1988 authorizing the legalization of non accessory radio towers and transmitting equipment on the roof of the subject building for a term of ten years, to expire on March 29, 1998; and

WHEREAS, under the subject calendar number, the grant was reopened on March 6, 2001 to extend the term for an additional ten years from the date of its expiration and to permit the installation of additional antennae, to expire March 28, 2008; and

WHEREAS, the instant application was filed on May 9, 2008 by Continental Communications, identified as a lessee and contract vendee; and

WHEREAS, the Board's Rules of Practice and Procedure require that all owners of record of a zoning lot consent to the filing of an application pertaining to that zoning lot and further requires that a signed and notarized statement or other proof accompany an application that is not filed by

the owner of record showing that the application is authorized by that owner (see BSA Rules of Practice and Procedure, § 1-03(g)); and

WHEREAS, an Affidavit of Ownership executed on April 25, 2008 by Glen E. Kotowski, identified as agent for North Shore Towers Apts., Inc., owner of subject site, accompanied the application; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on August 19, 2008; and

WHEREAS, on August 15, 2008, the Board received a letter from Robert Ricken, President of North Shore Towers Apartments, Inc., stating that that the April 25, 2008 Affidavit of Ownership was withdrawn and that consent by the record owner to the filing of the subject application was thereby voided and of no force or effect; and

WHEREAS, the Board would have lacked jurisdiction to hear the application, had it been filed initially without an owner's authorization; as the owner's authorization has been withdrawn, the Board lacks jurisdiction to maintain this application on the Calendar, or to approve it, and the application therefore must be dismissed in its entirety.

*Therefore it is Resolved* that the application filed under BSA Cal. No. 826-86-BZII – 828-86-BZII is hereby dismissed for lack of authorization by the owner.

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 827-86-BZII

APPLICANT – Eric Palatnik, P.C., for North Shore Towers Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 270-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application dismissed for lack of prosecution

**THE VOTE TO DISMISS** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

WHEREAS, this is an application seeking a waiver of

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# MINUTES

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the Rules of Practice and Procedure and a reopening of a special permit pursuant to ZR § 73-11 to permit non-accessory radio towers and transmitting equipment on an existing building, and an extension of term, an extension in the time to obtain a certificate of occupancy, and an amendment to legalize additional transmitting equipment and to eliminate a condition requiring a new certificate of occupancy; and

WHEREAS, the special permit was initially granted on March 29, 1988 authorizing the legalization of non accessory radio towers and transmitting equipment on the roof of the subject building for a term of ten years, to expire on March 29, 1998; and

WHEREAS, under the subject calendar number, the grant was reopened on March 6, 2001 to extend the term for an additional ten years from the date of its expiration and to permit the installation of additional antennae, to expire March 28, 2008; and

WHEREAS, the instant application was filed on May 9, 2008 by Continental Communications, identified as a lessee and contract vendee; and

WHEREAS, the Board's Rules of Practice and Procedure require that all owners of record of a zoning lot consent to the filing of an application pertaining to that zoning lot and further requires that a signed and notarized statement or other proof accompany an application that is not filed by the owner of record showing that the application is authorized by that owner (see BSA Rules of Practice and Procedure, § 1-03(g)); and

WHEREAS, an Affidavit of Ownership executed on April 25, 2008 by Glen E. Kotowski, identified as agent for North Shore Towers Apts., Inc., owner of subject site, accompanied the application; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on August 19, 2008; and

WHEREAS, on August 15, 2008, the Board received a letter from Robert Ricken, President of North Shore Towers Apartments, Inc., stating that that the April 25, 2008 Affidavit of Ownership was withdrawn and that consent by the record owner to the filing of the subject application was thereby voided and of no force or effect; and

WHEREAS, the Board would have lacked jurisdiction to hear the application, had it been filed initially without an owner's authorization; as the owner's authorization has been withdrawn, the Board lacks jurisdiction to maintain this application on the Calendar, or to approve it, and the application therefore must be dismissed in its entirety.

*Therefore it is Resolved* that the application filed under BSA Cal. No. 826-86-BZII – 828-86-BZII is hereby dismissed for lack of authorization by the owner.

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 828-86-BZII

APPLICANT – Eric Palatnik, P.C., for North Shore Towers

Apartment Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application May 9, 2008 – Extension of Term for a Special Permit (§73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 271-10 Grand Central Parkway, northeast corner of 267<sup>th</sup> Street, Block 8489, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application dismissed for lack of prosecution

**THE VOTE TO DISMISS** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

WHEREAS, this is an application seeking a waiver of the Rules of Practice and Procedure and a reopening of a special permit pursuant to ZR § 73-11 to permit non-accessory radio towers and transmitting equipment on an existing building, and an extension of term, an extension in the time to obtain a certificate of occupancy, and an amendment to legalize additional transmitting equipment and to eliminate a condition requiring a new certificate of occupancy; and

WHEREAS, the special permit was initially granted on March 29, 1988 authorizing the legalization of non accessory radio towers and transmitting equipment on the roof of the subject building for a term of ten years, to expire on March 29, 1998; and

WHEREAS, under the subject calendar number, the grant was reopened on March 6, 2001 to extend the term for an additional ten years from the date of its expiration and to permit the installation of additional antennae, to expire March 28, 2008; and

WHEREAS, the instant application was filed on May 9, 2008 by Continental Communications, identified as a lessee and contract vendee; and

WHEREAS, the Board's Rules of Practice and Procedure require that all owners of record of a zoning lot consent to the filing of an application pertaining to that zoning lot and further requires that a signed and notarized statement or other proof accompany an application that is not filed by the owner of record showing that the application is authorized by that owner (see BSA Rules of Practice and Procedure, § 1-03(g)); and

WHEREAS, an Affidavit of Ownership executed on April 25, 2008 by Glen E. Kotowski, identified as agent for North Shore Towers Apts., Inc., owner of subject site, accompanied the application; and



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# MINUTES

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WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, and then to decision on August 19, 2008; and

WHEREAS, on August 15, 2008, the Board received a letter from Robert Ricken, President of North Shore Towers Apartments, Inc., stating that that the April 25, 2008 Affidavit of Ownership was withdrawn and that consent by the record owner to the filing of the subject application was thereby voided and of no force or effect; and

WHEREAS, the Board would have lacked jurisdiction to hear the application, had it been filed initially without an owner's authorization; as the owner's authorization has been withdrawn, the Board lacks jurisdiction to maintain this application on the Calendar, or to approve it, and the application therefore must be dismissed in its entirety.

*Therefore it is Resolved* that the application filed under BSA Cal. No. 826-86-BZII – 828-86-BZII is hereby dismissed for lack of authorization by the owner.

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 200-00-BZ IV

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation.

SUBJECT – Application May 5, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a Physical Culture Establishment (Squash Total Fitness), which expired on May 21, 2008, in a C1-4 (R6B) zoning district.

PREMISES AFFECTED – 107-24 37<sup>th</sup> Avenue, a/k/a 37-16 108<sup>th</sup> Street, Southwest corner of 37th Avenue and 108th Street. 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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”), which expired on May 21, 2008; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2008, and then to decision on August 19, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the site is located at the southwest corner

of 37<sup>th</sup> Avenue and 108<sup>th</sup> Street, within a C1-4 (R6B) zoning district; 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 to expire July 17, 2006; and

WHEREAS, on May 11, 2004, the grant was amended to permit the expansion of the PCE onto the entire second floor; and

WHEREAS, on August 21, 2007, under the subject calendar number, the Board reopened the variance to extend the term of the variance for an additional five years, to expire on July 17, 2011; and

WHEREAS, one of the conditions of the August 21, 2007 approval was that substantial construction be completed and a new certificate of occupancy be obtained by May 21, 2008; and

WHEREAS, the applicant states that the property owner has completed general construction at the site; and

WHEREAS, however, the applicant represents that building renovations unrelated to the PCE use prevented the owner from obtaining the new certificate of occupancy for the PCE within the prescribed time frame; and

WHEREAS, the applicant therefore requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, another condition of the August 21, 2007 approval was the installation of a wheel chair lift to provide access to the PCE; and

WHEREAS, following the Board's August 21, 2007 approval, the applicant received permission from the Department of Buildings (“DOB”) to instead install an elevator on the premises; and

WHEREAS, at the Board's request, the applicant submitted photographs depicting the newly installed elevator and a DOB elevator record report confirming its installation; and

WHEREAS, another condition of the August 21, 2007 approval was the planting and maintenance of street trees, as per the BSA-approved plans; and

WHEREAS, the applicant obtained a tree planting permit from the NYC Department of Parks and Recreation which has expired; and

WHEREAS, the applicant represents that it will seek a renewal of the planting permit for the October 15 to December 15, 2008 planting season; and

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated July 17, 2001, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to February 19, 2009; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 19, 2009;

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# MINUTES

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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. 402567254)

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 7-04-BZ

APPLICANT – Lawrence Whiteside, for Reverend Doctor Sheldon E. Williams, owner.

SUBJECT – Application June 26, 2008 – Extension of Time to Complete Construction of a UG4 Church/Community Outreach Center (Co-Op City Baptist Church), in an R3A zoning district, which expired June 8, 2008.

PREMISES AFFECTED – 2208 Boller Avenue, north side of Erskine Place, from Boller Avenue to Hunter Avenue, Block 5135, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a house of worship/community center (Use Group 4); and

WHEREAS, a public hearing was held on this application on July 22, 2008 after due notice by publication in *The City Record*, and then to decision on August 19, 2008; and

WHEREAS, this application is submitted on behalf of the Co-op City Baptist Church; and

WHEREAS, the subject site is located on the corner formed by Boller Avenue, Erskine Place and Hunter Avenue; and

WHEREAS, on June 8, 2004, under the subject calendar number, the Board granted a variance to permit the proposed construction of a house of worship/community center (Use Group 4), located in an R3-2 zoning district, and

WHEREAS, on January 23, 2006, the Board approved by letter certain modifications to the previously approved plans, which eliminated the sub-cellar floor due to unforeseen soil conditions and associated costs; and

WHEREAS, pursuant to a rezoning of the surrounding area in early 2006, the subject site is now located within an

R3A zoning district; and

WHEREAS, substantial construction was to be completed by June 8, 2008 in accordance with ZR § 72-23, which requires substantial completion within four years of the date of the grant of a variance; and

WHEREAS, the applicant represents that construction was delayed due to discussions with the NYC Economic Development Corporation (“EDC”) regarding the financing and design of the proposed community center; and

WHEREAS, the applicant represents that additional time is therefore necessary to complete the project; and

WHEREAS, thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 8, 2004, so that as amended this portion of the resolution shall read: “to grant a three-year extension of time to complete construction, to expire on August 19, 2011; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT construction shall be substantially complete by August 19, 2011;

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. 200804291)

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 33-06-BZII

APPLICANT – Rampulla Associates Architects, owner; Carroll’s Garden Florist Corp., lessee.

SUBJECT – Application March 5, 2008 – Amendment to a previously-approved variance to allow the relocation of the approved commercial building to a different portion of the zoning lot. R1-2 district.

PREMISES AFFECTED – 1457 Richmond Road, north side Richmond Road from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

# MINUTES

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment of a variance to permit a vertical and horizontal enlargement of a one-story retail (Use Group 6) building; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2008, and then to decision on August 19, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of Richmond Road and Delaware Street within an R1-2 zoning district; and

WHEREAS, the site has a total lot area of 4,201 sq. ft. and is occupied by a 600 sq. ft. one-story garden supplies building with two loading docks and accessory parking for six cars; and

WHEREAS, on July 25, 2006, under the subject calendar number, the Board granted a variance to permit the construction of a second-story horizontal and vertical extension to the existing building; and

WHEREAS, the grant allows a building with the following bulk parameters: a maximum of two stories, a total floor area of 2,097.5 sq. ft., a total FAR of 0.50, and six parking spaces; and

WHEREAS, subsequent to the grant, the applicant sought Department of Environmental (“DEP”) approval for new storm sewer and sanitary connections for the building; and

WHEREAS, the required 30’-0” wide easement would be partially located within the footprint of the existing building and the proposed building enlargement; and

WHEREAS, thus, the enlargement approved by the BSA is no longer feasible; and

WHEREAS, the instant application therefore, seeks approval to construct a new building in a different location on the lot; and

WHEREAS, the applicant also proposes the following site changes in order to preserve the 30’-0” wide easement: (1) the new building will be located closer to Richmond Road; and (2) the proposed new parking lot will be relocated to the rear of the new building; and

WHEREAS, the applicant represents, consistent with the Board’s grant, that the first floor will be Use Group 6 retail space; the second floor will be Use Group 6 commercial office space; and

WHEREAS, the applicant represents, that the parking lot curb cut will be relocated along Delaware Road behind

the proposed building; and

WHEREAS, based upon its review of the record, the Board finds that the proposed two-story retail/commercial building 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 25, 2006, so that as amended this portion of the resolution shall read: “to permit a change in the proposed location of the development of a two-story retail/commercial building (Use Group 6); *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received March 5, 2008”- two (2) sheets and “Received July 1, 2008” – one (1) sheet; and *on further 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 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. (DOB Application No. 500812472)

Adopted by the Board of Standards and Appeals, August 19, 2008.

## 180-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 47 Development, LLC, owner; Ritual Spa LLC dba Silk Day Spa, lessee.

SUBJECT – Application June 12, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted PCE (Silk Day Spa), in a C6-2/C6-2M zoning district, which expired on May 20, 2008.

PREMISES AFFECTED – 47 West 13<sup>th</sup> Street, north side of West 13<sup>th</sup> Street, between Fifth and Sixth Avenues, Block 577, Lot 15, Borough of Manhattan.

## COMMUNITY BOARD #2M

### APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Application granted on condition.

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on May 20, 2008, for a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, and then to decision on August 19, 2008;

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# MINUTES

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and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located on the north side of West 13<sup>th</sup> 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 5,846 sq. ft. of floor area in the cellar and 491 sq. ft. of floor area on the first floor of a nine-story mixed-use building; and

WHEREAS, the PCE is operated as Silk Day Spa; and

WHEREAS, on November 20, 2007, under the subject calendar number, the Board approved the legalization of the PCE at the subject site, with certain conditions; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained by May 20, 2008; and

WHEREAS, the applicant represents that the owner's failure to obtain the certificate of occupancy within the stipulated time was due to construction delays beyond its control; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, a condition of the November 20, 2007 grant was that the Spa redirect the exhaust vents that discharge onto West 13<sup>th</sup> Street; and

WHEREAS, the applicant submitted a letter dated August 12, 2008 stating that the Spa will remove the subject vents and redirect the exhaust through the building's interior ventilation system; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to obtain a certificate of occupancy until February 19, 2009 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 November 20, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to February 19, 2009; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 19, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 360-01-BZ

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.

SUBJECT – Application July 1, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.

PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Carl A. Sulfaro, Esq.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for continued hearing.

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## 217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 10 A.M., for continued hearing.

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## 257-04-BZ

APPLICANT – Cozen O'Connor Attorneys, for Boerum Place, LLC, owner.

SUBJECT – Application May 19, 2008 – Original bulk variance was granted on 8/23/05. SOC Amendment filed on 5/19/08 pursuant to ZR §§72-01 & 72-22 to modify the street wall with dormers and to extend the elevator bulkhead to allow ADA access to the roof. No changes proposed to floor area or any waiver previously granted by the Board. R6, R6A, C2-3 & C2-4 districts.

PREMISES AFFECTED – 252/260 Atlantic Avenue aka 83-89 Boerum Place aka 239/247 Pacific Street, east side of Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Barbara Hair

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for continued hearing.

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# MINUTES

## APPEALS CALENDAR

### 265-07-A

APPLICANT – Abigail Patterson, for West 70<sup>th</sup> Associates, owner.

SUBJECT – Application November 19, 2007 – 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.

PREMISES AFFECTED – 57 West 70<sup>th</sup> Street, north side of 70<sup>th</sup> Street, 160' east of corner formed by 70<sup>th</sup> Street and Columbus Avenue, Block 1123, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Jay Goldstein.

For Opposition: Mark Davis, Department of Buildings.

**ACTION OF THE BOARD** – Appeal denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated October 17, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings (DOB) (the "Final Determination") addressed to Abigail Patterson, Esq., with respect to DOB Alteration Permit No. 104314635; and

WHEREAS, the Final Determination reads, in pertinent part:

"This letter is in reference to your October 15, 2007 request for final determination regarding the structure in the rear yard of 57 West 70<sup>th</sup> Street, New York, New York, 10023, which you characterized as a "porch."

"Please be advised, this structure conforms to Zoning Resolution § 23-44 as clarified by Technical Policy and Procedure Notice # 4/03.

"This is the Department's final determination with regard to this matter"; and

WHEREAS a public hearing was held on this application on May 6, 2008 after due notice by publication in *The City Record*, with a continued hearing on June 24, 2008 and then to decision on August 19, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commission Hinkson and Commissioner Montanez; and

WHEREAS, this appeal is brought on behalf of Helen Ritz, the owner and resident of 59 West 70<sup>th</sup> Street (the "Appellant"); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB has been represented by counsel throughout this Appeal; and

WHEREAS, the instant appeal concerns whether a rear yard structure located at the subject site is a permitted

obstruction under ZR § 23-44; and

WHEREAS, the premises is located at 57 West 70<sup>th</sup> Street in an R8B zoning district; and

### PRECEDURAL HISTORY

WHEREAS, on February 16, 2006, the Department of Buildings ("DOB") approved construction of a balcony in the rear yard of the subject site pursuant to DOB Application No. 104314635 (the "permit"); and

WHEREAS, on October 31, 2006, counsel for the Appellant wrote to the Manhattan Borough Commissioner requesting reconsideration of DOB's approval based on the alleged non-conformance of the rear yard structure with the provisions of ZR § 23-132 governing balconies; and

WHEREAS, in a January 4, 2007 letter to Appellant's counsel, the rear yard structure was denominated as a "porch" by DOB's Manhattan Borough Commissioner and the permit was accordingly amended to reflect that the structure was a porch; and

WHEREAS, on January 26, 2007, the Appellant requested a revocation of the permit based on the alleged creation of floor area beneath the porch in violation of ZR § 23-44; and

WHEREAS, on October 17, 2007, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on November 19, 2007, the Appellant filed the instant appeal at the BSA seeking a revocation of the permit, or an alteration of the rear structure to comply with the Zoning Resolution; and

### ISSUES PRESENTED

WHEREAS, the Appellant contends that DOB should revoke the permit for the structure because it (i) is a balcony that violates the requirements for balconies set forth in ZR § 23-132; or (ii) it is a porch that impermissibly creates floor area beneath it in violation of ZR § 23-44; or, alternatively, (iii) the area underneath is usable storage space in violation of DOB's Technical Policy and Procedure Notice # 4/03 ("TPPN # 4/03"); and

#### *(i) Whether the Rear Yard Structure is an Illegal Balcony*

WHEREAS, the Appellant argues that the rear yard structure is an exterior balcony under Section 1602.1 of the new Building Code, effective July 1, 2008; and

WHEREAS, the Appellant further argues that the "balcony" violates ZR § 23-132(e) which requires balconies to be located at least 20 feet above curb level or at the third story of a building, because it is attached at the first floor above the cellar and is only ten feet from the grade level; and

WHEREAS, the Appellant contends that the structure also violates the ZR § 23-132(f) because it extends the entire length of the plane surface of the building wall to which it is attached, far in excess of the 50 percent of the length of the plane surface permitted for balconies by ZR § 23-132(f); and

WHEREAS, DOB asserts states that the structure at issue is a porch rather than a balcony, and therefore is not

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# MINUTES

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regulated by ZR § 23-132; and

WHEREAS, the cited provision of the new Building Code defines a “balcony” as “an exterior floor projecting from and supported by a structure without additional independent supports;” and

WHEREAS, DOB points out that the photographs provided by the Appellant show that the structure in question is supported by beams extending from the structure to the ground, and

WHEREAS, DOB’s TPPN # 4/03 defines “porch” as “[a]n unenclosed, unroofed entrance with steps to a building located at or below the floor level of the first story above a cellar or basement;” and

WHEREAS, according to the approved plans, the structure is unroofed and is located at the floor level of the first story of the subject building; and

WHEREAS, DOB further cites to definitions of “porch” found in the Means Illustrated Construction Dictionary and Merriam-Webster Online Dictionary which distinguish a porch from a balcony by including the criterion that a porch can be an entrance to a building; and

WHEREAS, the contested structure is an entrance to the subject building; and

WHEREAS, the Board agrees that the structure at issue is a porch, rather than a balcony, and therefore is not regulated by ZR § 23-132; and

*(ii) Whether the Structure Is a Porch That Impermissibly Creates Floor Area*

WHEREAS, ZR § 23-44 provides that open porches and terraces are permitted obstructions in required rear yards; and

WHEREAS, the Appellant contends that if the rear yard structure is a porch, the structure violates the Zoning Resolution by impermissibly enclosing the area beneath it to create floor area; and

WHEREAS, Section 12-10(f) of the Zoning Resolution provides that “floor area” includes “floor space in open or roofed terrace, bridges, breezeways or porches, if more than 50 percent of the perimeter of such terrace, breezeway or porch is enclosed, and provided that a parapet not higher than 3 feet 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;” and

WHEREAS, the applicant asserts that the area beneath the rear yard structure is enclosed on three sides: on the south side by the building to which it is attached; on the east side by a wall and on the west side by a party wall which encloses the area to a height of 5’-8”; and

WHEREAS, the Appellant further contends that approximately 70 percent of the perimeter area is thereby enclosed and that the area underneath the porch is a “terrace,” within the meaning of TPPN #4/03, because it is enclosed around more than 50 percent of its perimeter; and

WHEREAS, DOB contends that even if the party wall shown in Petitioner’s photographs of the site was found to constitute an enclosure of the area under the porch, this area would not create “floor area” as defined in ZR § 12-10 (f)

because the area below the porch is at grade level and is therefore not a terrace, breezeway or porch; and

WHEREAS, terraces are, by definition elevated platforms (see, e.g., Dictionary of Architecture and Construction 988 (4<sup>th</sup> ed. 2005) (defining “terrace” as an embankment with level top, often paved, planted and adorned for leisure use. 2. A flat roof or a raised space or platform adjoining a building”)); and

WHEREAS, the Appellant has not argued that the structure is a “breezeway,” and it is clear from the definition of breezeway in TPPN #4/03 that it is not, as it does not connect a building to another building or garage; and

WHEREAS, DOB further contends, therefore, that even if the area under the porch were enclosed on the manner asserted by the Appellant, it would not be “floor area” under the Zoning Resolution; and

WHEREAS, the Board finds no support for Appellant’s claim that floor area in violation of ZR § 23-44 is created below the subject porch; and

*(iii) Whether the Rear Yard Structure Creates Prohibited Storage Area*

WHEREAS, the Appellant contends that approximately 70 percent of the perimeter area beneath the porch is enclosed, and that “usable building or storage space” is thereby created, in violation of TPPN # 4/03; and

WHEREAS, the Appellant argues that if usable building or storage space were created by a porch, that porch would no longer be a permitted obstruction and would therefore encroach into the rear yard in violation of ZR § 23-44; and

WHEREAS, as discussed above, under ZR § 23-44, a porch is a permitted obstruction in a rear yard unless its parapet or railing is enclosed above a certain height, thereby impermissibly creating floor area; and

WHEREAS, area at grade beneath a porch is not construed as “floor area” by the Zoning Resolution; and

WHEREAS, TPPN #4/03 prohibits “useable building or storage space” beneath porches; DOB points out that Zoning Resolution does not define these terms and the agency therefore interprets them to refer to floor area; and

WHEREAS, the Appellant argues, however, that TPPN #4/03’s prohibition against “usable building or storage space” under porches should be read expansively to create an impermissible obstruction of a required rear yard if such area is found to be more than 50 percent enclosed, even if such an enclosure did not create prohibited floor area under the Zoning Resolution; and

WHEREAS, DOB contends that there is no support for such an interpretation of the Zoning Resolution and, further, that the agency lacks the power to prohibit that which the Zoning resolution does not, citing Matter of Faith for Today v. Murdock, 11 A.D.2d 718, 719 (2d Dep’t. 1960) aff’d 9 N.Y.2d 761 (1961)(restrictions on use of property imposed by the Zoning Ordinance may not be extended by any administrative board or judicial tribunal in order to exclude a use which in its opinion should have been excluded) (internal citation and pagination omitted); and

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# MINUTES

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WHEREAS, DOB further contends that since TPPN #4/03 can prohibit only what is already prohibited by the Zoning Resolution, that the terms “usable building or storage space,” which are undefined by the Zoning Resolution, can refer only to the ZR-defined term “floor area,” because “floor area” is prohibited in required rear yards; and

WHEREAS, the Appellant argues that the area under the porch at issue is enclosed on “no less than four of six dimensions,” including by a “party wall” on the west side; and

WHEREAS, DOB points out and the Board agrees, that a finding that more than 50 percent of the perimeter is enclosed is relevant only to “floor area” considerations for “terraces, bridges, breezeways or porches,” and since the Appellant has not established that the area underneath the porch at issue is either a terrace, bridge, breezeway, or porch, the number of dimensions in which it is enclosed is not relevant; and

WHEREAS, even if the area at grade below the porch were determined to be a “terrace,” as the Appellant has suggested, DOB states that the Appellant has failed to establish that the perimeter walls are more than 50 percent enclosed, contending that the area below the porch is enclosed on only its south and east sides; and

WHEREAS, DOB states that that there is no enclosure on the west side of the lot as the west wall referred to by the Appellant is not located on the same lot as the porch; and

WHEREAS, DOB further contends that without the west wall, less than 50 percent of the perimeter area is enclosed and the area below the porch therefore would not constitute “useable building or storage space underneath” under TPPN # 4/03; and

WHEREAS, the Appellant argues, based on a 1989 deed, that the western wall separating 57 West 70<sup>th</sup> Street and 59 West 70<sup>th</sup> Street is in fact a party wall; and further argues that TPPN 4/03 does not distinguish party walls from walls constituting enclosures; and

WHEREAS, DOB asserts that even if a party wall were on the lot line (or entirely on Subject Premises’ side), such a wall would not create “floor area” merely by enclosing grade level space stating that, if that were the case, then all required yards surrounded by fences or walls would become impermissible obstructions; and

WHEREAS, DOB states and the Board agrees that such a result is clearly absurd and not supported by the Zoning Resolution; and

WHEREAS, notwithstanding the fact that, even if the area beneath the porch were more than 50 percent enclosed it would not create “floor area” under ZR § 12-10, the Board finds that the area below the porch is not so enclosed and that “useable building or storage space underneath” which would arguably be prohibited by TPPN 4/03 is not created; and

WHEREAS, the Board further finds that the contested structure is a porch, and a permitted obstruction under ZR § 23-44, and that there is therefore no basis for the revocation

of the permit; and

*Therefore it is resolved* that the instant appeal is denied.

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## 68-08-A

APPLICANT – Sheldon Lobel, P.C., for N.J.A. Ventures, LLC, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior R6A zoning. R5D Zoning District.

PREMISES AFFECTED – 135-23 82<sup>nd</sup> Avenue, between 135<sup>th</sup> Street and 138<sup>th</sup> Street (aka Hoffman Avenue), Block 9669, Lot 30, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed residential building under the common law doctrine of vested rights and a rescission of a Stop Work Order issued against the property; and

WHEREAS, a public hearing was held on this application on June 17, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 22, 2008, and then to decision on August 19, 2008; and

WHEREAS, the site was inspected by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens recommends disapproval of this application citing concerns with neighborhood context; and

WHEREAS, the subject site consists of a 7,193 sq. ft. lot fronting on the south side of 82<sup>nd</sup> Avenue between 135<sup>th</sup> Street and 138<sup>th</sup> Street (aka Hoffman Avenue) in the Briarwood neighborhood of Queens; and

WHEREAS, the applicant proposes to develop the site with a six-story multi-family building with 27 dwelling units and a total floor area of 21,579 sq. ft.; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, the proposed building complies with the former zoning district parameters; and

WHEREAS, however, on February 27, 2008 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Briarwood Rezoning, which rezoned the site to R5D; and

WHEREAS, the building does not comply with the R5D

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# MINUTES

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district parameters as to floor area and height; and

WHEREAS, on March 3, 2008, the applicant was issued a Stop Work Order by DOB, halting construction on the site; 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, Alteration Type 2 Permit No. 410045525 permitting construction of the subject building's foundations (the "Foundation Permit") was issued to the owner by the Department of Buildings (DOB) on December 14, 2007, prior to the Rezoning Date; and

WHEREAS, the applicant states that the Foundation Permit was based on complete plans and specifications examined and approved by DOB and was filed in conjunction with New Building Application No. 410024593 ("New Building Permit"); and

WHEREAS, however, no New Building Permit was issued in connection with the New Building Application prior to the Rezoning Date; and

WHEREAS, DOB initially opposed the subject application on the basis of outstanding objections to the Foundation Permit, and the belief that the zoning calculations for the foundation and proposed building had not been reviewed by the agency; and

WHEREAS, the Appellant subsequently cured the objections to the Foundation Permit and further investigation revealed that a DOB Plan Examiner had indeed reviewed and approved the zoning calculations prior to the issuance of the Foundation Permit; thus, DOB withdrew its opposition to the vesting application; and

WHEREAS, thus, the Board finds that the Foundation Permit was validly issued by DOB to the owner of the subject premises and was in effect until the Rezoning Date; and

WHEREAS, the applicant cites to Glenel Realty Corp. v. Worthington (4 A.D.2d 7002, 703 (2d Dep't 1957), for the proposition that a vested right in the foundation of a structure "must connote a vested right to the erection and use of the specific superstructure for which the foundation was designed;" and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 had completed site preparation, shoring of adjacent properties, excavation, foundations and interior column footings; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site taken one month before the Rezoning Date; an affidavit of the foundation contractor; an invoice from the foundation contractor stating the amount of work completed; concrete delivery tickets; cancelled checks; and accounting summaries; and

WHEREAS, the foundation contractor states that 100 percent of the foundation was completed by the Rezoning Date; and

WHEREAS, a foundation survey dated January 29, 2008, prior to the Rezoning Date, signed and sealed by a licensed land surveyor, states that the foundation was completed by that date; and

WHEREAS, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, the Board also notes that the site preparation, excavation, and installation of footings at the site indisputably occurred prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Rezoning Date, and that said work 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 \$569,927, including hard and soft costs and irrevocable commitments, out of \$5,934,613 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, cancelled checks, concrete pour tickets and accounting reports; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that



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# MINUTES

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the owner had paid \$551,474 for excavation, shoring, installation of foundations, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$19,276 in connection with the proposed construction in outstanding fees owed for architectural and engineering services; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, 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 represents that a complying development would have a maximum of four stories with a total floor area of 13,498 sq. ft., due to the R5D zoning district's height and bulk restrictions; and

WHEREAS, the inability to develop the proposed building at six stories and 21,579 square feet would require the owner to re-design the proposed development; and

WHEREAS, the applicant contends that \$570,750 associated with pre-Rezoning Date project costs would be lost if this appeal were denied; and

WHEREAS, the applicant contends that such a loss is significant;

WHEREAS, additionally, the applicant explained the diminution in income that would occur if the R5D district height and bulk limits were imposed; and

WHEREAS, the applicant notes that a portion of the foundation would have to be demolished and reconstructed for such a complying building, further compounding the economic harm to the owner; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying development, and the \$570,750 of actual expenditures and outstanding fees 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, 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 rescission of the Stop Work Order and a reinstatement of DOB Permit No. 410045525, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 19, 2008.

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## **39-07-A thru 40-07-A**

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of two, 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 3248, 3250, Wickham 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 October 7, 2008, at 10 A.M., for continued hearing.

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## **230-07-BZY**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Alco Builders, Inc., owner.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61, Borough of Queens.

## **COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: John Egnots, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10:00 A.M., for decision, hearing closed.

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## **168-08-A**

APPLICANT – Cozen O'Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110' north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

## **COMMUNITY BOARD #13BK**

# MINUTES

## APPEARANCES –

For Applicant: Barbara Hair.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for an adjourned hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 11:00 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, AUGUST 19, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

## ZONING CALENDAR

### 281-06-BZ & 282-06-A

APPLICANT – Eric Palatnik, P.C., for Yuri Frayman, owner.

SUBJECT – Application October 20, 2006 – Special Permit (§73-622) for the In-Part Legalization of the existing floor area which exceeds the district requirement (§23-141) in an R3-1 zoning district. This application also proposes to reduce the overall height which exceeds the district requirement.

Appeal of DOB determination that the proposed street wall eaves, slope roof projection and trussed rafters were not permitted obstruction as stated in §27-335(A)(2) of the Building Code.

PREMISES AFFECTED – 232 Beaumont Street, west side of Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 50, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application withdrawn.

#### THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, August 19, 2008.

### 189-07-BZ

### CEQR #08-BSA-010Q

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.  
SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated August 6, 2008, acting on Department of Buildings Application No. 402592743, reads in pertinent part:

- (1) Proposed commercial development in residential Zoning District R6 is contrary to ZR section 22-00”;
- (2) The Lot Coverage for the 1<sup>st</sup> floor commercial is contrary to ZR section 23-145; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, ground floor commercial retail use (Use Group 6) within a new six-story building which does not conform to district use and lot coverage regulations, contrary to ZR §§ 22-00 and 23-145; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in *The City Record*, with continued hearings on May 6, 2008, June 3, 2008, and July 15, 2008, and then to decision on August 19, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens recommends disapproval of this application stating that the applicant did not make the required variance findings and cited safety concerns regarding the proposed accessory off-street parking; and

WHEREAS, Councilmember Liu recommends disapproval of this application stating that the alleged hardship should be addressed by a more comprehensive neighborhood rezoning and expressed concern that the subject application, if granted, would set a precedent for similarly zoned properties in the neighborhood; and

WHEREAS, the subject site is located within an R6 zoning district on the east side of College Point Boulevard between a Long Island Rail Road (LIRR) right-of-way and

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# MINUTES

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41<sup>st</sup> Avenue; and

WHEREAS, the site is an irregularly shaped and shallow interior lot within 100 feet of the corner of 41<sup>st</sup> Avenue with a width of approximately 78 feet along its College Point Boulevard frontage, a depth of approximately 65 feet along its northern boundary, a depth of approximately 86 feet along its southern boundary and a total lot area of approximately 5,657 sq. ft.; and

WHEREAS, the site is currently developed with a one-story commercial building constructed in 1955 and occupied by a non-conforming door and window supply establishment which will be demolished to make way for the proposed development; and

WHEREAS, the applicant proposes to construct a six-story mixed-use building with ground floor retail use (U.G. 6), community facility medical offices on the second floor (U.G. 4) and twelve dwelling units (U.G. 2) on the third through sixth floors; and

WHEREAS, the proposed building will have a total floor area of 20,320 sq. ft. (3.59 FAR), 13,034 sq. ft. of residential floor area (2.30 FAR), 3,349 sq. ft. of community facility floor area (0.59 FAR), 3,937 sq. ft. of commercial retail floor area (0.70 FAR); and 23 attended accessory parking spaces in the building's cellar; and

WHEREAS, ground floor commercial use is not permitted in the subject R6 district and therefore the proposal requires a use variance to allow the proposed commercial retail use (U.G. 6); and

WHEREAS, the proposed building's 100 percent lot coverage proposed for the ground floor commercial base violates applicable lot coverage requirements; (lot coverage of 80% is the maximum permitted); and

WHEREAS, because of the proposed use non-conformance and the lot coverage non-compliance, 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 conforming development: (1) the contamination of the site from prior commercial use; (2) its location abuts the LIRR viaduct; (3) its irregular, trapezoidal shape; and (4) its location on a heavily-trafficked street with numerous commercial uses; and

WHEREAS, as to the contamination of the site, the applicant represents that the site was formerly used as a automotive repair shop and due to documented spills and releases of petroleum products from this operation, incurrence of significant environmental remediation costs would be necessary to redevelop the subject property; and

WHEREAS, as to the directly adjacent LIRR viaduct, the applicant represents that the Port Washington line of the railroad travels on an approximately fifteen foot high viaduct that spans the entire length of the site's northern boundary resulting in a condition that inhibits residential uses on the ground floor; and

WHEREAS, as to the site's shallow and irregular shape, the applicant represents that the site's depth varies from

approximately 65' to 86' from its College Point Boulevard frontage; thus constraining an as-of-right ground floor plate; and

WHEREAS, the applicant also asserts that the high amount of traffic at the location, which includes that for the many nearby commercial businesses, diminishes the marketability for a conforming use on the ground floor level; and

WHEREAS, as to the site's location within 100 feet of the corner of College Point Boulevard and 41<sup>st</sup> Avenue, the applicant notes that College Point Boulevard is a wide street with a width of 100 feet, which is heavily-trafficked; and

WHEREAS, the Board notes that the applicant submitted a land use map of the surrounding area, which reflect commercial uses with frontage on College Point Boulevard; 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 which analyzed a conforming and complying development which consisted of a multiple dwelling with ground floor medical offices; and

WHEREAS, the feasibility study concluded that a reasonable rate of return for an as-of-right development is not achievable; and

WHEREAS, the applicant represents that a conforming and complying development would not realize a reasonable return due to the site's constraints; and

WHEREAS, specifically, the applicant has identified significant premium costs related to the soil remediation that render a conforming and complying development infeasible; and

WHEREAS, the Board directed the applicant to provide a financial analysis for two scenarios with less total square footage than that of the proposed: (1) a five-story residential building with ground floor commercial retail with a first level floor-to-ceiling height of 16'-0"; and (2) a five-story residential building with ground floor retail with a first level floor-to-ceiling height of 23' and found that neither yield a reasonable return; and

WHEREAS, at the Board's request, the applicant also modified the financial analysis to include commercial retail rent comparables, which it found to be more relevant to the subject site than the comparables data initially analyzed; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed 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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# MINUTES

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WHEREAS, the applicant represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant states that the site was used for commercial uses for approximately 50 years; and

WHEREAS, the Board notes that the proposed building respects the height and floor area limits of the subject zoning district and provides the required parking based on the floor area; and

WHEREAS, the applicant states that the block immediately to the west of the subject site is established within an M1-2 district and a C4-2 district and that the College Point Boulevard frontage to its immediate southwest is located within a (C2-1) R6 district and that both of these blocks are occupied by commercial uses; and

WHEREAS, the commercial character of the neighborhood is reinforced by the presence of the railroad viaduct immediately to the north of the site; and

WHEREAS, the Board has reviewed the map and photos of the immediate area submitted with this application, and has also conducted its own site visit, and concludes that the proposed ground floor commercial use and the overall bulk parameters of the building will be compatible with the existing conditions in the surrounding neighborhood; and

WHEREAS, at hearing, the Board questioned the ability of the proposed cellar level to accommodate 23 parked vehicles; and

WHEREAS, in particular, the Board expressed concern regarding potential interference with vehicle movement by the location of an elevator and stacker mechanisms, as well as the limited turning radius at the building's western wall; and

WHEREAS, the applicant responded to the Board's concerns by submitting additional drawings showing an adequate turning radius for the area in question;

WHEREAS, the applicant, also in response to the Board's concerns with vehicle maneuverability, has agreed to post a parking attendant at the base of the ramp on the cellar level; and

WHEREAS, the Board is satisfied that the proposed accessory parking layout is adequate with respect to the safety, maneuverability and its ability to accommodate 23 vehicles; 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 unique site conditions specifically the proximity to the LIRR viaduct and the environmental conditions; and

WHEREAS, the applicant represents that without the requested zoning relief for the non-conforming commercial use and the non-compliant lot coverage that would allow the

proposed building, construction costs could not be overcome, and the shallowness of the ground-level floor plates would make the site less efficient and therefore less marketable; and

WHEREAS, the Board directed the applicant to evaluate a number of alternative proposals but none were found to provide a reasonable rate of return and 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 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. 08BSA010Q, dated December 6, 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 (DEP) has reviewed and found acceptable the following submissions from the Applicant: an December, 2007 Environmental Assessment Statement, a November, 2007 Phase I Report, March, 2008 Phase II Subsurface Investigative Report and May, 2008 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.

*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, within an R6 zoning district, a six (6) story mixed-use building total floor area of 20,320 sq. ft. (3.59 FAR), 13,034 sq. ft. of residential floor area (2.30 FAR), 3,349 sq. ft. of community facility floor area (0.59 FAR), 3,937 sq. ft. of commercial retail floor area (0.70 FAR), twelve (12) dwelling units, a base height of 60'-0", a total height of 70'-0" above a ten-foot front setback, 23 attended accessory parking spaces in the building's cellar; and is non-

# MINUTES

conforming as to use and non-compliant as to lot coverage; contrary to ZR §§ 22-00 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 April 22, 2008” – two (2) sheets and “Received August 15, 2008” – five (5) sheets; and *on further condition*:

THAT the total FAR of the development is limited to 3.59, with a residential FAR of 2.30, a community facility FAR of 0.59, and a commercial FAR of 0.70;

THAT the other bulk parameters of the building shall be as indicated on the BSA-approved plans;

THAT the Department of Buildings must approve the layout of the parking areas, the queuing space, the use of stackers, and the location of the curb cut for ingress/egress; and

THAT 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

THAT all signage shall comply with C1 zoning district parameters;

THAT the above conditions shall be stated on the certificate of occupancy;

THAT substantial construction must be completed by August 19, 2012;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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, August 19, 2008.

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## 12-08-BZ

### CEQR #08-BSA-044M

APPLICANT – Sheldon Lobel, P.C., for Empire State Development Corp., owner; Harlem Center, LLC, lessee.

SUBJECT – Application January 3, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on a portion of the cellar and ground floor in a ten-story commercial building. The proposal is contrary to §32-10. C4-7 district.

PREMISES AFFECTED – 317 Lenox Avenue, a/k/a 105 W. 125<sup>th</sup> Street, west side of Lenox Avenue, between 125<sup>th</sup> Street and 126<sup>th</sup> Street, Block 1910, Lot 7501, Borough of Manhattan.

## COMMUNITY BOARD #10M

### APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 7, 2008, acting on Department of Buildings Application No. 104930309, reads in pertinent part:

“Proposed changes of use of the portions of the cellar and 1<sup>st</sup> floor to physical culture establishment requires BSA approval as per ZR 32-31”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-7 zoning district, the legalization of a physical culture establishment (PCE) in a portion of the cellar and a portion of the first floor of a 10-story commercial building, contrary to ZR §§ 32-10 and 32-31; and

WHEREAS, a public hearing was held on this application on May 6, 2008 after due notice by publication in *The City Record*, and then to decision on August 19, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Lenox Avenue a/k/a Malcolm X Boulevard, between 125<sup>th</sup> Street and 126<sup>th</sup> Street; and

WHEREAS, the proposed PCE will occupy approximately 13,740 sq. ft. of floor area in the cellar and on the first floor of the subject site; and

WHEREAS, the PCE will be operated as a Planet Fitness health club and will be open to the general public; and

WHEREAS, the applicant represents that the services of the PCE will include those a full-service health club, including programs for group training, physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the applicant represents that the facility will operate 24 hours daily from midnight on Mondays until 10:00 PM on Fridays, and will operate from 7:00 AM to 7:00 PM on Saturdays and Sundays; and

WHEREAS, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has

# MINUTES

performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 (ak); 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. 08BSA044M, dated March 20, 2008; 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 and 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 establishment of a physical culture establishment in the cellar and on the first floor of a 13-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 January 3, 2008"- (2) sheets; "Received March 20, 2008"- (1) sheet; and "Received April 9, 2008"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on August 19, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment

without prior application to and approval from the Board;

THAT sound attenuation measures shall be installed and maintained per the sound attenuation plan;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained by August 19, 2009;

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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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. (DOB Application No. 104930309)

Adopted by the Board of Standards and Appeals, August 19, 2008.

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**37-08-BZ**  
**CEQR #08-BSA-058R**

APPLICANT – Slater & Beckerman, LLP, for Catholic High School Association of N.Y., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 21, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3X zoning district.

PREMISES AFFECTED – 100 Merrill Avenue, between Arlene Street and Richmond Avenue, Block 2236, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Robert Gaudio.

For Opposition: John Grassadonio and Walter Steinhandler.

**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, August 19, 2008.

# MINUTES

## 156-08-BZ

### CEQR #08-BSA-089M

APPLICANT – Friedman & Gotbaum, LLP, for Hilton Resorts Corporation, owner; Spa Chakra, LLC, lessee.

SUBJECT – Application June 5, 2008 – Special Permit pursuant to ZR §73-36 to allow the proposed Physical Culture Establishment on a portion of the ground floor of a new hotel. The proposal is contrary to ZR §32-10. The premises is located in a C5-3 zoning district.

PREMISES AFFECTED – 102 West 57<sup>th</sup> Street, Southerly side of West 57<sup>th</sup> Street, 150 feet west of Sixth Avenue, Block 1009, Lots 37 & 39, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 13, 2008, acting on Department of Buildings Application No. 104500425PAA, reads in pertinent part:

“Proposed physical culture establishment on the ground [floor] portion located within C5-3 zoning district is not permitted pursuant to zoning resolution section 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C5-3 zoning district, the establishment of a physical culture establishment (PCE) on a portion of the ground floor of a 27-story time-share hotel, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 15, 2008, after due notice by publication in *The City Record*, and then to decision on August 19, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 5, Manhattan, has declined to hear this matter; and

WHEREAS, the subject site is located on the south side of West 57<sup>th</sup> Street, 100 feet west of Sixth Avenue; and

WHEREAS, a 27-story time-share hotel is currently under construction at the site; and

WHEREAS, the PCE will occupy approximately 3,252 sq. ft. of floor area on the ground floor of the subject site; and

WHEREAS, the PCE will be operated by Spa Chakra and will be open to the general public; and

WHEREAS, the applicant represents that the services at the PCE will include those of a full-service day spa

including massage by licensed professionals; and

WHEREAS, the hours of operation are proposed to be: Monday through Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant has provided floor plans that describe the sound attenuation program to be installed at the PCE; and

WHEREAS, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 (ak); 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. 08BSA089M, dated July 1, 2008; 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 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 C5-3 zoning district, the

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# MINUTES

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establishment of a physical culture establishment on a portion of the ground floor of a 27-story time-share hotel, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 2, 2008- (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 19, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT 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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

THAT sound attenuation measures shall be installed and maintained in accordance with 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);

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 19, 2008.

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## 51-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Irving Minkin, Aaron Ambalu, Robert Pauls and Sheldon Lobel.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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## 119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§42-10), rear yard (§43-26) and parking (§44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 171-07-BZ

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED – 167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Judith Barron.

For Administration: Althea Binder, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Robert G.



# MINUTES

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for an adjourned hearing.

## **238-07-BZ**

**APPLICANT** – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O'Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

**SUBJECT** – Application October 23, 2007 – Variance (§72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§117-21 & §23-145), lot coverage (§117-21 & §23-145), minimum distance between windows (§117-21 & §23-711(b)) and height and setback (§117-21, §23-633 & §23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§ 42-00). M1-4/R6A (LIC) and M1-4 districts.

**PREMISES AFFECTED** – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180' west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

## **COMMUNITY BOARD #2Q**

**APPEARANCES** –

For Applicant: Howard Goldman, and Michael S. Bogin.  
For Opposition: Douglas Otto, Tom Paino, Kenneth Greenberg, Tony Vaccaro, Kim Hosea, Ron Williamson, Lorence A. Long, Anna Finn, Vincent Pitaro, Jim Jenkins, Tim K, Diane Hendry and Nigel Rollings.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for decision, hearing closed.

## **257-07-BZ**

**APPLICANT** – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

**SUBJECT** – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

**PREMISES AFFECTED** – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

## **COMMUNITY BOARD #11M**

**APPEARANCES** –

For Applicant: Robert Alessi.

For Opposition: Joanne Seminara.

**THE VOTE TO REOPEN HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for decision, hearing closed.

## **291-07-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

**SUBJECT** – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to §24-35 (side yards), §24-391 (rear yard), §24-34 (front yard), and §24-521 (front wall height). R4 district.

**PREMISES AFFECTED** – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

**APPEARANCES** –

For Applicant: Eric Palatnik

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.

## **41-08-BZ**

**APPLICANT** – Omnipoint Communications Inc., for Mid Queens Ltd., owner; Omnipoint Communications Inc., lessee.

**SUBJECT** – Application February 27, 2008 – Special Permit (§73-30) to permit a proposed 65 foot non-accessory radio tower and related equipment at grade.

**PREMISES AFFECTED** – 64-35 223<sup>rd</sup> Place, Block 7658, Lot 2, Borough of Queens.

## **COMMUNITY BOARD #11Q**

**APPEARANCES** –

For Applicant: Robert Guardioso.

For Opposition: Antonio Whitaker and Steven E.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

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## 76-08-BZ

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.

SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR section 24-36. R5 district.

PREMISES AFFECTED – 621 Beach 9<sup>th</sup> Street, south of Caffney Avenue, Block 1558, Lot 15, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.

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## 78-08-BZ

APPLICANT – Flora Edwards, Esq., for SBCSICA, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) to permit a new community facility building (South Bronx Charter School). The proposal is contrary to §§123-62 (Maximum floor area ratio for community facilities), 24-11 (Maximum floor area ratio and percentage of lot coverage) and 123-662 (b)(4) (As it relates to street wall height for all buildings in Special Mixed-Use Districts with R6, R7, R8 and R10 district designations). MX-1 (M1-2/R6A).

PREMISES AFFECTED – 611-617 East 133<sup>rd</sup> Street, Block 2546, Lot 27, Borough of Bronx.

### COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 1:30 P.M., for deferred decision.

-----

## 79-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Giuseppe Porretto, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) for the construction of a single family residence on a vacant lot. This application seeks to vary (§23-32) for undersized lot width and lot area; (§23-461) for less than the required side yards and (§21-15) for a proposed lot line building which is not allowed in an R3-2 zoning district.

PREMISES AFFECTED – 117-23 132<sup>nd</sup> Street, easterly side of 132<sup>nd</sup> Street, 220; southerly of Foch Boulevard, Block 11696, Lot 55, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.

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## 102-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a one family residence on a vacant undersized lot that does not provide sufficient side yards (§23-461) and does not provide one of the required parking spaces (§25-22) within a R3-1 zoning Low Density Growth Management district.

PREMISES AFFECTED – 103 Beachview Avenue, 40' west of intersection of Beachview Avenue and Idlesee Place, Block 3724, Lot 30, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Linda Bukhardt.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:50 P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 35

September 4, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|                        |  |
|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

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### CONTENTS

|                                       |     |
|---------------------------------------|-----|
| DOCKET .....                          | 569 |
| <b>CALENDAR</b> of September 23, 2008 |     |
| Morning .....                         | 570 |
| Afternoon .....                       | 571 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, August 26, 2008**

Morning Calendar .....572

**Affecting Calendar Numbers:**

|             |   |
|-------------|---|
| 16-92-BZ    | 115 King Street, Brooklyn                 |
| 218-58-BZII | 77-40 Hewlett Street, Queens              |
| 705-68-BZ   | 88-14/22 182 <sup>nd</sup> Street, Queens |
| 546-82-BZ   | 148-15 89 <sup>th</sup> Avenue, Queens    |
| 164-99-BZ   | 79-03 Roosevelt Avenue, Queens            |
| 340-03-BZ   | 408 Greenwich Street, Manhattan           |
| 96-08-A     | 208 Oceanside Avenue, Queens              |
| 150-08-A    | 331 Hillside Avenue, Queens               |
| 306-05-BZY  | 206A Beach 3 <sup>rd</sup> Street, Queens |
| 47-08-A     | 7228 Thursby Avenue, Queens               |

Afternoon Calendar .....576

**Affecting Calendar Numbers:**

|            |   |
|------------|---|
| 74-07-BZ   | 6-10 West 70 <sup>th</sup> Street, Manhattan    |
| 44-08-BZ   | 1015 East 23 <sup>rd</sup> Street, Brooklyn     |
| 66-08-BZ   | 1497 East 21 <sup>st</sup> Street, Brooklyn     |
| 78-08-BZ   | 611-617 East 133 <sup>rd</sup> Street, Bronx    |
| 39-06-BZ   | 245 Varet Street, Brooklyn                      |
| 243-07-BZ/ |   |
| 244-07-A   | 120 John Street, Staten Island                  |
| 271-07-BZ  | 213-219 West 23 <sup>rd</sup> Street, Manhattan |
| 59-08-BZ   | 591 Forest Avenue, Staten Island                |
| 84-08-BZ   | 67-24 Main Street, Queens                       |
| 167-08-BZ  | 253 5 <sup>th</sup> Avenue, Manhattan           |
| 94-08-BZ   | 1501 Pitkin Avenue, Brooklyn                    |
| 145-08-BZ  | 1121 East 28 <sup>th</sup> Street, Brooklyn     |
| 148-08-BZ  | 1383 East 27 <sup>th</sup> Street, Brooklyn     |
| 155-08-BZ  | 282 Beaumont Street, Brooklyn                   |

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# DOCKET

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New Case Filed Up to August 26, 2008  
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**215-08-BZ**

1778-1800 Southern Boulevard, Intersection of East 174th Street, Boston Post Road and Suthern Boulevard., Block 2984, Lot(s) 1 & 7, Borough of **Bronx, Community Board: 3**. Variance to allow proposed residential and commercial building, contrary to use regulations.  
-----

**216-08-BZ**

1624 Shore Boulevard, At the corner formed by the intersection of Shore Boulevard and Oxford Street., Block 8757, Lot(s) 88, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the legalization and enlargement of a single family home.  
-----

**217-08-BZY**

126 First Place, Southside of First Place 300 feet east of the intersection of Court Street and First Place., Block 459, Lot(s) 17, Borough of **Brooklyn, Community Board: 6**. Extension of time to complete construction (11-332) of a development commenced prior to the amendment of the zoning district regulations . R6 zoning district.  
-----

**218-08-A**

82 Signal Hill Road, Corner of Woodside Avenue 838.47' northeast of Nesmythe Terrace., Block 618, Lot(s) 170 (tent 172 & 170), Borough of **Staten Island, Community Board: 1**. Construction fronting a mapped street, contrary to Section 36 of the General City Law.  
-----

**219-08-A**

84 Signal Hill Road, Corner of Woodside Avenue 838.47' northeast of Nesmythe Terrace., Block 618, Lot(s) 170(tent 172 & 170), Borough of **Staten Island, Community Board: 1**. Construction fronting a mapped street, contrary to Section 36 of the General City Law.  
-----

**220-08-BZ**

95 Taaffe Place, East side 123'-3.5" south of intersection of Taaffe Place & Park Avenue., Block 1897, Lot(s) 23, Borough of **Brooklyn, Community Board: 3**. Variance to allow the extension to a one family dwelling.  
-----

**221-08-BZ**

34-08 Collins Place, Bound by north side of Collins Place, 34th Avenue, College Point Boulevard & 35th Avenue., Block 4945, Lot(s) 34, Borough of **Queens, Community Board: 7**. Variance to allow the construction of a hotel, contrary to use regulations.

-----  
**222-08-BZ**

71 Beaumont Street, East side of Beaumont Street, 220 ft north of Hampton Avenue., Block 8728, Lot(s) 77, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home.  
-----

**223-08-BZ**

4553 Arthur Kill Road, West side of Arthur Kill Road, 142 feet south of the intersection with Kreisler Street., Block 7596, Lot(s) 250, Borough of **Staten Island, Community Board: 3**. Variance to allow a retail building, contrary to use regulations.  
-----

**224-08-BZ**

47-10 Laurel Hill Boulevard, Fronts south side of laurel Hill Boulevard and is bounded by 47th Street to the west and 48th Street to the east., Block 2305, Lot(s) 22, Borough of **Queens, Community Board: 2**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower.  
-----

**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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SEPTEMBER 23, 2008, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 23, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----

## SPECIAL ORDER CALENDAR

### 681-68-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Sharon Cohen, owner.

SUBJECT – Application June 4, 2008 - Amendment to a previously granted Variance (72-21) for the change of use on the first floor of an existing one story building from Offices (UG6) and Air-Freight Storage (UG16) to Retail Stores (UG6), in an R3-1 zoning district, with accessory storage in the cellar and accessory parking for patrons to remain.

PREMISES AFFECTED – 137-42 Guy Brewer Boulevard, northwest corner of 140<sup>th</sup> Avenue and Guy Brewer Boulevard, Block 12309, Lot 17, Borough of Queens.

**COMMUNITY BOARD #12Q**

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### 389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application June 13, 2008 - Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an Amendment to legalize the conversion of the service bays to a convenience store.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #11BX**

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### 222-90-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for 80-02 Fee Owner LLC, owner; Jack LaLanne Fitness Centers d/b/a Bally Total Fitness; lessee.

SUBJECT – Application August 7, 2008 - Extension of Term/waiver for the continued operation of a previously granted PCE (Bally Total Fitness), in a C4-4 zoning district, which expired on August 13, 2006 and an Extension of Time to obtain a Certificate of Occupancy which expired on September 23, 1998.

PREMISES AFFECTED – 80-02 Kew Gardens Road, west side of block front at Union Turnpike, Block 3348, Lot 37, Borough of Queens.

**COMMUNITY BOARD #9Q**

-----

### 68-94-BZ

APPLICANT – Cozen O'Connor, for Bay Plaza Community Center LLC, owner; Jack LaLanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application August 14, 2008 - Extension of Time to obtain a Certificate of Occupancy for a previously granted special permit for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expired on March 12, 2008. The premise is located in a C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, southside of Baychester Avenue, Block 5141, Lot 810, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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## APPEALS CALENDAR

### 151-08-BZY

APPLICANT – Law Office of Howard Goldman, for 5-15 West 125<sup>th</sup> Street, lessee Harlem Community Development Corp., owner.

SUBJECT – Application May 29, 2008 - Extension of time to complete construction (11-331) under the prior zoning district regulations C4-4. C4-4A zoning district.

PREMISES AFFECTED – 5-15 West 125<sup>th</sup> Street, between Fifth Avenue and Malcom X Boulevard, Block 1723, Lots 23, 31, 45, 46, 144, Borough of Manhattan.

**COMMUNITY BOARD #10M**

-----

### 152-08-A

APPLICANT – Quinn McCabe LLP, for 23 High-Line LLC, c/o Alf Naman, owners.

SUBJECT – Application May 30, 2008 - Appeals seeking to vacate a Stop Work Order issued by the Department of Buildings for failure to obtain the authorization of the adjacent property owner. C6-3A, Special District WCH.

PREMISES AFFECTED – 515 W 23<sup>rd</sup> Street, north side of West 23<sup>rd</sup> Street, between 10<sup>th</sup> and 11<sup>th</sup> Avenues, Block 695, Lot 27, Borough of Manhattan.

**COMMUNITY BOARD #4M**

-----

### 177-08-A

APPLICANT – Quinn McCabe LLP, for 23 High-Line LLC, c/o Alf Naman, owners.

SUBJECT – Application July 7, 2008 - Appeals seeking to vacate a Partial Stop Work Order issued by the Department of Buildings for failure to obtain the authorization of the adjacent property owner. C6-3A, Special District WCH.

PREMISES AFFECTED – 515 W 23<sup>rd</sup> Street, north side of West 23<sup>rd</sup> Street, between 10<sup>th</sup> and 11<sup>th</sup> Avenues, Block 695, Lot 27, Borough of Manhattan.

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# CALENDAR

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## COMMUNITY BOARD #4M

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**SEPTEMBER 23, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 23, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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### ZONING CALENDAR

#### 159-08-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§ 72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§ 42-10 & § 42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

#### COMMUNITY BOARD #2M

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#### 165-08-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP; for Vornado Office Management LLC, owner; Bally Sports Club, Incorporated, lessee.

SUBJECT – Application June 18, 2008 – Special Permit (§73-36) to allow a physical culture establishment on four levels in an existing 26-story building. The proposal is contrary to ZR section 32-10. C6-6 & C6-4.5 MiD districts.

PREMISES AFFECTED – 11 Penn Plaza, a/k/a 166 West 32nd Street, south side of West 32nd Street between Seventh and Sixth Avenues. Block 807, Lot 1, Borough of Manhattan

#### COMMUNITY BOARD # 5M

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#### 178-08-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.

SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (23-141(b)) and less than the minimum side yards (23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

-----

#### 185-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Claremont LaSalle, Incorporated c/o Manhattan Modern Management, owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to allow the enlargement of a six-story building and installation of an elevator, contrary to bulk regulations.

PREMISES AFFECTED – 170 Claremont Avenue, corner lot located on the eastside of Claremont Avenue and south side of LaSalle Street, Block 1993, Lot 43, Borough of Manhattan.

#### COMMUNITY BOARD #9M

-----

#### 194-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Colonnade Management LLC, owner.

SUBJECT – Application July 16, 2008 – Special Permit (§73-19) to allow a Use Group 3 school on the first floor of an existing four-story mixed-use building. The proposal is contrary to ZR Section 42-10. M1-5B district.

PREMISES AFFECTED – 432 Lafayette Street, westerly side of Lafayette Street, 229'-11" south of Astor Place, Block 545, Lot 38, Borough of Manhattan.

#### COMMUNITY BOARD #2M

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, AUGUST 26, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## **SPECIAL ORDER CALENDAR**

### **16-92-BZ**

APPLICANT – Stadtmauer Bailkin, LLP, for High Teck Park, Inc., owner.

SUBJECT – Application May 18, 2007 – Pursuant to Z.R §72-01 and §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: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to a variance, a legalization of use, an amendment to approved plans, and an extension of term, of a variance permitting auto repair and warehouse use on a site partially within an R5 zoning district and partially within a C1-3 zoning district, which expired on September 22, 2002; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in *The City Record*, with continued hearings on October 30, 2007, January 15, 2008, February 26, 2008; April 1, 2008, June 17, 2008 and July 22, 2008, and then to decision on August 26, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez,

and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the north side of Sullivan Street between Van Brunt Street and Richardson Street; and

WHEREAS, the site is located partially within an R5 zoning district (8,934 sq. ft.) and partially within a C1-3 district (9,111 sq. ft.) and has a total lot area of 18,045 sq. ft.; and

WHEREAS, site is occupied by two industrial buildings: a one-story building and a two-story building, with a total floor area of 22,738 sq. ft., which are occupied by warehouse (Use Group 16) uses, a carpentry shop, office use, and accessory parking; and

WHEREAS, the site has been under the Board’s jurisdiction since 1958, when under BSA Cal. No. 1053-47-BZ, the Board amended a pre-existing variance permitting the erection and maintenance of a commercial building on an abutting site on King Street to include the subject site; and

WHEREAS, on February 4, 1969, under BSA Cal. No. 815-68-BZ, the Board granted a variance under ZR § 11-412 to permit a further enlargement in lot area and an increase in the accessory parking area; and

WHEREAS, on July 21, 1981, under BSA Cal. No. 334-81-BZ, the Board granted a variance pursuant to ZR § 72-21, to permit the erection of a one-story enlargement, which was subsequently amended to extend the time to obtain building permits and complete construction; and

WHEREAS, on September 22, 1992, under the subject calendar number, the Board granted a variance to legalize a change in use from refrigerator repair with accessory parking (Use Group 17) to auto repair and warehouse (Use Group 16) and office use (Use Group 6), and to legalize the enlargement of the lot area, for a term of ten years to expire on September 22, 2002; and

WHEREAS, the applicant initially filed an application on May 18, 2007 seeking a waiver of the Rules of Practice and Procedure, a reopening, an extension of term and an amendment permitting the legalization of a change in use from auto repair and warehouse to a charity auto donation facility (Use Group 16, automotive storage), container storage (Use Group 16), woodworking and metal working uses (Use Group 16) and an amendment to the approved plans legalizing and enlarging a mezzanine addition (the “initial application”); and

WHEREAS, the subject site of the initial application was a 39,000 sq. ft. through block site located at former Block 556, Lot 15, with the address of 115 King Street/ 78 Sullivan Street; and

WHEREAS, numerous neighborhood residents testified in opposition to the initial application, citing concerns with illegal parking, noise, unapproved uses, and lack of compatibility with the neighborhood context; and

WHEREAS, specifically along King Street, the Board noted during various site visits that trucks servicing the premises were adding to existing traffic congestion; and

WHEREAS, the Board expressed concern regarding the impacts of the uses on King Sing Street and asked the applicant to explore providing an off-street loading area on the



# MINUTES

premises or, alternatively, to modify the application to eliminate the portion of the property fronting on King Street, to diminish the impact of the commercial uses on the surrounding residential neighborhood; and

WHEREAS, the applicant submitted the instant application, which concerns only the Sullivan Street portion of the site formerly within the Board's jurisdiction (identified as "tentative Lot 43" of Block 556), and which eliminates the King Street portion from the subject site (identified as "tentative Lot 15" of Block 556); and

WHEREAS, tentative Lot 15 site would no longer be subject to the jurisdiction of the Board; and

WHEREAS, the instant application includes an application to the Real Property Assessment Bureau seeking the formal designation of tentative lot 43, and tentative lot 15, to effect the severance of the King Street portion from the site which will remain under the jurisdiction of the Board; the applicant states that this application has been filed with the Department of Finance; and

WHEREAS, the applicant seeks to extend the term of the variance for the remainder of the site, which expired on September 22, 2002; and

WHEREAS, the applicant represents that a timely renewal was not sought due to a change in ownership of the site, and a misunderstanding by the new owner of the expiration date of the term; and

WHEREAS, the Board notes that any extension of term would date back to the period of the prior expiration; and

WHEREAS, issues were raised at hearing concerning the compliance of the site with the conditions of the previous grant, the Board finds it appropriate to provide a term which is shorter than the ten-year term requested; and

WHEREAS, the applicant also seeks to amend the site plan to legalize an office mezzanine created between the first and second floors of the building on the eastern portion of the site and to legalize a change in use to permit the carpentry, warehouse and office uses which currently occupy the site; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs showing how the site is being maintained; and

WHEREAS, the applicant submitted photographs indicating that the site is free of debris and illegally parked vehicles; and

WHEREAS, the applicant agrees not to permit any future illegal parking of vehicles at the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the plans 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, as adopted September 22, 1992, so that as amended this portion of the resolution shall read: "to modify the plot plan to reduce the size of the subject site, to legalize the carpentry and metalworking uses, to permit the noted amendments to the plans, and to extend the term for

eight years from the expiration of the prior grant, to expire on September 22, 2010, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received July 8, 2008"- (5) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the term shall expire on September 22, 2010;

THAT the site be maintained free of debris, graffiti and illegally-parked vehicles;

THAT any changes in building occupancy or use must be approved by the Board;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the site shall be brought into compliance with the BSA-approved plans and a certificate of occupancy shall be obtained by May 26, 2009;

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. 301113916)

Adopted by the Board of Standards and Appeals, August 26, 2008.

## 218-58-BZII

APPLICANT – Vassalotti Associates Architects, LLP, for Norman Dawson, owner.

SUBJECT – Application June 3, 2008 – Extension of Term for an existing gasoline service station (Exxon), in a C1-2/R-2 zoning district, which expired on July 29, 2008.

PREMISES AFFECTED – 77-40 Hewlett Street, west side, 80.02' south of 77<sup>th</sup> Road, Block 8555, Lots 60 & 61, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for decision, hearing closed.

## 705-68-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Lanide Realty Corporation, owner; City Auto Corporation, lessee.

SUBJECT – Application March 27, 2008 – Extension of Term/waiver for a (UG8) parking lot in an R4-1 zoning

# MINUTES

district which expired on April 27, 2007.  
PREMISES AFFECTED – 88-14/22 182<sup>nd</sup> Street, 128’ south of the intersection of Hillside Avenue and 182<sup>nd</sup> Street, Block 9917, Lots 7, 11, 143, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant:

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 10 A.M., for continued hearing.

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## 546-82-BZIII

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Pasquale Carpentiere.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for decision, hearing closed.

-----

## 164-99-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Ivan Duque, owner.

SUBJECT – Application March 20, 2008 – Extension of Term/waiver for a (UG12) eating and drinking establishment without restrictions on entertainment, in a C2-3/R-6 zoning district, which expired on August 15, 2006; an Amendment to the seating layout on the first and second floors, relocation of the bar on the second floor and the addition of two storage rooms in the cellar.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, north side of Roosevelt Avenue, 22’ east of the intersection of 79<sup>th</sup> Street and Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 10 A.M., for continued hearing.

-----

## 340-03-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, by Howard S. Weiss, Esq., for 408-410 Greenwich Street LLC.  
SUBJECT – Application February 20, 2008 – Reopening for

an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 10 A.M., for an adjourned hearing.

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## 96-08-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Mary Jo and William d’Ecclesiis, lessee.

SUBJECT – Application April 17, 2008 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to Section 35 of the General City Law. R4 Zoning district.

PREMISES AFFECTED – 208 Oceanside Avenue, north side of Oceanside Avenue 49.27’ east of mapped Beach 203<sup>rd</sup> Street, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 9, 2008, acting on Department of Buildings Application No. 410064594 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

WHEREAS, a public hearing was held on this application on August 26, 2008, 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 6, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated May 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 24, 2008, the Department of Transportation states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

# MINUTES

Therefore it is Resolved that the decision of the Queens Borough Commissioner dated April 9, 2008, acting on Department of Buildings Application No. 410064594 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, 2008"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; 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 26, 2008.

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## 150-08-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Kari And Michael Fitzsimmons, lessees.

SUBJECT – Application May 29, 2008 – Proposed reconstruction and enlargement of an existing single family home and the upgrade of an existing non-conforming private disposal system within the bed of a mapped street contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 331 Hillside Avenue, intersection of Hillside Avenue and the mapped Beach 182<sup>nd</sup> Street, Block 16340, Lot 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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 20, 2008 acting on Department of Buildings Application No. 410094776 reads, in pertinent part:

- "A1- 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;

- A2- 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 26, 2008, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 18, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 18, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections ; and

WHEREAS, by letter dated July 24, 2008, the Department of Transportation states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner dated May 20, 2008, acting on Department of Buildings Application No. 410094776, 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 29, 2008"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; 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 26, 2008.

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## 306-05-BZY

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (§11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED –206A Beach 3<sup>rd</sup> Street, Block 15604, Lot 34, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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# MINUTES

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## 47-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50’ west of intersection with Beach 72<sup>nd</sup> Street, Bock 16066, Lot 46, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:15 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, AUGUST 26, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 74-07-BZ

#### CEQR #07-BSA-071M

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 70<sup>th</sup> Street, south side of West 70<sup>th</sup> Street, west of the corner formed by the intersection of Central Park West and West 70<sup>th</sup> Street,

Block 1122, Lots 36 & 37, Borough of Manhattan.

### COMMUNITY BOARD #7M

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 28, 2007,<sup>1</sup> acting on Department of Buildings Application No. 104250481, reads, in pertinent part:

1. “Proposed lot coverage for the interior portions of R8B & R10A exceeds the maximum allowed. This is contrary to Section 24-11/77-24. Proposed interior portion lot coverage is 0.80;
2. Proposed rear yard in R8B does not comply. 20’.00 provided instead of 30.00’ contrary to Section 24-36;
3. Proposed rear yard in R10A interior portion does not comply. 20.—’ provided instead of 30.00’ contrary to Section 24-36;
4. Proposed initial setback in R8B does not comply. 12.00’ provided instead of 15.00’ contrary to Section 24-36;
5. Proposed base height in R8B does not comply. . . contrary to Section 23-633;
6. Proposed maximum building height in R8B does not comply. . . contrary to 23-66;
7. Proposed rear setback in an R8B does not comply. 6.67’ provided instead of 10.00’ contrary to Section 23-633;”<sup>2</sup> and

WHEREAS, this is an application under ZR § 72-21,

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1 The referenced August 28, 2007 decision supersedes a March 27, 2007 decision by the Department of Buildings which included eight objections, one of which was eliminated after the applicant modified the plans.

2 A letter dated January 28, 2008 to Chair Srinivasan from David Rosenberg, an attorney representing local residents, claims that a purported failure by the Department of Buildings (“DOB”) Commissioner or the Manhattan Borough Commissioner to sign the above-referenced August 28, 2007 objections, as allegedly required by Section 666 of the New York City Charter (the “Charter”), divests the Board of jurisdiction to hear the instant application. However, the jurisdiction of the Board to hear an application for variances from zoning regulations, such as the instant application, is conferred by Charter Section 668, which does not require a letter of final determination executed by the DOB Commissioner or by an authorized DOB borough commissioner.

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# MINUTES

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to permit, on a site partially within an R8B district and partially within an R10A district within the Upper West Side/ Central Park West Historic District, the proposed construction of a nine-story and cellar mixed-use community facility / residential building that does not comply with zoning parameters for lot coverage, rear yard, base height, building height, front setback, and rear yard setback contrary to ZR §§ 24-11, 77-24, 24-36, 23-66, and 23-633; and

WHEREAS, this application is brought on behalf of Congregation Shearith Israel, a not-for-profit religious institution (the "Synagogue"); and

WHEREAS, a public hearing was held on this application on November 27, 2007, after due notice by publication in the *City Record*, with continued hearings on February 12, 2008, April 15, 2008 and June 24, 2008, and then to decision on August 26, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends disapproval of this application; and

WHEREAS, a number of members of the Synagogue testified in support of the application; and

WHEREAS, a representative of New York State Senator Thomas K. Duane testified at hearing in opposition to the application; and

WHEREAS, a representative of New York State Assembly Member Richard N. Gottfried testified at hearing in opposition to the application; and

WHEREAS, a number of area residents testified in opposition to the application; and

WHEREAS, additionally, Landmark West! and a group of neighbors represented by counsel testified at hearing and made submissions into the record in opposition to the application (the "Opposition"); the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject zoning lot on which the Synagogue is located consists of Lots 36 and 37 within Block 1122 (the "site"); and

WHEREAS, the site has a total lot area of 17,286 square feet, with 172 feet of frontage along the south side of West 70<sup>th</sup> Street, and 100.5 feet of frontage on Central Park West; and

WHEREAS, the portion of the site that extends 125 feet west of Central Park West is located in an R10A zoning district; the remainder of the site is located within an R8B district; and

WHEREAS, the site is also located within the Upper West Side/ Central Park West Historic District; and

WHEREAS, Tax Lot 36 is occupied by the Synagogue, with a height of 75'-0", and a connected four-story parsonage house located at 99-100 Central Park West, with a total floor area of 27,760 sq. ft.; and

WHEREAS, Tax Lot 37 is occupied in part by a four-

story Synagogue community house with 11,079 sq. ft. of floor area located at 6-10 West 70<sup>th</sup> Street (comprising approximately 40 percent of the tax lot area); the remainder of Lot 37 is vacant (comprising approximately 60 percent of the tax lot area) (the "Community House"); and

WHEREAS, the Community House is proposed to be demolished; and

WHEREAS, the applicant represents that Tax Lot 36 and Tax Lot 37 together constitute a single zoning lot under ZR § 12-10, as they have been in common ownership since 1965 (the "Zoning Lot"); and

WHEREAS, Tax Lot 37 is divided by a zoning district boundary, pursuant to 1984 zoning map and text amendments to the Zoning Resolution that relocated the former R8/R10 district boundary line to a depth of 47 feet within the lot; and

WHEREAS, the applicant further represents that the formation of the Zoning Lot predates the relocation of the zoning district boundary, and that development on the site is therefore entitled to utilize the zoning floor area averaging methodology provided for in ZR § 77-211, thereby allowing the zoning floor area to be distributed over the entire Zoning Lot; and

WHEREAS, the applicant states that as 73 percent of the site is within an R10A zoning district, which permits an FAR of 10.0, and 27 percent of the site is within an R8B zoning district, which permits an FAR of 4.0, the averaging methodology allows for an overall site FAR of 8.36 and a maximum permitted zoning floor area of 144,511 sq. ft.; and

WHEREAS, the applicant states that the site is currently built to an FAR of 2.25 and a floor area of 38,838 sq. ft.; and

WHEREAS, the applicant proposes a nine-story and cellar mixed-use building with community facility (Use Group 3) uses on two cellar levels and the lower four stories, and residential (Use Group 2) uses on five stories including a penthouse (the "proposed building"), which will be built on Tax Lot 37; and

WHEREAS, the applicant states that the community facility uses include: Synagogue lobby and reception space, a toddler program, adult education and Hebrew school classes, a caretaker's unit, and a Jewish day school; the upper five stories are proposed to be occupied by five market-rate residential condominium units; and

WHEREAS, the proposed building will have a total floor area of 42,406 sq. ft., comprising 20,054 sq. ft. of community facility floor area and 22,352 sq. ft. of residential floor area; and

WHEREAS, the proposed building will have a base height along West 70<sup>th</sup> Street of 95'-1" (60 feet is the maximum permitted in an R8B zoning district); with a front setback of 12'-0" (a 15'-0" setback is the minimum required in an R8B zoning district); a total height of 105'-10" (75'-0" is the maximum permitted in an R8B zone), a rear yard of 20'-0" for the second through fourth floors (30'-0" is the minimum required); a rear setback of 6'-8" (10'-0" is required in an R8B zone), and an interior lot coverage of 80

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# MINUTES

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percent (70 percent is the maximum permitted lot coverage); and

WHEREAS, the Synagogue initially proposed a nine-story building with a total floor area of 42,961 sq. ft., a residential floor area of 22,966 sq. ft., and no court above the fifth floor (the "original proposed building"), and

WHEREAS, the Synagogue modified the proposal to provide a complying court at the north rear above the fifth floor, thereby reducing the floor plates of the sixth, seventh and eighth floors of the building by approximately 556 sq. ft. and reducing the floor plate of the ninth floor penthouse by approximately 58 sq. ft., for an overall reduction in the variance of the rear yard setback by 25 percent and a reduction in the residential floor area to 22,352 sq. ft.; and

WHEREAS, the Synagogue is seeking waivers of zoning regulations for lot coverage and rear yard to develop a community facility that can accommodate its religious mission, and is seeking waivers of zoning regulations pertaining to base height, total height, front setback, and rear setback to accommodate a market rate residential development that can generate a reasonable financial return; and

WHEREAS, as a religious and educational institution, the Synagogue is entitled to significant deference under the laws of the State of New York pertaining to proposed changes in zoning and is able to rely upon programmatic needs in support of the subject variance application (see Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968)); and

WHEREAS, under ZR § 72-21(b), a not-for-profit institution is generally exempted from having to establish that the property for which a variance is sought could not otherwise achieve a reasonable financial return; and

WHEREAS, however, the instant application is for a mixed-use project in which approximately 50 percent of the proposed floor area will be devoted to a revenue-generating residential use which is not connected to the mission and program of the Synagogue; and

WHEREAS, under New York State law, a not-for-profit organization which seeks land use approvals for a commercial or revenue-generating use is not entitled to the deference that must be accorded to such an organization when it seeks to develop a project that is in furtherance of its mission (see Little Joseph Realty v. Babylon, 41 N.Y.2d 738 (1977); Foster v. Saylor, 85 A.D.2d 876 (4<sup>th</sup> Dep't 1981) and Roman Cath. Dioc. of Rockville Ctr v. Vill. Of Old Westbury, 170 Misc.2d 314 (1996); and

WHEREAS, consequently, prior Board decisions regarding applications for projects sponsored by not-for-profit religious or educational institutions which have included commercial or revenue-generating uses have included analysis of the hardship, financial return, and minimum variance findings under ZR § 72-21 (see BSA Cal. No. 315-02-BZ, applicant Touro College; BSA Cal. No. 179-03-BZ, applicant Torah Studies, Inc.; BSA Cal. No. 349-05-BZ, Church of the Resurrection; and BSA Cal. No. 194-03-BZ, applicant B'nos Menachem School); and

WHEREAS, therefore, as discussed in greater detail below, the Board subjected this application to the standard of review required under ZR § 72-21 for the discrete community facility and residential development uses, respectively, and evaluated whether the proposed residential development met all the findings required by ZR § 72-21, notwithstanding its sponsorship by a religious institution; and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

Community Facility Use

WHEREAS, the zoning district regulations limit lot coverage to 80 percent and require a rear yard of 30'-0"; and

WHEREAS, the proposed building will have the following program: (1) a multi-function room on the sub-cellar level with a capacity of 360 persons for the hosting of life cycle events and weddings and mechanical space; (2) dairy and meat kitchens, babysitting and storage space on the cellar level; (3) a synagogue lobby, rabbi's office and archive space on the first floor; (4) toddler classrooms on the second floor; (5) classrooms for the Synagogue's Hebrew School and Beit Rabban day school on the third floor; and (6) a caretaker's apartment and classrooms for adult education on the fourth floor; and

WHEREAS, the first floor will have 5,624 sq. ft. of community facility floor area, the second and third floor will each have 4,826.5 sq. ft. of community facility floor area, and the fourth floor will have 4,777 sq. ft. of community facility floor area, for a total of 20,054 sq. ft. of community facility floor area; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Synagogue, and by the physical obsolescence and poorly configured floor plates of the existing Community House which constrain circulation and interfere with its religious programming; and

WHEREAS, the applicant represents that the programmatic needs and mission of the Synagogue include an expansion of its lobby and ancillary space, an expanded toddler program expected to serve approximately 60 children, classroom space for 35 to 50 afternoon and weekend students in the Synagogue's Hebrew school and a projected 40 to 50 students in the Synagogue's adult education program, a residence for an onsite caretaker to ensure that the Synagogue's extensive collection of antiquities is protected against electrical, plumbing or heating malfunctions, and shared classrooms that will also accommodate the Beit Rabban day school; and

WHEREAS, the applicant states that the proposed building will also permit the growth of new religious, pastoral and educational programs to accommodate a congregation which has grown from 300 families to 550 families; and

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# MINUTES

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WHEREAS, to accommodate these programmatic needs, the Synagogue is seeking lot coverage and rear yard waivers to provide four floors of community facility use in the proposed building; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to substantial 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 (see Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, however, in addition to its programmatic needs, the applicant also represents that the following site conditions create an unnecessary hardship in developing the site in compliance with applicable regulations as to lot coverage and yards: if the required 30'-0" rear yard and lot coverage were provided, the floor area of the community facility would be reduced by approximately 1,500 sq. ft.; 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 represents that a complying building would necessitate a reduction in the size of three classrooms per floor, affecting nine proposed classrooms which would consequently be too narrow to accommodate the proposed students; 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 further states that the reduction in classroom floor area would consequently reduce the toddler program by approximately 14 children and reduce the size of the Synagogue's Hebrew School, Adult Education program and other programs and activities; and

WHEREAS, the applicant represents that the requested yard and lot coverage waivers would enable the Synagogue to develop the site with a building with viable floor plates and adequate space for its needs; and

WHEREAS, the Opposition has argued that the Synagogue cannot satisfy the (a) finding based solely on its programmatic need and must still demonstrate that the site is burdened by a unique physical hardship in order to qualify for a variance; and

WHEREAS, notwithstanding that the applicant has asserted that the site is also burdened with a physical hardship that constrains an as-of-right development, discussed below, the Board notes that the Opposition ignores 50 years of unwavering New York jurisprudence holding that zoning boards must accord religious institutions a presumption of moral, spiritual and educational benefit in evaluations of applications for zoning variances (see e.g.; Diocese of Rochester v. Planning Bd., 1 N.Y.2d 508 (1956) (zoning board cannot wholly deny permit to build church in residential district; because such institutions further the

morals and welfare of the community, zoning board must instead seek to accommodate their needs); see also Westchester Ref. Temple v. Brown, 22 N.Y.2d 488 (1968); and Islamic Soc. of Westchester v. Foley, 96 A.D. 2d 536 (2d Dep't 1983)), and therefore need not demonstrate that the site is also encumbered by a physical hardship; and

WHEREAS, in support of its proposition that a religious institution must establish a physical hardship, the Opposition cites to decisions in Yeshiva & Mesivta Toras Chaim v. Rose (137 A.D.2d 710 (2d Dep't 1988)) and Bright Horizon House, Inc. v Zng. Bd. of Appeals of Henrietta (121 Misc.2d 703 (Sup. Ct. 1983)); and

WHEREAS, both decisions uphold the denial of variance applications based on findings that the contested proposals constituted neither religious uses, nor were they ancillary or accessory uses to a religious institution in which the principal use was as a house of worship, and are therefore irrelevant to the instant case; and

WHEREAS, the Board finds that the proposed Synagogue lobby space, expanded toddler program, Hebrew school and adult education program, caretaker's apartment, and accommodation of Beit Rabban day school constitute religious uses in furtherance of the Synagogue's program and mission; and

WHEREAS, the Opposition contends that the Synagogue's programmatic needs are too speculative to serve as the basis for an (a) finding; and

WHEREAS, in response to a request by the Board to document demand for the proposed programmatic floor area, the applicant submitted a detailed analysis of the program needs of the Synagogue on a space-by-space and time-allocated basis which confirms that the daily simultaneous use of the overwhelming majority of the spaces requires the proposed floor area and layout and associated waivers; and

WHEREAS, the Opposition argues, nonetheless, that the Synagogue's programmatic needs could be accommodated within an as-of-right building, or within existing buildings on the Synagogue's campus and that the proposed variances for the community facility use are unmerited and should consequently be denied; and

WHEREAS, specifically, the Opposition has contended that the Synagogue's programmatic needs could be accommodated within the existing parsonage house; and

WHEREAS, the applicant represents that the narrow width of the parsonage house, at approximately 24'-0", would make it subject to the "sliver" limitations of ZR § 23-692 which limit the height of its development and, after deducting for the share of the footprint that would be dedicated to elevator and stairs, would generate little floor area; and

WHEREAS, the applicant further represents that development of the parsonage house would not address the circulation deficiencies of the synagogue and would block several dozen windows on the north elevation of 91 Central Park West; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in

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# MINUTES

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a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by a religious institution, but must instead seek to accommodate the planned religious use without causing the institution to incur excessive additional costs (see Islamic Soc. of Westchester v. Foley, 96 A.D.2d 536 (2d Dep't 1983)); and

WHEREAS, religious institutions are entitled to locate on their property facilities for other uses that are reasonably associated with their overall purposes and a day care center/preschool has been found to constitute such a use (see Uni. Church v. Shorten, 63 Misc.2d 978, 982 (Sup. Ct. 1970)); and

WHEREAS, in submissions to the Board, the Opposition argues that the Beit Rabban school does not constitute a programmatic need entitled to deference as a religious use because it is not operated for or by the Synagogue; and

WHEREAS, however, it is well-established under New York law that religious use is not limited to houses of worship, but is defined as conduct with a 'religious purpose;' the operation of an educational facility on the property of a religious institution is construed to be a religious activity and a valid extension of the religious institution for zoning purposes, even if the school is operated by a separate corporate entity (see Slevin v. Long Isl. Jew. Med. Ctr., 66 Misc.2d 312, 317 (Sup. Ct. 1971)); and

WHEREAS, the applicant further states that the siting of the Beit Rabban school on the premises helps the Synagogue to attract congregants and thereby enlarge its congregation, which the courts have also found to constitute a religious activity (see Community Synagogue v. Bates, 1 N.Y.2d 445, 448 (1958)), in which the Court of Appeals stated, "[t]o limit a church to being merely a house of prayer and sacrifice would, in a large degree, be depriving the church of the opportunity of enlarging, perpetuating and strengthening itself and the congregation"); and

WHEREAS, the Board notes that the applicant has provided supportive evidence showing that, even without the Beit Rabban school, the floor area as well as the waivers to lot coverage and rear yard would be necessary to accommodate the Synagogue's programmatic needs; and

WHEREAS, the applicant represents that the variance request is necessitated not only by its programmatic needs, but also by physical conditions on the subject site – namely – the need to retain and preserve the existing landmarked Synagogue and by the obsolescence of the existing Community House; and

WHEREAS, the applicant states that as-of-right development of the site is constrained by the existence of the landmarked Synagogue building which occupies 63 percent of the Zoning Lot footprint; and

WHEREAS, the applicant represents that because so much of its property is occupied by a building that cannot be disturbed, a relatively small portion of the site is available for development – largely limited to the westernmost portion of the Zoning Lot; and

WHEREAS, the applicant further represents that the physical obsolescence and poorly configured floorplates of the existing Community House constrain circulation and interfere with its religious programming and compromise the Synagogue's religious and educational mission, and that these limitations cannot be addressed through interior alterations; and

WHEREAS, the applicant states that the proposed building will provide new horizontal and vertical circulation systems to provide barrier-free access to its sanctuaries and ancillary facilities; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Opposition argues that uniqueness is limited to the physical conditions of the Zoning Lot and that the obsolescence of an existing building or other building constraints therefore cannot fulfill the requirements of the (a) finding, while citing no support for such a proposition; and

WHEREAS, to the contrary, New York courts have found that unique physical conditions under Section 72-21(a) of the Zoning Resolution can refer to buildings as well as land (see Guggenheim Neighbors v. Board of Estimate, June 10, 1988, N.Y. Sup. Ct. Index No. 29290/87; see also, Homes for the Homeless v. BSA, 7/23/2004, N.Y.L.J. citing UOB Realty (USA) Ltd. v. Chin, 291 A.D.2d 248 (1st Dep't 2002)); and, further, obsolescence of a building is well-established as a basis for a finding of uniqueness (see Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990) (condition creating hardship was land improved with a now-obsolete structure)); and

WHEREAS, in submissions to the Board, the Opposition has also contended that the Synagogue had failed to establish a financial need for the project as a whole; and

WHEREAS, the Board notes that to be entitled to a variance, a religious or educational institution must establish that existing zoning requirements impair its ability to meet its programmatic needs; neither New York State law, nor ZR § 72-21, require a showing of financial need as a precondition to the granting of a variance to such an organization; and

WHEREAS, the applicant proposed the need to generate revenue for its mission as a programmatic need, New York law does not permit the generation of income to satisfy the programmatic need requirement of a not-for-profit organization, notwithstanding an intent to use the revenue to support a school or worship space; and



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# MINUTES

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WHEREAS, further, in previous decisions, the Board has rejected the notion that revenue generation could satisfy the (a) finding for a variance application by a not-for-profit organization (see BSA Cal. No. 72-05-BZ, denial of use variance permitting operation by a religious institution of a catering facility in a residential district) and, therefore, requested that the applicant forgo such a justification in its submissions; and

WHEREAS, however, in numerous prior instances the Board has found that unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of a not-for-profit organization, can create practical difficulties and unnecessary hardship in developing a site in strict conformity with the current zoning (see, e.g., BSA Cal. No. 145-07-BZ, approving variance of lot coverage requirements to permit development of a medical facility; BSA Cal. No. 209-07-BZ, approving bulk variance to permit enlargement of a school for disabled children; and 215-07-BZ, approving bulk variance to permit enlargement of a YMCA); and

## Residential Use

WHEREAS, the building is proposed for a portion of the Zoning Lot comprised of Lot 37, with a lot area of approximately 6,400 sq. ft. (the “development site”); and

WHEREAS, proposed residential portion of the building is configured as follows: (1) mechanical space and accessory storage on the cellar level; (2) elevators and a small lobby on the first floor; (2) core building space on the second, third and fourth floors; and (3) a condominium unit on each of the fifth through eighth, and ninth (penthouse) floors, for a total of five units; and

WHEREAS, the first floor is proposed to have approximately 1,018 sq. ft. of residential floor area, the second through fourth floors will each have 325 sq. ft. of residential floor area, the fifth floor will have 4,512 sq. ft. of residential floor area, the sixth through eighth floors will each have approximately 4,347 sq. ft. of residential floor area and the ninth (penthouse) floor will have approximately 2,756 sq. ft., for a total residential floor area of approximately 22,352 sq. ft.; and

WHEREAS, the applicant represents that compliance with the zoning requirements for base height, building height, and front and rear setback would allow a residential floor area of approximately 9,638 sq. ft.; and

WHEREAS, the applicant states that the following unique physical conditions create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the development site’s location on a Zoning Lot that is divided by a zoning district boundary; (2) the existence and dominance of a landmarked synagogue on the footprint of the Zoning Lot; and (3) the limitations on development imposed by the site’s contextual zoning district regulations; and

WHEREAS, as to the development site’s location on a zoning lot that is divided by a zoning district boundary, the applicant states that the development site is split between an eastern portion, comprising approximately 73 percent of the

Zoning Lot, which is located within an R10A zoning district, and a western portion, comprising approximately 27 percent of the Zoning Lot, which is located in an R8B zoning district; and

WHEREAS, applicant represents that the division of the development site by a zoning district boundary constrains an as-of-right development by imposing different height limitations on the two respective portions of the lot; and

WHEREAS, in the R10A portion of the Zoning Lot, a total height of 185’-0” and maximum base height of 125’-0” are permitted; and

WHEREAS, in the R8B portion of the development site, a building is limited to a total height of 75’-0” and a maximum base height of 60’-0” with a setback of 15’-0”; and

WHEREAS, the applicant further represents that the requirements of the R8B district also limit the size of floor plates of a residential development; and

WHEREAS, in the R8B portion of the development site, a setback of 15’-0” is required at the 60 ft. maximum base height, and a 10’-0” rear setback is required; the applicant represents that a complying development would therefore be forced to set back from the street line at the midpoint between the fifth and sixth floors; and

WHEREAS, in the R10A portion of the development site, a 15’-0” setback is not required below the maximum base height of 125’-0”, and a total height of 185’-0” is permitted, which would otherwise permit construction of a 16-story residential tower on the development site; and

WHEREAS, the applicant is constrained from building to the height that would otherwise be permitted as-of-right on the development site by the “sliver law” provisions of ZR § 23-692, which operate to limit the maximum base height of the building to 60’-0” because the frontage of the site within the R10A zoning district is less than 45 feet; and

WHEREAS, a diagram provided by the applicant indicates that less than two full stories of residential floor area would be permitted above a four-story community facility, if the R8B zoning district front and rear setbacks and height limitations were applied to the development site; and

WHEREAS, the Board notes that several Zoning Resolution provisions recognize the constraints created by zoning district boundaries where different regulations apply to portions of the same zoning lot; and

WHEREAS, specifically, the Board notes that the provisions of ZR § 77-00, permitting the transfer of zoning lot floor area over a zoning district boundary for zoning lots created prior to their division by a zoning district boundary, recognize that there is a hardship to a property owner whose property becomes burdened by a district boundary which imposes differing requirements to portions of the same zoning lot; and

WHEREAS, the Board further notes that that the special permit provisions of ZR § 73-52 allow the extension of a district boundary line after a finding by the Board that relief is required from hardship created by the location of the

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# MINUTES

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district boundary line; and

WHEREAS, the applicant represents, however, that because of the constraints imposed by the contextual zoning requirements and the sliver law, the Synagogue can transfer only a small share of its zoning lot area across the R8B district boundary; and

WHEREAS, the applicant further represents that the site is unique in being the only underdeveloped site overlapping the R10A/R8B district boundary line within a 20-block area to the north and south of the subject site; and

WHEREAS, the applicant further represents that 17 other residential zoning lots overlap the R10A/ R8B district boundary line between West 65<sup>th</sup> Street and West 86<sup>th</sup> Street, but that none were characterized by a similar amount of surplus development rights; and

WHEREAS, the applicant states that all the properties within the 22-block study area bisected by the district boundary line are developed to an FAR exceeding 10.0, while the subject Zoning Lot is developed to an FAR of 2.25; and

WHEREAS, the Opposition argues that the presence of a zoning district boundary within a lot is not a “unique physical condition” under the language of ZR § 72-21 and represents that four other properties are characterized by the same R10A/ R8B zoning district boundary division within the area bounded by Central Park West and Columbus Avenue and 59<sup>th</sup> Street and 110<sup>th</sup> Street owned by religious or nonprofit institutions, identified as: (i) First Church of Christ Scientist, located at Central Park West at West 68<sup>th</sup> Street; (ii) Universalist Church of New York, located at Central Park West at West 76<sup>th</sup> Street; (iii) New-York Historical Society, located at Central Park West at West 77<sup>th</sup> Street; and (iv) American Museum of Natural History, located at Central Park West at West 77<sup>th</sup> Street to West 81<sup>st</sup> Street; and

WHEREAS, the Board notes that it has recognized that the location of zoning district boundary, in combination with other factors such as the size and shape of a lot and the presence of buildings on the site, may create an unnecessary hardship in realizing the development potential otherwise permitted by the zoning regulations (see BSA Cal. No. 358-05-BZ, applicant WR Group 434 Port Richmond Avenue, LLC; BSA Cal. No. 388-04-BZ, applicant DRD Development, Inc.; BSA Cal. No. 291-03-BZ, applicant 6202 & 6217 Realty Company; and 208-03-BZ, applicant Shell Road, LLC); and

WHEREAS, the Board further notes that the incidence of four sites within a 51-block area sharing the same “unique conditions” as the subject site would not, in and of itself, be sufficient to defeat a finding of uniqueness; and

WHEREAS, under New York law, a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district’s zoning (see Douglaston Civ. Assn. v. Klein,

51 N.Y.2d 963, 965 (1980)); and

WHEREAS, as to the impact of the landmarked Congregation Shearith Israel synagogue building on the ability to develop an as-of-right development on the same zoning lot, the applicant states that the landmarked synagogue occupies nearly 63 percent of the Zoning Lot footprint; and

WHEREAS, the applicant further states that because so much of the Zoning Lot is occupied by a building that cannot be disturbed, only a relatively small portion of the site is available for development; and

WHEREAS, the applicant represents that only the area occupied by the parsonage house, located directly to the south of the Synagogue on Tax Lot 36, and the development site are available for development; and

WHEREAS, the applicant represents that the narrow width of the parsonage house makes its development infeasible; and

WHEREAS, the applicant states that the area of development site, at approximately 6,400 sq. ft., constitutes only 37 percent of Zoning Lot area of the site; and

WHEREAS, the Board notes that the site is significantly underdeveloped and that the location of the landmark Synagogue limits the developable portion of the site to the development site; and

WHEREAS, as to the limitations on development imposed by the site’s location within the R8B contextual zoning district, the applicant represents the district’s height limits and setback requirements, and the limitations imposed by ZR § 23-692, result in an inability to use the Synagogue’s substantial surplus development rights; and

WHEREAS, the applicant represents that, as a result of these constraints, the Synagogue would be permitted to use a total of 28,274 sq. ft. for an as-of-right development, although it has approximately 116,752 sq. ft. in developable floor area; and

WHEREAS, the Synagogue further represents that, after development of the proposed building the Zoning Lot would be built to a floor area of 70,166 sq. ft. and an FAR of 4.36, although development of 144,511 sq. ft. of floor area and an FAR of 8.36 would be permitted as-of-right, and that approximately 74,345 sq. ft. of floor area will remain unused; and

WHEREAS, the Opposition contends that the inability of the Synagogue to use its development rights is not a hardship under ZR § 72-21 because a religious institution lacks the protected property interest in the monetization of its air rights that a private owner might have, citing Matter of Soc. for Ethical Cult. v. Spatt, 51 N.Y.2d 449 (1980); and

WHEREAS, the Opposition further contends that the inability of the Synagogue to use its development rights is not a hardship because there is no fixed entitlement to use air rights contrary to the bulk limitations of a zoning district; and

WHEREAS, the Board notes that Spatt concerns whether the landmark designation of a religious property imposes an unconstitutional taking or an interference with the free exercise of religion, and is inapplicable to a case in

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# MINUTES

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which a religious institution merely seeks the same entitlement to develop its property possessed by any other private owner; and

WHEREAS, furthermore, Spatt does not stand for the proposition that government land use regulation may impose a greater burden on a religious institution than on a private owner; indeed, the court noted that the Ethical Culture Society, like any similarly situated owner, retained the right to generate a reasonable return from its property by the transfer of its excess development rights (see 51 N.Y.2d at 455, FN1); and

WHEREAS, the Board notes that the Zoning Resolution includes several provisions permitting the utilization or transfer of available development rights from a landmark building within the lot on which it is located or to an adjacent lot, and

WHEREAS, the Board further notes that while a nonprofit organization is entitled to no special deference for a development that is unrelated to its mission, it would be improper to impose a heavier burden on its ability to develop its property than would be imposed on a private owner; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the Synagogue's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; thereby meeting the required finding under ZR § 72-21(a); and

ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

Community Facility Use

WHEREAS, the applicant represents that it need not address the (b) finding since it is a not-for-profit religious institution and the community facility use will be in furtherance of its not-for-profit mission; and

Residential Development

WHEREAS, under New York State law, a not-for-profit organization which seeks land use approvals for a commercial or revenue-generating use is not entitled to the deference that must be accorded to such an organization when it seeks to develop a project that is in furtherance of its mission (see Little Joseph Realty v. Babylon, 41 N.Y.2d 738 (1977)); (municipal agency was required to make the variance findings because proposed use would be operated solely by and for the benefit of a private entrepreneur); Foster v. Saylor, 85 A.D.2d 876 (4<sup>th</sup> Dep't 1981) (variance upheld permitting office and limited industrial use of former school building after district established inability to develop for a conforming use or otherwise realize a financial return on the

property as zoned); and Roman Cath. Dioc. of Rockville Ctr v. Vill. Of Old Westbury, 170 Misc.2d 314 (1996) (cemetery to be operated by church was found to constitute a commercial use)); and

WHEREAS, the residential development was not proposed to meet its programmatic needs, the Board therefore directed the applicant to perform a financial feasibility study evaluating the ability of the Synagogue to realize a reasonable financial return from as-of-right residential development of the site, despite the fact that it is a not-for-profit religious institution; and

WHEREAS, the applicant initially submitted a feasibility study that analyzed: (1) an as-of-right community facility/residential building within an R8B envelope (the "as-of-right building"); (2) an as-of-right residential building with 4.0 FAR; (3) the original proposed building; and (4) a lesser variance community facility/residential building; and

WHEREAS, at hearing, the Board questioned why the analysis included the community facility floor area and asked the applicant to revise the financial analysis to eliminate the value of the floor area attributable to the community facility from the site value and to evaluate an as-of-right development; and

WHEREAS, in response, the applicant revised the financial analysis to analyze: (1) the as-of-right building; (2) the as-of-right residential building with 4.0 FAR; (3) the original proposed building; (4) the lesser variance community facility/residential building; and (5) an as-of-right community facility/residential tower building, using the modified the site value; and

WHEREAS, the feasibility study indicated that the as-of-right scenarios and lesser variance community facility/residential building, would not result in a reasonable financial return and that, of the five scenarios only the original proposed building would result in a reasonable return; and

WHEREAS, it was subsequently determined that a tower configuration in the R10A portion of the Zoning Lot was contrary to ZR § 73-692 (the "sliver law") and therefore that the as-of-right community facility/residential tower building could not represent an as-of-right development; the Board then questioned the basis for the previous valuation of the development rights and requested that the applicant recalculate the site value using only R8 and R8B sales; and

WHEREAS, the Board also requested the applicant to evaluate the feasibility of providing a complying court to the rear above the fifth floor of the original proposed building; and

WHEREAS, applicant subsequently analyzed the financial feasibility of: (i) the proposed building (the original proposed building with a complying court); (ii) an eight-story building with a complying court (the "eight-story building"); and (iii) a seven-story building with penthouse and complying court (the "seven-story building"), using the revised site value; the modified analysis concluded that of the three scenarios, only the proposed building was feasible; and

WHEREAS, at hearing, the Board raised questions as

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# MINUTES

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to the how the space attributable to the building's rear terraces had been treated in the financial feasibility analysis; and

WHEREAS, in a written response, the applicant stated that the rear terraces on the fifth and sixth floors had not originally been considered as accessible open spaces and were therefore not included in the sales price as sellable terrace areas of the appertaining units; the applicant provided an alternative analysis considering the rear terraces as sellable outdoor terrace area and revised the sales prices of the two units accordingly; and

WHEREAS, at hearing, the Board also asked the applicant to explain the calculation of the ratio of sellable floor area gross square footage (the "efficiency ratio") for each of the following scenarios: the proposed building, the eight-story building, the seven-story building, and the as-of-right building; and

WHEREAS, in a subsequent submission, the applicant provided a chart identifying the efficiency ratios for each respective scenario, and explained that the architects had calculated the sellable area for each by determining the overall area of the building and then subtracting the exterior walls, the lobby, the elevator core and stairs, hallways, elevator overrun and terraces from each respective scenario; and

WHEREAS, the applicant also submitted a revised analysis of the as-of-right building using the revised estimated value of the property; this analysis showed that the revised as-of-right alternative would result in substantial loss; and

WHEREAS, in a submission, the Opposition questioned the use of comparable sales prices based on property values established for the period of mid-2006 to mid-2007, rather than using more recent comparable sales prices, and questioned the adjustments made by the applicant to those sales prices; and

WHEREAS, in a written response, the applicant pointed out that, to allow for comparison of earlier to later analyses, it is BSA practice to establish sales comparables from the initial feasibility analysis to serve as the baseline, and then to adjust those sales prices in subsequent revisions to reflect intervening changes in the market; the applicant also stated that sales prices indicated for units on higher floors reflected the premium price units generated by such units compared to the average sales price for comparable units on lower floors; and

WHEREAS, the Opposition also questioned the choice of methodology used by the applicant, which calculated the financial return based on profits, contending that it should have been based instead on the projected return on equity, and further contended that the applicant's treatment of the property acquisition costs distorted the analysis; and

WHEREAS, in response to the questions raised by the Opposition concerning the methodology used to calculate the rate of return, the applicant states that it used a return on profit model which considered the profit or loss from net sales proceeds less the total project development cost on an unleveraged basis, rather than evaluating the project's return on equity on a leveraged basis; and

WHEREAS, the applicant further stated that a return on equity methodology is characteristically used for income producing residential or commercial rental projects, whereas the calculation of a rate of return based on profits is typically used on an unleveraged basis for condominium or home sale analyses and would therefore be more appropriate for a residential project, such as that proposed by the subject application; and

WHEREAS, the Board notes that a return on profit model which evaluates profit or loss on an unleveraged basis is the customary model used to evaluate the feasibility of market-rate residential condominium developments; and

WHEREAS, the Opposition also raised concerns as to the omission of the income from the Beit Rabban school from the feasibility study; and

WHEREAS, in response to concerns raised by the Opposition as to why the feasibility study omitted the income from the Beit Rabban school, a submission by the applicant states that the projected market rent for community facility use was provided to the Board in an earlier submission and that the cost of development far exceeded the potential rental income from the community facility portion of the development; and

WHEREAS, further, the Board notes that it requested that costs, value and revenue attributable to the community facility be eliminated from the financial feasibility analysis to allow a clearer depiction of the feasibility of the proposed residential development and of lesser variance and as-of-right alternatives; 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 compliance with applicable zoning requirements would provide a reasonable return; and

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, as pertains to the (c) finding 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, because the variances sought to permit the community facility use differ from the variances sought to permit the proposed residential use, the potential affects on neighborhood character of each respective set of proposed variances are discussed separately below; and

#### Community Facility Use

WHEREAS, the applicant represents that the proposed rear yard and lot coverage variances permitting the community facility use will not negatively affect the character of the neighborhood, nor affect adjacent uses; and

WHEREAS, the applicant states that the proposed waivers would allow the community facility to encroach into the rear yard by ten feet, to a height of approximately 49 feet; and

WHEREAS, the applicant states that, as a community facility, the Synagogue would be permitted to build to the

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# MINUTES

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rear lot line up to a height of 23 feet; and

WHEREAS, the applicant represents that the affect of the encroachment into the rear yard is partly offset by the depths of the yards of the adjacent buildings to its rear; and

WHEREAS, the Board conducted an environmental review of the proposed action and found that it would not have significant adverse impacts on the surrounding neighborhood; and

WHEREAS, the Opposition disputes the findings of the Environmental Assessment Statement (“EAS”) and contends that the expanded toddler program, and the life cycle events and weddings held in the multi-purpose room of the lower cellar level of the proposed community facility would produce significant adverse traffic, solid waste, and noise impacts; and

WHEREAS, the Board notes that the additional traffic and noise created by the expanded toddler program – which is projected to grow from 20 children to 60 children daily – falls below the CEQR threshold for potential environmental impacts; and

WHEREAS, the Board further notes that the waivers of lot coverage and rear yard requirements are requested to meet the Synagogue’s need for additional classroom space and that the sub-cellar multi-purpose room represents an as-of-right use; and

WHEREAS, the applicant states that the proposed multi-function room would result in an estimated 22 to 30 life cycle events and weddings over and above those currently held; and

WHEREAS, with respect to traffic, the applicant states that life cycle events would generate no additional traffic impacts because they are held on the Sabbath and, as Congregation Shearith Israel is an Orthodox synagogue, members and guests would not drive or ride to these events in motor vehicles; and

WHEREAS, the applicant further states that significant traffic impacts are not expected from the increased number of weddings, because they are generally held on weekends during off-peak periods when traffic is typically lighter, or from the expanded toddler program, which is not expected to result in a substantial number of new vehicle trips during the peak hours; and

WHEREAS, with respect to solid waste, the EAS estimated the solid waste attributable to the entirety of the proposed building, including the occupants of the residential portion and the students in the school, and conservatively assumed full occupancy of the multi-function room (at 360 persons); and

WHEREAS, the estimates of solid waste generation found that the amount of projected additional waste represented a small amount, relative to the amount of solid waste collected weekly on a given route by the Department of Sanitation, and would not affect the City’s ability to provide trash collection services; and

WHEREAS, the Synagogue states that trash from multi-purpose room events will be stored within a refrigerated area within the proposed building and, if

necessary, will be removed by a private carter on the morning following each event; and

WHEREAS, at the Board’s direction, the applicant submitted revised plans showing the cellar location of the refrigerated trash storage area; and

WHEREAS, with respect to noise, as the multi-purpose room is proposed for the sub-cellar of the proposed building, even at maximum capacity it is not expected to cause significant noise impacts; and

WHEREAS, as held in Westchester Reform Temple v. Brown (22 N.Y.2d 488 (1968)), a religious institution's application is entitled to deference unless significant adverse effects upon the health, safety, or welfare of the community are documented (see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, the Opposition has raised general concerns about disruption to the character of the surrounding neighborhood, but has presented no evidence to the Board supporting the alleged traffic, solid waste and noise impacts of the proposed community facility; and

WHEREAS, the detrimental effects alleged by the Opposition largely concern the purported impact of events held in the multi-purpose room which, as noted above, is permitted as-of-right; and  
Residential Use

WHEREAS, the applicant represents that the proposed variances to height and setback permitting the residential use will not negatively affect the character of the neighborhood, nor affect adjacent uses; and

WHEREAS, the applicant states that the proposed base height waiver and front setback waivers of the R8B zoning requirements allow the building to rise to a height of approximately 94’-10” along the West 70<sup>th</sup> Street street-line, before setting back by 12’-0”;

WHEREAS, the applicant further states that the R8B zoning regulations limit the base height to 60 feet, at which point the building must set back by a minimum of 15’-0”;

WHEREAS, the applicant states that the proposed waiver of maximum building height will allow a total height of approximately 105’-10”, instead of the maximum building height of 75’-0” permitted in an R8B district; and

WHEREAS, the applicant also seeks a rear setback of 6’-8”, instead of the 10’-0” rear setback required in an R8B district; and

WHEREAS, the applicant represents that the front and rear setbacks are required because the enlargement would rise upward and extend from the existing front and rear walls; and

WHEREAS, the applicant represents that the proposed base height, wall height and front and rear setbacks are compatible with neighborhood character; and

WHEREAS, the applicant states that a Certificate of Appropriateness approving the design for the proposed building was issued by the Landmarks Preservation Commission on March 14, 2006; and

WHEREAS, the Opposition raised issues at hearing concerning the scale of the proposed building and its compatibility to the neighborhood context; and

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# MINUTES

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WHEREAS, the applicant represents that the proposed bulk and height of the building is consistent with the height and bulk of neighboring buildings, and that the subject site is flanked by a nine-story building at 18 West 70<sup>th</sup> Street which has a base height of approximately 95 ft. with no setback, and an FAR of 7.23; and

WHEREAS, the applicant further represents that the building located at 101 Central Park West, directly to its north, has a height of 15 stories and an FAR of 13.92; and that the building located directly to its south, at 91 Central Park West, has a height of 13 stories and an FAR of 13.03; and

WHEREAS, the Board notes that, at nine stories in height, the building would be comparable in size to the adjacent nine-story building located at 18 West 70<sup>th</sup> Street, while remaining shorter than the 15-story and 13-story buildings located within 60 feet of the site; and

WHEREAS, the Opposition also contends that the proposed nine-story building disrupts the mid-block character of West 70<sup>th</sup> Street and thereby diminishes the visual distinction between the low-rise mid-block area and the higher scale along Central Park West; and

WHEREAS, the applicant submitted a streetscape of West 70<sup>th</sup> Street indicating that the street wall of the subject building matches that of the adjacent building at 18 West 70<sup>th</sup> Street and that no disruption to the midblock character is created by the proposed building; and

WHEREAS, the Opposition also contends that approval of the proposed height waiver will create a precedent for the construction of more mid-block high-rise buildings; and

WHEREAS, as discussed above, the Opposition has identified four sites within a 51-block area bounded by Central Park West and Columbus Avenue, and 59<sup>th</sup> Street and 110<sup>th</sup> Street that purportedly could seek variances permitting midblock buildings which do not comply with the requirements of the R8B zoning district; and

WHEREAS, an analysis submitted by the applicant in response found that none of the four sites identified by the Opposition shared the same potential for mid-block development as the subject site; and

WHEREAS, the Opposition argues that the proposed building will significantly diminish the accessibility to light and air of its adjacent buildings; and

WHEREAS, the Opposition contended specifically that the proposed building abuts the easterly wall and court of the building located at 18 West 70<sup>th</sup> Street, thereby eliminating natural light and views from seven eastern facing apartments which would not be blocked by an as-of-right building; and

WHEREAS, the Opposition further argues that the proposed building will cut off natural lighting to apartments in the building located at 91 Central Park West and diminish light to apartments in the rear of the building located at 9 West 69<sup>th</sup> Street, and that the consequentially diminished light and views will reduce the market values of the affected apartments; and

WHEREAS, in response the applicant noted that lot

line windows cannot be used to satisfy light and air requirements and, therefore, rooms which depend solely on lot line windows for light and air were necessarily created illegally and the occupants lack a legally protected right to their maintenance; and

WHEREAS, the applicant further notes that an owner of real property also has no protected right in a view; and

WHEREAS, nonetheless, the Board directed the applicant to provide a fully compliant outer court to the sixth through eighth floors of the building, thereby retaining three more lot line windows than originally proposed; and

WHEREAS, the applicant submitted revised plans in response showing a compliant outer court; and

WHEREAS, the Opposition asserts that the proposed building would cast shadows on the midblock of West 70<sup>th</sup> Street; and

WHEREAS, CEQR regulations provide that an adverse shadow impact is considered to occur when the shadow from a proposed project falls upon a publicly accessible open space, a historic landscape, or other historic resource, if the features that make the resource significant depend on sunlight, or if the shadow falls on an important natural feature and adversely affects its uses or threatens the survival of important vegetation, and that shadows on streets and sidewalks or on other buildings are not considered significant under CEQR; and

WHEREAS, a submission by the applicant states that that no publicly accessible open space or historic resources are located in the mid-block area of West 70<sup>th</sup> Street; thus any incremental shadows in this area would not constitute a significant impact on the surrounding community; and

WHEREAS, a shadow study submitted by the applicant compared the shadows cast by the existing building to those cast by the proposed new building to identify incremental shadows that would be cast by the new building that are not cast presently; and

WHEREAS, the EAS analyzed the potential shadow impacts on publicly accessible open space and historic resources and found that no significant impacts would occur; and

WHEREAS, the applicant evaluated shadows cast over the course of a full year, with particular attention to December 21, when shadows are longest, March 21 and September 21 (vernal and autumnal equinoxes) and June 21, when shadows are shortest, disregarding the shadows cast by existing buildings, and found that the proposed building casts few incremental shadows, and those that are cast are insignificant in size; and

WHEREAS, specifically, the shadow study of the EAS found that the building would cast a small incremental shadow on Central Park in the late afternoon in the spring and summer that would fall onto a grassy area and path where no benches or other recreational equipment are present; and

WHEREAS, based upon the above, the Board finds that neither the proposed community facility use, nor the proposed residential use, will alter the essential character of the

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# MINUTES

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surrounding neighborhood or impair the use or development of adjacent properties, or be detrimental to the public welfare; and

## ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's unique physical conditions: (1) the existence and dominance of a landmarked synagogue on the footprint of the Zoning Lot, (2) the site's location on a zoning lot that is divided by a zoning district boundary; and (3) the limitations on development imposed by the site's contextual zoning district; and

WHEREAS, the applicant further states that these conditions originate with the landmarking of its Synagogue building and with the 1984 rezoning of the site; and

WHEREAS, based on the above, the Board therefore finds that the hardship herein was not created by the owner or by a predecessor in title; and

## ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the original proposed building of the Synagogue had no rear court above the fifth floor, and

WHEREAS, in response to concerns raised by the residents of the adjacent building, the Board directed the applicant to provide a fully compliant outer court to the sixth through eighth floors of the building, thereby retaining access to light and air of three additional lot line windows; and

WHEREAS, the applicant modified the proposal to provide a complying court at the north rear above the fifth floor, thereby reducing the floor plates of the sixth, seventh and eighth floors of the building by approximately 556 sq. ft. and reducing the floor plate of the ninth floor penthouse by approximately 58 sq. ft., for an overall reduction in the variance of the rear yard setback of 25 percent; and

WHEREAS, during the hearing process, the Board also directed the applicant to assess the feasibility of several lesser variance scenarios; and

WHEREAS, financial analyses submitted by the applicant established that none of these alternatives yielded a reasonable financial return; and

WHEREAS, however, the Opposition argues that the minimum variance finding is no variance because the building could be developed as a smaller as-of-right mixed-use community facility/ residential building that achieved its programmatic mission, improved the circulation of its worship space and produced some residential units; and

WHEREAS, the Synagogue has fully established its programmatic need for the proposed building and the nexus of the proposed uses with its religious mission; and

WHEREAS, the Board notes again that a zoning board must accommodate a proposal by a religious or educational institution for a project in furtherance of its mission, unless the proposed project is shown to have significant and measurable detrimental impacts on surrounding residents (See Westchester Ref. Temple v. Brown, 22 N.Y.2d 488 (1968); Islamic Soc. of Westchester v. Foley, 96 A.D. 2d 536 (2d Dep't 1983); and Jewish Recons. Synagogue of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, the Opposition has not established such impacts; and

WHEREAS, the Opposition may have raised other issues that are not specifically addressed herein, the Board has determined that all cognizable issues with respect to the required variance findings or CEQR review are addressed by the record; and

WHEREAS, the Board finds that the requested lot coverage and rear yard waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs and that the front setback, rear setback, base height and building height waivers are the minimum necessary to allow it to achieve a reasonable financial return; 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 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. 07BSA071M dated May 13, 2008; 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; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; 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 the required findings under ZR § 72-21, to permit, on a site partially within an R8B district and partially within an R10A district within the Upper West Side/ Central Park West Historic District, the proposed construction of a nine-story and cellar mixed-use community facility/ residential building that does not comply with zoning parameters for lot coverage, rear yard,

# MINUTES

base height, building height, front setback and rear setback contrary to ZR §§ 24-11, 77-24, 24-36, 23-66, and 23-633; *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 13, 2008”–nineteen (19) sheets and “Received July 8, 2008”– one (1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a total floor area of 42,406 sq. ft.; a community facility floor area of 20,054 sq. ft.; a residential floor area of 22,352 sq. ft.; a base height of 95’-1””; with a front setback of 12’-0””; a total height of 105’-10””; a rear yard of 20’-0””; a rear setback of 6’-8””; and an interior lot coverage of 0.80; and

THAT the applicant shall obtain an updated Certificate of Appropriateness from the Landmarks Preservation Commission prior to any building permit being issued by the Department of Buildings;

THAT refuse generated by the Synagogue shall be stored in a refrigerated vault within the building, as shown 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 substantial construction be completed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 26, 2008.

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## 44-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – 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 rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated January 29, 2008, acting on Department of Buildings Application No. 310069591, reads in pertinent part:

- “1. Proposed rear yard [of] 21’-0” does not comply with ZR 23-47 for required rear yard of 30’-0””;
2. Proposed floor area and open space ratio exceeds requirements of ZR 23-141(a)”;

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, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in *The City Record*, with continued hearings on May 13, 2008, June 3, 2008, July 1, 2008 and July 22, 2008, and then to decision on August 26, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; 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 J and Avenue K; and

WHEREAS, the subject site has a total lot area of 4,500 sq. ft., and is occupied by a single-family home with floor area of 3,149.1 sq. ft. (0.70 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 3,149.1 sq. ft. (0.70 FAR), to approximately 4,495 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 54.7 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 21’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the enlargement of the home is not located within 20’-0” of the rear lot line; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained and questioned the size of proposed dormers; and

WHEREAS, in response, the applicant agreed to retain additional portions of the existing home and modified the appearance of the proposed 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



# MINUTES

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, 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 June 18, 2008"-(8) sheets and "July 9, 2008"-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 540 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 4,495 sq. ft. (1.00 FAR), an open space ratio of 54.7 percent, and a rear yard with a minimum depth of 21'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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, August 26, 2008.

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## 66-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Manic Friendland, owner.

SUBJECT – Application March 28, 2008 – 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 less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1497 East 21<sup>st</sup> Street, east side of East 21<sup>st</sup> Street, between Avenue N and Avenue M, Block 7657, Lot 12, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 27, 2008, acting on Department of Buildings Application No. 310091343, reads in pertinent part:

- “1. Proposed floor area is in excess of permitted floor area ratio as per ZR Section 23-141;
2. Proposed open space is less than the permitted open space as per ZR Section 23-141;
3. Proposed rear yard is less than rear yard required as per ZR Section 23-147;” 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 and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on May 20, 2008, after due notice by publication in *The City Record*, with continued hearings on July 1, 2008 and July 22, 2008, and then to decision on August 26, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 21st Street, between Avenue M and Avenue N; and

WHEREAS, the subject site has a total lot area of 8,000 sq. ft., and is occupied by a single-family home with a floor area of 4,557 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 4,557 sq. ft. (0.57 FAR), to 7,880 sq. ft. (0.99 FAR); the maximum floor area permitted is 4,000 sq.

# MINUTES

ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 51 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the home is not located within 20'-0" of the rear lot line; and

WHEREAS, a neighbor to the rear of the subject site testified in opposition to the application citing concerns with its potential impact on his privacy; and

WHEREAS, the neighbor subsequently submitted a letter withdrawing his opposition, on condition that the applicant construct a new fence along the common property line and provide plantings of at least seven feet in height for screening and privacy between the two property; and

WHEREAS, the applicant has agreed to provide the requested fencing and screening; 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, 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 July 8, 2008"-(12) sheets and "July 29, 2008"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar or attic;

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 7,880 sq. ft. (0.99 FAR), an open space ratio of 51 percent, and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved

plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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, August 26, 2008.

**78-08-BZ  
CEQR #08-BSA-075X**

APPLICANT – Flora Edwards, Esq., for SBCSICA, owner.  
SUBJECT – Application April 3, 2008 – Variance (§72-21) to permit a new community facility building (South Bronx Charter School). The proposal is contrary to §§123-62 (Maximum floor area ratio for community facilities), 24-11 (Maximum floor area ratio and percentage of lot coverage) and 123-662 (b)(4) (As it relates to street wall height for all buildings in Special Mixed-Use Districts with R6, R7, R8 and R10 district designations). MX-1 (M1-2/R6A).

PREMISES AFFECTED – 611-617 East 133<sup>rd</sup> Street, Block 2546, Lot 27, Borough of Bronx.

**COMMUNITY BOARD #1BX**

APPEARANCES –

For Applicant: Flora Edwards.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 25, 2008, acting on Department of Buildings Application No. 210040784, reads in pertinent part:

“Proposed 5 Story elementary school building . . . infringes on 15'-0" setback on Cypress Place & 133<sup>rd</sup> Street Facades and infringes on 10'-0" setback on the Cypress Place/Bruckner Boulevard façade pursuant to ZR 123-662(b)(4) & ZR 123-662(1). Floor area is exceeded with a total floor area of 39,614.33 SF with an allowable floor area of 27,707.00 sf pursuant to ZR 123-62 & ZR 24-11"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an MX-1 (M1-2/R6A) Special Mixed

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# MINUTES

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Use Zoning District, the construction of a five-story charter elementary school which does not comply with regulations for floor area, FAR and setbacks, contrary to ZR §§ 24-11, 123-62 and 123-662; and

WHEREAS, the application is brought on behalf of the South Bronx Charter School for International Cultures and the Arts (the "School"), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on July 1, 2008, after due notice by publication in the *City Record*, with a continued hearing on August 19, 2008, and then to decision on August 26, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Bronx, recommends approval of this application; and

WHEREAS, City Council Member Maria del Carmen Arroyo provided testimony in support of this project; and

WHEREAS, a parent of a current student of the School testified in support of the application; and

WHEREAS, the subject site is located the intersection of Bruckner Boulevard/ Cypress Place and East 133<sup>rd</sup> Street<sup>3</sup> within an MX-1 (M1-2/R6A) Special Mixed Use Zoning District; and

WHEREAS, the site has approximately 150 feet of frontage on East 133<sup>rd</sup> Street, approximately 92 feet of frontage on the eastern side of Cypress Place, approximately 164 feet of frontage on the north at Bruckner Boulevard/Cypress Place, and approximately 26' feet of frontage at the western intersection of Cypress Place/Bruckner Boulevard and East 133<sup>rd</sup> Street; and

WHEREAS, the subject site is occupied by a vacant two-story building that will be demolished; and

WHEREAS, the applicant proposes to construct a five-story school (Use Group 3), with a total floor area of approximately 39,614 sq. ft. (4.62 FAR), and a street wall height of 69'-10" without setbacks; and

WHEREAS, the zoning district regulations limit total floor area to 27,707 sq. ft., (3.00 FAR) and require a 10'-0" setback on Bruckner Boulevard/Cypress Place and 15'-0" setbacks on Cypress Place and on 133<sup>rd</sup> Street, respectively, at a street wall height of 60'-0"; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) accommodating the projected enrollment of 450 kindergarten through fifth grade students at a single permanent location, (2) providing sufficient classroom and accessory space to implement the educational requirements of the School; and (3) a location convenient to its student body; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; thus the instant application was filed; and

WHEREAS, the applicant represents that without the waivers, the School would lack sufficient space for the accessory language laboratory, library and multimedia center which are required by its educational program, and would be unable to provide classrooms of a size sufficient to meet its Charter requirements; and

WHEREAS, the applicant represents that a complying development would limit the size of a 25-pupil classroom to 637 sq. ft, less than the 713 sq. ft. minimum standard for new construction established by the New York State Department of Education; and

WHEREAS, additionally, the applicant represents that a complying school could not provide adequate space for a fully operational kitchen and cafeteria; and

WHEREAS, the proposed building will have the following program: (i) mechanical room and kitchen storage in a 420 sq. ft. cellar; (ii) kitchen, administrative rooms and a multi-purpose room on the first floor; (iii) music, art, language, media and project rooms on the second floor; and (iii) classroom space on the third through fifth floors; and

WHEREAS, the applicant represents that the proposed building will allow the School to operate permanently at a single location with sufficient classroom space for 450 students in kindergarten through fifth grade, as required by its charter; and

WHEREAS, the applicant states that it currently operates its educational facilities at two temporary locations and that it must vacate one of these current facilities after the 2009-2010 academic year; and

WHEREAS, the School further states that its charter requires it to add an additional grade each year until it reaches its full capacity of 450 students in the 2010-2011 academic year; and

WHEREAS, the School represents that its current facilities provide an inadequate number of classrooms and only limited access to gym, library and other educational facilities and cannot accommodate the future growth of the School; and

WHEREAS, the applicant further represents that the addition of another grade in the fall of 2008 will increase its classroom requirement to a total of 15, and its consequential deficit to eight classrooms; and

WHEREAS, the applicant states that its program includes a location proximate to the Mott Haven community where 70 percent of its student body lives; and

WHEREAS, the Board acknowledges that the School, as an 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational 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

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<sup>3</sup> Although the tax map shows the site as bounded by Bruckner Boulevard to the north and west, East 133<sup>rd</sup> Street to the south and Cypress Place to the east, Cypress Place actually bounds the site on the north, west and east, separated from Bruckner Boulevard by a barrier wall to the north and by a traffic island to the west.

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# MINUTES

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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 subject site in compliance with the applicable regulations as to floor area and setbacks: (1) its small and irregular shape; and (2) its sub-surface conditions, and

WHEREAS, with respect to its size and shape, the applicant states that the site is an irregularly-shaped trapezoid that is only 91'-0" at its widest point, with a frontage of approximately 26'-0" at its western boundary and a lot area of 8,569 sq. ft.; and

WHEREAS, at a maximum street wall height of 60'-0", the zoning district regulations require setbacks of 15 feet along the Bruckner Boulevard/ Cypress Place frontage of the site, and 10 foot setbacks along each of the other three lot lines; and

WHEREAS, the applicant represents that the small and irregular shape of the lot, coupled with the required setbacks, would result in a floor plate with a width of approximately five feet on the western side of the site, making it impossible to provide adequate classroom and hallway space on the fifth floor of the building; and

WHEREAS, with respect to the sub-surface conditions, the applicant has submitted a geotechnical investigation indicating bedrock sub-surface conditions between 1.5 ft. and 2.5 ft. below the first floor slab; and

WHEREAS, due to the practical and financial difficulties of excavating bedrock, the applicant represents that the School must therefore place building uses above-grade that would otherwise be located in the cellar-level; and

WHEREAS, above-grade development of the required floor area increases the volume of space considered as floor area, partially necessitating a waiver of the required FAR; and

WHEREAS, the applicant states that its program includes serving a student body largely residing in the Mott Haven neighborhood of the Bronx; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate and agrees that the proposed building is necessary to address its needs, given the current unique conditions that constrain the site; and

WHEREAS, accordingly, based on the above, the Board finds that the unique site conditions, when considered in conjunction with the programmatic needs of the School, create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit educational institution and the variance is requested 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 proposed school will be the only building on the subject block, the building therefore is not directly adjacent to other neighboring buildings; and

WHEREAS, the applicant states that the property closest to the site is a small park to its east on the opposite side of Cypress Place and that the land uses within a 400 foot radius of the subject site are primarily characterized by warehouse distribution and industrial uses; and

WHEREAS, the applicant further states that Bruckner Boulevard, elevated roadways leading to the Major Deegan Expressway and Triborough Bridge, and their associated exit and entrance ramps occupy the northern and eastern portions of the study area; and

WHEREAS, the applicant represents that the proposed school would be higher than most of the buildings in the area, which are characteristically bulky one-story warehouses, but would have little or no impact on the visual character of the area which is dominated by elevated roadways which create a sense of height far exceeding that of the proposed building; and

WHEREAS, the school is permitted as of right within the subject zoning district and its overall building height is compliant with the R6A zoning district regulations; and

WHEREAS, the applicant states that the School's hours of operations will be from 8:00 a.m. to 4:00 p.m.; and

WHEREAS, the applicant represents that the school is designed to address the potential effects of its proximity to the Bruckner Boulevard truck route, as well as to the highway and bridge approach; and

WHEREAS, the applicant states that the building will include windows that provide at least 35 dBA of noise attenuation and a central air conditioning system that allows all windows to remain closed, as well as a ventilation system compliant with New York City Green School standards; and

WHEREAS, at hearing, the Board cited concerns about traffic safety and student crossings; and

WHEREAS, the applicant states that a modal split analysis indicates that 70 percent of the students will arrive by school bus and that 19 percent will be dropped off by private motor vehicles; and

WHEREAS, the applicant further represents that the entrance to the School will be situated at the western end of the site at the intersection of Cypress Place and East 133<sup>rd</sup> Street, and that pick-up and drop-off for students will take place on Cypress Avenue, a virtually traffic-free enclave surrounding the site on its east, north and south sides, and which connects to no other street other than 133<sup>rd</sup> Street; and

WHEREAS, in addition, the applicant states that it is applying to the New York City Department of Transportation to create a no-standing zone during School hours at the designated drop off/ pick up points; and

WHEREAS, the New York City Department of Transportation ("DOT") has conducted a traffic safety review of the subject proposal; and

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# MINUTES

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WHEREAS, DOT determined that the following traffic improvement measures or similar measures may be necessary after the project is completed: (i) modification of traffic signal timings, parking regulations and related signage at the intersection of Bruckner Boulevard and St. Ann's Avenue; (ii) prohibition of southbound left-turn movement and installation of traffic signs at the intersections of Bruckner Boulevard/East 133<sup>rd</sup> Street and St. Ann's Avenue, and East 134<sup>th</sup> Street and St. Ann's Avenue, respectively; (iii) installation of regulatory signs at the intersection of East 138<sup>th</sup> Street and St. Ann's Avenue; and (iv) installation of fences at the southern side of Bruckner Boulevard between East 133<sup>rd</sup> Street and Cypress Place; and

WHEREAS, the applicant will conduct a traffic and pedestrian safety monitoring study within six months of its occupancy to verify the need for the proposed traffic improvement measures, which would be implemented by the applicant after construction is completed; and

WHEREAS, the applicant must submit the scope of work for the traffic and pedestrian safety monitoring study to DOT for approval prior to commencing the study; and

WHEREAS, the Board notes that DOT has also begun preparations for the installation of signs and markings at intersections surrounding the School; and

WHEREAS, the applicant represents that the proposed signage, signal timing changes, and other traffic control measures can be expected to enhance the safety of students crossing at intersections surrounding the School; and

WHEREAS, the New York City Fire Department ("FDNY") has approved the instant application, subject to the adoption of certain fire safety measures set forth in a letter dated July 22, 2008; and

WHEREAS, the applicant has agreed to comply with the measures contained within the July 22, 2008 letter of the FDNY; 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 represents that the hardship was not self-created and is inherent in the size, shape and subsurface conditions of the site; and

WHEREAS, the applicant states that more than a dozen alternative properties were evaluated during a yearlong search for an adequate site for the School; and

WHEREAS, the applicant represents that each of the identified sites which met the School's requirements as to location and potential floor area had acquisition costs that far exceeded the School's acquisition budget; and

WHEREAS, each of the alternative sites identified as being within the acquisition budget were either found to be too small to accommodate the School's program, too distant from its Mott Haven service area, or was burdened by environmental conditions which precluded its use for an educational facility; 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 floor area and setback waivers are the minimum necessary to accommodate the programmatic needs of the School; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School 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 Unlisted action pursuant to 6 NYCRR §§ 617.2(a) – 617.2(k); 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. 08BSA075X, dated August 22, 2008; 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 by the applicant: (1) a March 2008 EAS; (2) a May 2007 Phase I Environmental Site Assessment; (3) Limited Subsurface Investigation Reports of June 2007 and August 2007; (4) a July 2008 Phase II Subsurface Investigation Workplan; (5) July 2008 and August 2008 air quality submissions ("air quality submissions"); and (6) a Health and Safety Plan ("HASP"); and

WHEREAS, the latter submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, DEP approved the July 2008 Phase II Subsurface Investigation Workplan and the HASP; and

WHEREAS, the EAS identified hazardous materials present on the subject site, a Restrictive Declaration was therefore executed on August 20, 2008 and recorded against the subject property on August 22, 2008 to protect construction workers and future occupants from exposure; and

WHEREAS, prior to the issuance of any building permits, approval of a Remedial Action Plan ("RAP") by DEP is also required to ensure that necessary remedial measures are undertaken so that the proposed action does not result in a significant adverse impact on human health and the environment; and

WHEREAS, subsequent to DEP approval of the RAP, a Remedial Closure Report certified by a Professional

# MINUTES

Engineer, must be submitted to DEP showing that all remedial requirements have been properly prior to occupancy; and

WHEREAS the issuance of a Notice to Proceed for the subject property is contingent on DEP approval of the RAP, and the issuance of a Notice of Satisfaction is contingent on DEP approval of a Remedial Closure Report; and

WHEREAS, with respect to air quality review, the applicant conducted an analysis of combustion sources for boiler and emergency power generators of the Bronx Grit Chamber which determined that no air pollutant standards and thresholds would be exceeded by construction of the School; therefore, there is no potential significant adverse air quality impact anticipated from the Bronx Grit Chamber; and

WHEREAS, the applicant has agreed to install double glazed windows that achieve a 35 dBA of attenuation for each building façade and a dedicated outdoor air system, therefore, the proposed project is not anticipated to result in significant adverse noise impacts; 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 R6 zoning district, the development of a new community facility (Use Group 3), which does not comply with floor area ratio and setback requirements, contrary to ZR §§ 24-11 and 123-662, *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, 2008"- Two (2) sheets; "Received July 15, 2008"- Six (6) sheets; "Received August 5, 2008"- One (1) sheet; "Received August 14, 2008"-One (1) sheet; and "Received August 26, 2008"-Four (4) sheets and, *on further condition*:

THAT the proposed school shall have a floor area of approximately 39,614 sq. ft. (4.62 FAR), and a street wall height of 69'-10" without setbacks, as shown on the BSA-approved plans;

THAT the premises shall comply with all applicable fire safety measures, as required;

THAT DEP shall be notified one week prior to the onset of investigative field work relating to hazardous materials testing;

THAT the issuance of building permits shall be conditioned on the issuance by DEP of a Notice to Proceed;

THAT the issuance of a certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of

Satisfaction;

THAT a dedicated outdoor air system and double glazed windows on each facade capable of achieving a 35 dBA of attenuation shall be provided;

THAT the applicant shall inform DOT six months prior to the anticipated initial occupancy of the proposed development so that DOT can investigate the feasibility of implementing the proposed traffic safety measures prior to the occupancy of the project;

THAT the applicant shall conduct a traffic and pedestrian safety monitoring study within six months of its occupancy;

THAT the applicant shall submit a proposed scope of work to DOT for approval prior to conducting the traffic and pedestrian monitoring study;

THAT the applicant shall, with the cooperation of DOT, implement the design, construction and installation of improvements identified by the traffic and pedestrian safety monitoring study and approved by DOT;

THAT a drop-off/pick-up area shall be maintained on Cypres Place, as shown on the BSA-approved plans;

THAT two dedicated employees shall coordinate assistance to students entering and leaving the building during the hours of 7:30 a.m. and 9:00 a.m. and 3:30 p.m. and 5:00 p.m.;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; 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.

Adopted by the Board of Standards and Appeals, August 26, 2008.

## **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.

THE VOTE TO CLOSE HEARING –

**ACTION OF THE BOARD** – Laid over to October 28, 2007, at 1:30 P.M., for deferred decision.

# MINUTES

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**243-07-BZ/244-07-A**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (§23-141); less than the minimum front yards (§23-45) and less than the required amount of parking (§23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Marie Wausnock and Vikki Palmer.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.  
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**271-07-BZ**

APPLICANT – The Rizzo Group, for Mitchell Marks, owner; Club Ventures II, LLC., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (PCE) in the C2-7A portion of the zoning district. A variance is also requested to allow the PCE use in the 22'3" portion of the site in the R8A zoning district. The proposal is contrary to §§ 22-10 and 32-18.

PREMISES AFFECTED – 213-219 West 23<sup>rd</sup> Street, north side of 23<sup>rd</sup> Street between Seventh and Eighth Avenues, Block 773, Lot 34, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Kenneth Barbina, Esq.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.  
-----

**59-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Elizabeth Safian and James Heineman.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.  
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**84-08-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; L & M Service Station, lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§§11-411, 11-412 & 73-01 (d)) to reinstate and amend the variance granted under Cal No. 410-48-BZ for an automotive service station with accessory uses located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 67-24 Main Street, a/k/a 68-12 Main Street, West side Street 315.5' north of 68<sup>th</sup> Drive, Block 6486, Lot 38, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.  
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**94-08-BZ**

APPLICANT – Law Offices of Howard Goldman, LLC, for ZTI Corp., owner; Pitkin Managers, LLC, lessee.

SUBJECT – Application April 16, 2008 – Variance (§72-21) to waive all the required accessory parking (23 spaces) for the residential portion of a mixed-use redevelopment of an existing theatre building; contrary to §25-00. C4-3 district.

PREMISES AFFECTED – 1501 Pitkin Avenue, between Legion Street and Saratoga Avenues, Block 3492, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

APPEARANCES –

For Applicant: Chris Wright and Daniel Gorthe.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for decision, hearing closed.  
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**145-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Faige Neuman and Stephen Neuman, owner.

SUBJECT – Application May 16, 2008 – Special Permit (§73-622) for the enlargement of an existing single family

# MINUTES

home. This application seeks to vary open space and floor area (§23-141); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1121 East 28<sup>th</sup> Street, east side of East 28<sup>th</sup> Street, between Avenue K and Avenue L, Block 7628, Lot 37, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for decision, hearing closed.

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## 148-08-BZ

APPLICANT – Dennis D Dell’Angelo, for Michael Hass, owner.

SUBJECT – Application May 28, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); less than the required side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1383 East 27<sup>th</sup> Street, east side of East 27<sup>th</sup> Street, 60’ north of Avenue N, Block 7663, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis Dell’Angelo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for decision, hearing closed.

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## 155-08-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Samuel Falack, Michael Penn, Irvin Peters, Susan Klapper and Francine Odk.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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## 167-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Profile Enterprises, L.P., owner; for Garden Retreat Spa, LLC, lessee.

SUBJECT – Application June 19, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the second floor of an existing seven-story building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 253 5<sup>th</sup> Avenue, northeast corner of the intersection formed by 5<sup>th</sup> Avenue and West 28<sup>th</sup> Street, Block 858, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:50 P.M.*



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 36-37

September 19, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|                        |  |
|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|   |         |
|---|---------|
| DOCKET .....                              | 599     |
| <b>CALENDAR</b> of October 7, 2008        |         |
| Morning .....                             | 600     |
| Afternoon .....                           | 601/602 |
| <b>SPECIAL HEARING</b> of October 8, 2008 |         |
| Morning .....                             | 602     |

---

# CONTENT

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**MINUTES of Regular Meetings,  
Tuesday, September 9, 2008**

Morning Calendar .....603

**Affecting Calendar Numbers:**

|                           |   |
|---------------------------|---|
| 218-58-BZ                 | 77-40 Hewlett Street, Queens                |
| 546-82-BZ                 | 148-15 89 <sup>th</sup> Avenue, Queens      |
| 788-89-BZ                 | 187-17 Jamaica Avenue, Queens               |
| 164-99-BZ                 | 79-03 Roosevelt Avenue, Queens              |
| 43-02-BZ                  | 116 East 73 <sup>rd</sup> Street, Manhattan |
| 709-55-BZ                 | 2000 Rockaway Parkway, Brooklyn             |
| 719-56-BZ                 | 2525 Victory Boulevard, Staten Island       |
| 115-94-BZ                 | 2470-2480 Bedford Avenue, Brooklyn          |
| 43-02-BZ                  | 116 East 73 <sup>rd</sup> Street, Manhattan |
| 95-08-A                   | 6701 Bay Parkway, Brooklyn                  |
| 141-07-A                  | 129-48 Hookcreek Boulevard, Queens          |
| 251-07-A thru<br>254-07-A | 63/65 Houston Street, Staten Island         |
| 266-07-A &<br>191-08-BZY  | 1610 Avenue S, Brooklyn                     |

Afternoon Calendar .....611

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 134-06-BZ | 241-15 Northern Boulevard, Queens           |
| 39-08-BZ  | 77 Richmond Hill Road, Staten Island        |
| 11-07-BZ  | 41-06 Junction Boulevard, Queens            |
| 245-07-BZ | 220 Water Street, Brooklyn                  |
| 257-07-BZ | 3 East 101 <sup>st</sup> Street, Manhattan  |
| 35-08-BZ  | 1856 East 24 <sup>th</sup> Street, Brooklyn |
| 42-08-BZ  | 182 Girard Street, Brooklyn                 |
| 51-08-BZ  | 511 Avenue R, Brooklyn                      |
| 61-08-BZ  | 439 86 <sup>th</sup> Street, Brooklyn       |
| 158-08-BZ | 1814 East 27 <sup>th</sup> Street, Brooklyn |
| 179-08-BZ | 600 Broadway, Manhattan                     |

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# DOCKET

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New Case Filed Up to September 9, 2008

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**228-08-BZ**

2802 Avenue R, Southeast corner of Avenue R and East 28<sup>th</sup> Street, Block 6834, Lot(s) 1, Borough of **Brooklyn, Community Board: 15**. Variance to permit the construction of a mikvah, contrary to use regulations.

-----

**229-08-BZ**

866 East 8th Street, West side of East 8<sup>th</sup> Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot(s) 25, Borough of **Brooklyn, Community Board: 12**. Variance to allow a residential building, contrary to use regulations.

-----

**230-08-BZ**

1019 East 23rd Street, East side of 23<sup>rd</sup> Street between Avenue J and Avenue K, Block 7605, Lot(s) 36, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.

-----

**231-08-A**

118 Beach 221st Street, Southwest side of Beach 221<sup>st</sup> Street 320' Southeast of Breezy Point Boulevard, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction fronting a mapped street, contrary to Section 36 of the General City Law.

-----

**232-08-A**

50 Tioga Walk, West side of Tioga Walk 126.5' south of 6<sup>th</sup> Avenue, Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Article 3, Section 35 of the General City Law.

-----

**233-08-A**

56 Hillside Avenue, Southside Hillside Avenue 72.54' west of intersection with Rockaway Point Boulevard, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Article 3 Section 35 of the General City Law.

-----

**234-08-BZ**

1702 Avenue Z, Southeast of the corner formed by Avenue Z and East 17<sup>th</sup> Street, Block 7462, Lot(s) 1, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**OCTOBER 7, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 7, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **736-45-BZ**

APPLICANT – Walter T. Gorman, P.E., for Midel Property Associates, LLC, owner; Exxon Mobil Corporation, lessee. SUBJECT – Application June 3, 2008 – Extension of Term/waiver for a previously granted variance for the operation of a gasoline service station (Mobil), in a C2-4/R8 zoning district, which expired on March 17, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 8, 2000.

PREMISES AFFECTED – 3740 Broadway, northeast corner of West 155<sup>th</sup> Street, Block 2114, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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### **94-58-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Nor-East S/S Incorporated, lessee. SUBJECT – Application June 19, 2008 – Extension of Term/waiver for the continued operation of a gasoline service station (Mobil), in an R-4 zoning district, which expired on September 30, 2003

PREMISES AFFECTED – 22-55/25-75 Brooklyn Queens Expressway, northeast corner of 30<sup>th</sup> Avenue, Block 1046, Lot 1, Borough of Queens.

**COMMUNITY BOARD #3Q**

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### **141-58-BZ**

APPLICANT – Kenneth H. Koons, for East 201 Street Realty Corporation, owner.

SUBJECT – Application August 14, 2008 – Extension of Term of a UG7 Funeral Home in an R8C- (Special Grand Concourse Preservation) zoning district which expired on July 15, 2008.

PREMISES AFFECTED – 201-203 East 202<sup>nd</sup> Street, northeast corner Grand Concourse, Block 3307, Lots 67 & 68, Borough of Bronx.

**COMMUNITY BOARD #7BX**

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### **198-66-BZ**

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application July 25, 2008 – Extension of Time to Complete Construction of an existing plaza for a

residential high rise building, in a C1-9 zoning district, which expired on June 19, 2008 and an Extension of Time to obtain a Certificate of Occupancy which expires on June 19, 2009.

PREMISES AFFECTED – 300 East 74<sup>th</sup> Street, between First and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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### **170-96-BZ**

APPLICANT – Martyn & Don Weston, Architects, for 8501 Flatlands Avenue, owner.

SUBJECT – Application July 30, 2008 – Extension of Term/Amendment/Waiver (§72-01 & §72-22) to reopen the term of 10 years for an automobile repair facility located in an R5 zoning district.

PREMISES AFFECTED – 8501 Flatlands Avenue, northeast corner of East 85<sup>th</sup> Street, Block 8006, Lots 6 and 7, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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### **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 23<sup>rd</sup> Street, Block 879, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## **APPEALS CALENDAR**

### **70-08-A thru 72-08-A**

APPLICANT – Eric Palatnik, P.C., for TOCS Developers, Inc., owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.

PREMISES AFFECTED – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **73-08-A thru 75-08-A**

APPLICANT – Eric Palatnik, P.C., for S.B. Holding, owner.

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# CALENDAR

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SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

PREMISES AFFECTED – 354 Van Name, northeast of the corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, Borough of Staten Island.

**COMMUNITY BOARD #1SI**  
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**81-08-A & 82-08-A**

APPLICANT – Harvey Epstein, Esq., for 514-516 East 5<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 4, 2008 – Appeal seeking to revoke permit and approvals for a vertical enlargement of an existing non- fireproof tenement building which fails to comply with the applicable provisions of the MDL regarding fire safety standards. R7-2 zoning district.

PREMISES AFFECTED – 514-516 & 515 East 5<sup>th</sup> Street, between A and Avenue B, Block 401, Lot 17, 18 & 56, Borough of Manhattan.

**COMMUNITY BOARD #3M**  
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**168-08-A**

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110’ north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**  
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**OCTOBER 7, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 7, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
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**ZONING CALENDAR**

**46-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.

SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility building. The proposals contrary to sections 24-11 (Floor area ratio and lot coverage) and 24-522 (front wall height,

setback, sky exposure plane and number of stories). R6 district.

PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**  
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**175-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Mama Spa Corporation, owner.

SUBJECT – Application July 3, 2008 – Special Permit (73-36) to allow a Physical Culture Establishment at the cellar, first and second floors of an existing five-story building. The proposal is contrary to ZR Section 32-10. C6-1 district.

PREMISES AFFECTED – 141 Allen Street, between Rivington Street and Delancy Street, Block 415, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #3M**  
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**189-08-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Broadway Mercer Associates, owner; TSI Mercer Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (73-36) to allow the legalization of a Physical Culture Establishment in the cellar, first and second floors in the six-story mixed-use building. The proposal is contrary to ZR Section 32-10. C6-2 district.

PREMISES AFFECTED – 232 Mercer Street, Easterly side of Mercer Street 220’ north of Blecker Street. Block 532, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**190-08-BZ**

APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.

SUBJECT – Application July 14, 2008 – Variance (§ 72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§ 42-10). M1-5B district.

PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**203-08-BZ**

APPLICANT – Sheldon Lobel, P.C. for Avi Babayof, owner.

SUBJECT – Application August 1, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (§23-

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# CALENDAR

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141); side yards (§23-461) and less than the minimum rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1245 East 23<sup>rd</sup> Street, located on the east side of East 23<sup>rd</sup> Street between Avenue L and Avenue M. Block 7641, Lot 26, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**214-08-BZ**

APPLICANT – Harold Weinberg, for Yossi Cohen, owner.  
SUBJECT – Application August 19, 2008 – Special Permit (73-622) for the enlargement of an existing family residence. This application seeks to vary floor area, lot coverage and open space (23-141); less than the minimum side yard (23-461) and less than minimum required rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1855 East 24<sup>th</sup> Street, east side 305' north of Avenue S between Avenue R and Avenue S, Block 6830, Lot 64, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

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, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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*Jeff Mulligan, Executive Director*

**OCTOBER 8, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 8, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL PUBLIC HEARING**

**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**

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**140-07-A**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application May 25, 2007 - Appeal seeking

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 9, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**218-58-BZII**

APPLICANT – Vassalotti Associates Architects, LLP, for Norman Dawson, owner.

SUBJECT – Application June 3, 2008 – Extension of Term for an existing gasoline service station (Exxon), in a C1-2/R-2 zoning district, which expired on July 29, 2008.

PREMISES AFFECTED – 77-40 Hewlett Street, west side, 80.02' south of 77<sup>th</sup> Road, Block 8555, Lots 60 & 61, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for an extension of term of a gasoline service station, which expired on July 29, 2008; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, and then to decision on September 9, 2008; and

WHEREAS, Community Board 13, Queens, had no objections to the approval of the proposal; and

WHEREAS, the site is located on the west side of Hewlett Street between 77<sup>th</sup> Road and Union Turnpike; and

WHEREAS, the site is within a C1-2 (R-2) zoning district and is occupied with an automotive repair/gasoline service station with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 1958, when, under the subject calendar number, the Board granted a variance permitting the construction and maintenance of an automotive service station and accessory building; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on February 2, 1999, the grant was amended to permit an enlargement of an accessory building and to extend the term for ten years from the expiration of the prior grant on July 29, 1998; and

WHEREAS, the applicant now seeks to extend the term

of the variance, which expired on July 29, 2008; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, the Board notes that any extension of term would date back to the period of the prior expiration; 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 *reopen* the resolution, as adopted July 29, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on July 29, 2018 *on condition* that any and all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the term shall expire on July 29, 2018;

THAT the site be maintained free of debris and graffiti;

THAT all landscaping be planted and maintained as per the BSA-approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained by September 9, 2009;

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. 410100411)

Adopted by the Board of Standards and Appeals, September 9, 2008.

**546-82-BZIII**

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

# MINUTES

## THE RESOLUTION:

WHEREAS, this is an application for a reopening, an amendment, and an extension of the term for a previously granted variance for a parking lot (UG8) which expired on May 6, 2007; and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in *The City Record*, with continued hearings on July 15, 2008, July 22, 2008, August 26, 2008, and then to decision on September 9, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is on the north side of 89th Avenue, between 148<sup>th</sup> Street and 150<sup>th</sup> Street; and

WHEREAS, the site is located within an R7A zoning district within the Downtown Special Jamaica District, and is occupied by a parking lot; and

WHEREAS, on June 14, 1983, under the subject calendar number, the Board granted a variance to allow an enlargement of an existing legal non-conforming open parking lot for a term of ten years; and

WHEREAS, on May 9, 1985, the grant was extended by ten years, to expire on June 14, 2003, and amended to limit the capacity to 68 parking spaces and ten reservoir spaces; and

WHEREAS, the applicant represents that there have not been any changes to the site; and

WHEREAS, at hearing, the Board asked the applicant to explain the necessity for the razor wire along the top of the fence surrounding the subject site; and

WHEREAS, the applicant stated that the razor wire was necessary to deter trespassers, as the lot adjoined secluded areas; and

WHEREAS, the applicant provided photographs reflecting possible points of entry to the lot; and

WHEREAS, the applicant also seeks to amend the previously granted variance to permit unattended evening parking by non-commercial vehicles; and

WHEREAS, the applicant states that permitting unattended parking by local residents will relieve a shortage on available on-street parking spaces; and

WHEREAS, the applicant seeks a ten-year extension; and

WHEREAS, 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 amendment and extension of term 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 June 14, 1983, 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 14, 2013; *on condition* that the use and operation

of the site shall substantially conform to the approved drawings, filed with this application; and *on further condition*:

THAT the term of this grant shall expire on June 14, 2013;

THAT hours of operation of attended parking shall be from 7:00 a.m. to 6:00 p.m. and unattended parking for local residents will be provided from 6:00 p.m. to 7:00 a.m.; and

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. No. 1206/79)

Adopted by the Board of Standards and Appeals, September 9, 2008.

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## 788-89-BZ

APPLICANT – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

SUBJECT – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

PREMISES AFFECTED – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

## COMMUNITY BOARD #12Q

### APPEARANCES –

For Applicant: Mark McArthy.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening of a variance permitting automobile sales and repairs (Use Group 16), an extension of term which expired on November 19, 2006, and an extension of the time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on May 20, 2008 after due notice by publication in the *City Record*, with continued hearings on June 24, 2008,



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# MINUTES

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July 29, 2008 and then to decision on September 9, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the site is located at the northeastern intersection of Jamaica Avenue and 187<sup>th</sup> Place, within a C2-2 (R5) zoning district; and

WHEREAS, the subject site has a total lot area of 10,000 sq. ft.; and

WHEREAS, the site is currently occupied by a parking area for cars offered for sale and an accessory auto repair building; and

WHEREAS, the site has been under the jurisdiction of the Board since April 24, 1934, when, under Cal. No. 8-34-BZ, the Board approved the erection and maintenance of a gasoline service station at the site; and

WHEREAS, the grant was subsequently extended and amended; and

WHEREAS, on November 18, 1991, under the subject calendar number, the Board granted a variance to permit a change in use to auto repairs and auto sales, a legalization of an enlargement, and an extension of term, to expire November 19, 1996; and

WHEREAS, on November 18, 1997, under the subject calendar number, the Board granted an extension of ten years, to expire on November 19, 2006; and

WHEREAS, the applicant now seeks to extend the term; and

WHEREAS, the Board may extend the term of an expired variance; and

WHEREAS, at hearing, the Board directed the applicant to address the following conditions: (1) signage must comply with C2 zoning district regulations; (2) the site is overcrowded and has an inefficient traffic flow; and (3) the site is not well-maintained; and

WHEREAS, as to the signage, the applicant removed non-complying signage to bring the signage into compliance with C2 zoning district regulations; and

WHEREAS, the applicant also presented evidence that the site had been cleaned up; and

WHEREAS, the applicant submitted a site plan indicating the location of 36 parking spaces for cars offered for sale and four spaces for customer parking; the site plan is consistent with previously approved drawings; and

WHEREAS, based upon the above, the Board finds the requested extension 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 the resolution, as adopted November 18, 1991, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten (10) years from the expiration of the prior grant, to expire on November 19, 2017, and to extend the time to obtain a certificate of occupancy; *on condition* that any and all use shall substantially conform to drawings filed with this application

marked "Received June 19, 2008"-(3) sheets; and *on further condition*:

THAT this grant shall be for a term of ten (10) years, to expire on November 19, 2017;

THAT all exterior lighting shall be directed away from adjacent residential uses;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with C2 zoning district regulations;

THAT the hours of operation shall be limited to Monday through Sunday, 10:00 a.m. to 7:00 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 March 9, 2009;

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 9, 2008.

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## **164-99-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Ivan Duque, owner.

SUBJECT – Application March 20, 2008 – Extension of Term/waiver for a (UG12) eating and drinking establishment without restrictions on entertainment, in a C2-3/R-6 zoning district, which expired on August 15, 2006; an Amendment to the seating layout on the first and second floors, relocation of the bar on the second floor and the addition of two storage rooms in the cellar.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, north side of Roosevelt Avenue, 22' east of the intersection of 79<sup>th</sup> Street and Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

## **COMMUNITY BOARD #3Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

# MINUTES

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 August 15, 2006, for an eating and drinking establishment with entertainment and dancing (UG 12); and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, and then to decision on September 9, 2008; and

WHEREAS, the premises had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the north side of Roosevelt Avenue, east of the intersection of 79th Street and Roosevelt Avenue, and

WHEREAS, the premises is currently occupied by a two-story building that houses an eating and drinking establishment with entertainment and dancing (UG 12) on both floors; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 6, 1989 when, under calendar number 873-87-BZ, the Board granted a special permit pursuant to Z.R. § 73-244, to permit, in a C2-3(R6) zoning district, an eating and drinking establishment with entertainment and dancing (UG 12); and

WHEREAS, on August 15, 2000, under the subject calendar number, the Board granted an extension of the special permit for a term of three years; and

WHEREAS, on August 9, 2005, the Board granted an additional three-year term, such extension expired on August 15, 2006; and

WHEREAS, the applicant now requests an extension of term; and

WHEREAS, the applicant also seeks to amend the plans to permit changes to the seating layout on the first and second floors and to add two storage rooms to the cellar; and

WHEREAS, at the hearing the Board raised concerns with proposed changes to the second floor to provide seating which would not be permitted by the special permit; and

WHEREAS, the applicant agreed that the use of the second floor will comply with the terms of the previously approved 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 June 6, 1989, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit the noted amendment to the plans and to extend the term of the special permit for an eating and drinking establishment with entertainment and dancing for three (3) years from August 15, 2006, *on condition* that the use shall substantially conform to drawings as filed with this

application, marked ‘March 20, 2008’–(2) sheets and ‘August 5, 2008’–(3) 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 August 15, 2009;

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. 401619192)

Adopted by the Board of Standards and Appeals, September 9, 2008.

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## 43-02-BZ

APPLICANT – Sheldon Lobel PC, for George Pantelides, owner.

SUBJECT – Application February 1, 2002 – Under §72-21 to legalize an existing greenhouse-type structure and stairway platform encroaching partially within a required theoretical rear yard. Re-opened in Bulletin 88/4/54 denied in hearing.

PREMISES AFFECTED – 116 East 73<sup>rd</sup> Street, south side between Park Avenue and Lexington Avenue Block 1407, Lot 67, Borough of Manhattan.

## COMMUNITY BOARD #8M

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated January 14, 2002 and updated on February 1, 2002 acting on Alteration Application. No. 102232344 reads:

“Proposed legalization of greenhouse type construction within 30 ft. required rear yard is contrary to section 23-47 of the Zoning Resolution and the decision of the Board of Standards and Appeals on April 27, 2001 under Calendar No.: 31-01-A.”; and

WHEREAS, the subject premises are improved with

# MINUTES

an attached townhouse located between Park and Lexington Avenues in an R8BB/LH-1A zoning district which is also part of the Upper East Side Historic District; and

WHEREAS, the building contains four floors, a basement and cellar with a fully attached building, a non-complying portion of the rear of the subject premises protrudes into the required 30' rear yard; and

WHEREAS, on June 25, 1999, the Department of Buildings ("DOB") approved Alteration Application No.102232344 permitting the construction of a two story "greenhouse" which would occupy a formerly open space that constituted a non-compliant rear yard to the subject premises; and

WHEREAS, the above-referenced permit allowed for construction of a glass-enclosed staircase on the first and second floors with an open space at grade, which is the basement level; and

WHEREAS, the record indicates that construction of the glass-enclosed staircase was completed on or about September 1999; and

WHEREAS, the subject structure is built above the first story (the basement) and contains two stories, one at the first floor and the other at the second floor; and

WHEREAS, Z.R. § 23-47 requires that R8B zoning districts provide at least one rear yard with a depth of at least 30 feet; and

WHEREAS, however, at the basement, first and second floors, the building extends an additional 14' into the rear yard, leaving a non-compliant rear yard only 24'-2"; and

WHEREAS, on April 24, 2001, under Calendar Number 31-01-A, the Board granted an administrative appeal reversing the DOB decision to permit the construction of the two-story enlargement in the rear of subject premises; and

WHEREAS, under the subject calendar number, the owner of the subject premises subsequently filed an application pursuant to Z.R. § 72-21, to permit the legalization of the staircase structure encroaching partially within the required rear yard contrary to ZR. § 23-47; and

WHEREAS, the Board found that the subject structure failed to meet the definition of a greenhouse as per the Zoning Resolution and that the instant application did not meet the requirements of Z.R §72-21 (a), (b) and (d); and

WHEREAS, on January 14, 2003, under the subject calendar number, the Board denied the application seeking a variance to Z.R. § 23-47; and

WHEREAS, the applicant subsequently filed a petition pursuant to Article 78 of the Civil Practice Law and Rules seeking an order annulling the Board's decision; and

WHEREAS, the Supreme Court granted the petition and ordered the Board to grant the variance (see Pantelidis v. Board of Standards and Appeals, 814 N.Y.S.2d 891 (N.Y. Sup. 2005); and

WHEREAS, the Supreme Court decision was affirmed by the Appellate Division (43 A.D.3d 314 (1<sup>st</sup> Dep't 2004)) and by the Court of Appeals (10 N.Y.3d 846 (2008)); and

WHEREAS, the resolution adopted January 14, 2003,

under the subject calendar number is hereby annulled; and

*Therefore it is Resolved* that the Board of Standards and Appeals, in accordance with the December 23, 2005 order of the Supreme Court, permits within an R8B zoning district, the two-story enlargement of an existing five-story building that does not provide the required rear yard, contrary to ZR § 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 14, 2002"-- (6) 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;

THAT the Department of Buildings must 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 9, 2008.

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## 709-55-BZIII

APPLICANT – Walter T. Gorman, P.E., for L M T Realty Company, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application May 27, 2008 – Extension of Time to obtain a Certificate of Occupancy, in a C1-2/R4 zoning district, for a gasoline service station (Mobil) which expired on January 9, 2003; waiver of the rules and an Amendment to legalize existing condition contrary to previous approved plans.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lot 68, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 10 A.M., for decision, hearing closed.

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## 719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy

# MINUTES

which expired on October 26, 2000.  
PREMISES AFFECTED – 2525 Victory Boulevard,  
northwest corner of Willowbrook Road, Block 1521, Lot 1,  
Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: John Ronan.

**ACTION OF THE BOARD** – Laid over to October  
28, 2008, at 10 A.M., for continued hearing.

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## 115-94-BZ

APPLICANT – Martyn & Don Weston, for Irma Poretsky,  
owner.

SUBJECT – Application June 16, 2008 – (§11-411)  
Extension of Term/Waiver for an Automotive Repair Shop  
located in an R6 zoning district which expired on July 30,  
2006.

PREMISES AFFECTED – 2470-2480 Bedford Avenue, 60  
feet north of Clarendon Road, Block 5167, Lot 40, Borough  
of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Don Weston.

**ACTION OF THE BOARD** – Laid over to October  
28, 2008, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 95-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for  
6701 Realty, LLC, owner.

SUBJECT – Application April 16, 2008 – An appeal  
seeking a determination that the property owner has  
acquired common law vested right to continue development  
under the prior C4-3 zoning district regulations. C4-2A  
zoning district.

PREMISES AFFECTED – 6701 Bay Parkway, southeast  
corner of the intersection of Bay Parkway and West 8<sup>th</sup>  
Street, Block 6576, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

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, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an appeal requesting a Board  
determination that the owner of the premises has obtained the  
right to complete an enlargement of an existing commercial

building under the common law doctrine of vested rights and a  
rescission of a Stop Work Order issued against the property;  
and

WHEREAS, a public hearing was held on this  
application on July 29, 2008 after due notice by publication in  
*The City Record*, and then to decision on September 9, 2008;  
and

WHEREAS, the site was inspected by Chair Srinivasan,  
Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 11, Brooklyn  
recommends approval of this application; and

WHEREAS, the subject site consists of a two-story  
commercial building on the southeast corner of the  
intersection of Bay Parkway and West 8<sup>th</sup> Street, in the  
Bensonhurst neighborhood of Brooklyn; and

WHEREAS, the applicant proposes to add a three-story  
enlargement to an existing commercial building for a total  
floor area of 21,539 sq. ft.; and

WHEREAS, the subject site was formerly located within  
an C4-3 zoning district; and

WHEREAS, the proposed building complies with the  
former zoning district parameters; and

WHEREAS, however, on June 23, 2005 (hereinafter,  
the “Rezoning Date”), the City Council voted to adopt the  
Bensonhurst Rezoning, which rezoned the site to C4-2A; and

WHEREAS, the building does not comply with the C4-  
2A district parameters as to floor area and height; and

WHEREAS, on January 17, 2008, the applicant was  
issued a Stop Work Order by DOB, halting construction on  
the site; 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, Alteration Permit No. 301952590  
permitting the enlargement of the subject building (the  
“Alteration Permit”) was issued to the owner by the  
Department of Buildings (DOB) on June 2, 2005, prior to the  
Rezoning Date; and

WHEREAS, the applicant states that 100 percent of the  
foundation work necessary for the enlargement was completed  
by the Rezoning Date; and

WHEREAS, according to an April 15, 2008  
reconsideration of the Brooklyn Borough Commissioner, the  
building was vested on the Rezoning Date; and

WHEREAS, thus, the Board finds that the Alteration  
Permit was validly issued by DOB to the owner of the subject  
premises and was in effect until its lapse by operation of law  
on June 23, 2007; and

WHEREAS, the applicant notes that because the  
Alteration Permit was vested as of the Rezoning Date, the  
developer would have been eligible to apply for an extension  
of time to complete construction under Z.R. § 11-332; and

WHEREAS, the applicant states that the developer was  
unaware that an application for an extension of time to  
complete construction under Z.R. § 11-332 must be filed  
within 30 days of the of the date the permit lapsed; and

WHEREAS, the deadline for such an application was

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# MINUTES

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July 23, 2007; and

WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, the applicant cites to Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) for the proposition that the statutory text of Z.R §11-331 does not “codify or abolish the common-law doctrine of vested rights” and, further, that the developer’s failure to meet the deadline for filing an application for a building permit renewal under Z.R §11-331 would not affect the developer’s right to establish vested rights under the common law; and

WHEREAS, the Board notes that Kadin v. Bennett provides that, 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, the court in Kadin v. Bennett found that “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 lapse of the building permit, the owner had nearly completed the building enlargement; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site taken July 18, 2007, a schedule of work performed, cancelled checks, accounting summaries, and an affidavit of the project architect; and

WHEREAS, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the lapse of the building permit; and

WHEREAS, the Board also notes that construction of the superstructure, roofing, installation of windows, HVAC equipment, ductwork, interior framing, window installation and sheetrocking indisputably occurred prior to the lapse of the building permit; and

WHEREAS, the Board has reviewed the representations

as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the lapse of the building permit, and that said work 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 lapse of the building permit, the owner expended approximately \$2,386,288, including hard and soft costs and irrevocable commitments, out of approximately \$2,619,386 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks and accounting reports; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$2,182,288 for excavation, installation of foundations, exterior and interior construction and architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$204,000 in connection with work performed at the site prior to June 23, 2007 which had not yet been paid for; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, 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 represents that a complying development would have a maximum of three stories with a total floor area of 13,462 sq. ft., due to the C4-2A zoning district’s height and bulk restrictions; and

WHEREAS, the applicant contends that \$2,386,288 associated with project costs incurred prior to the lapse of the building permit would be lost if this appeal were denied; and

WHEREAS, the applicant contends and the Board agrees that such a loss is significant;

WHEREAS, additionally, the applicant explained the diminution in income that would occur if the C4-2A district height and bulk limits were imposed; and

WHEREAS, the applicant notes that a substantial portion of the building would have to be demolished and reconstructed for such a complying building, further compounding the economic harm to the owner; and

WHEREAS, the Board agrees that the need to redesign, the cost of demolition, the limitations of any complying development, and the \$2,386,288 in actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant

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# MINUTES

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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 Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a rescission of the Stop Work Order and a reinstatement of Alteration Permit No. 301952590, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 9, 2008.

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## 141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.  
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Hakime Altine.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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## 251-07-A thru 254-07-A

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner.

SUBJECT – Application November 2, 2007 – 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.

PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.

### COMMUNITY BOARD #ISI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: James E. Scott, Kim McEvoy, Stacey Murphy.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for continued hearing.

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## 266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Deirdre Carson and Stuart A. Klein.

For Opposition: Susan Reagan, Liam O’Hanlor, Bernadette Morrissy, Mindy M. Spiewak, Sherry Boosker, Ilya Novofastovsky, Ed Jaworski and Marsha B.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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## 191-08-BZY

APPLICANT – Stuart A. Klein, for 1610 Avenue S, LLC, owner.

SUBJECT – Application July 14, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Deirdre Carson and Stuart A. Klein.

For Opposition: Susan Reagan, Liam O’Hanlor, Bernadette Morrissy, Mindy M. Spiewak, Sherry Boosker, Ilya Novofastovsky, Ed Jaworski and Marsha B.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, SEPTEMBER 9, 2008  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**134-06-BZ**

**CEQR #06-BSA-104Q**

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 – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 402387449, reads in pertinent part:

- “1. The proposed multiple dwelling use is contrary to ZR § 22-12 and therefore requires approval of the Board of Standards and Appeals.
2. The proposed floor area and FAR exceeds that which is permitted under ZR § 23-141.
3. The proposed open space is less than the minimum required amount under ZR § 23-141.
4. The proposed front yard is less than the minimum required amount under ZR § 23-45.
5. The proposed multi-family residential building does not meet the sky exposure plane requirements under ZR § 23-631.
6. The proposed development exceeds the maximum number of dwelling units permitted on the zoning lot under ZR § 23-22.
7. The proposed rear yard on the interior lot portion

is less than required under ZR § 23-47;” and WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R1-2 zoning district, a proposed three-story residential building (Use Group 2) with 24 dwelling units and 34 accessory parking spaces (with an additional three reservoir spaces), which is not a permitted use, exceeds the maximum permitted FAR, does not provide the required open space, front yard, or rear yard, encroaches into the sky exposure plane, and exceeds the maximum number of dwelling units, contrary to ZR §§ 22-12, 23-141, 23-45, 23-631, 23-47 and 23-22; 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 February 5, 2008, April 15, 2008, June 17, 2008, and then to decision on September 9, 2008; and

WHEREAS, the hearing was closed and set for decision on July 29, 2008; the Board subsequently reopened the hearing to permit the applicant to submit revised plans and set the case for decision September 9, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommended disapproval of an earlier iteration of the proposal (for a five-story building), citing concerns about increased traffic and insufficient parking; and

WHEREAS, the Queens Borough President recommends disapproval of the application; and

WHEREAS, State Senator Frank Padavan and City Council Member Tony Avella recommend disapproval of the application; and

WHEREAS, certain neighbors, including representatives of the Douglaston/Little Neck Historical Society and the Douglaston Civic Association, provided testimony in opposition to the application, citing concerns about (1) whether the proposal represented the minimum variance, (2) the current use of the site as a parking lot, and (3) the potential traffic impact; and

WHEREAS, the Douglaston Civic Association was represented by counsel and provided submissions in opposition to the proposal, which include the following additional concerns (1) that the applicant had not met any of the required findings under ZR § 72-21, (2) the building’s bulk and number of dwelling units are not compatible with the neighborhood context, and (3) that there will be an increase in traffic generated by the building’s residents; and

WHEREAS, collectively, those opposed to the application are the “Opposition”; and

WHEREAS, the Opposition’s concerns are discussed in greater detail below; and

WHEREAS, the subject premises is located on the northwest corner of the intersection of Northern Boulevard and the Douglaston Parkway; and

WHEREAS, the site is irregularly-shaped, and has a total lot width of 95.11 feet and a total lot area of

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# MINUTES

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approximately 14,517 sq. ft.; and

WHEREAS, the site is occupied by a one-story vacant gasoline service station building, which will be demolished; and

WHEREAS, the Board notes that on February 15, 1961, under BSA Cal. No. 603-37-BZ, it granted a variance for the construction of a gasoline service station with accessory uses; the grant was subsequently amended and extended at various times; and

WHEREAS, additionally, on May 14, 1991, under BSA Cal. No. 216-88-BZ, the Board granted a variance to permit the construction of a three-story and penthouse office building (Use Group 6); construction pursuant to the variance never commenced and it expired on May 14, 1995; and

WHEREAS, the Board notes that the current proposal has gone through several iterations throughout the hearing process, including the following: (1) a five-story building with 39,950 sq. ft. of floor area (2.75 FAR), 40 dwelling units, a total height of 70'-6", and 63 parking spaces; (2) a four-story building with 31,960 sq. ft. of floor area (2.20 FAR), 32 dwelling units, a total height of 51'-6", and 34 parking spaces; and (3) a four-story building, with 30,520 sq. ft. of floor area (2.10 FAR), 28 dwelling units, a total height of 48'-6", and 34 parking spaces; and

WHEREAS, the Board directed the applicant to reduce the size of the building and the number of dwelling units so that the building was more compatible with adjacent uses and the neighborhood context and so that the proposal met the minimum variance finding; and

WHEREAS, the applicant provided revised financial analyses to correspond to the iterations; and

WHEREAS, the applicant now proposes a three-story Use Group 2 residential building (only Use Group 1 residential development is permitted); with a front wall and total height of 30'-0" (the maximum permitted front wall height is 25'-0" and the total height is based on compliance with the sky exposure plane); 22,860 sq. ft. of floor area (1.57 FAR) (the maximum permitted floor area is 7,258.5 sq. ft. and 0.50 FAR); front yards with depths of 15'-0" and 10'-1 1/2" (front yards with minimum depths of 20'-0" are required); open space of 52 percent (150 percent is the minimum permitted); 24 dwelling units (the maximum permitted number of dwelling units is two); 34 parking spaces (with an additional three reservoir spaces); and a rear yard of 15'-0" within the interior lot portion of the zoning lot (30'-0") is required.

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) a sloping lot condition, (2) soil contamination due to a history of automotive related uses at the site, which requires remediation, and (3) the location on a heavily-trafficked intersection, in close proximity to multi-family dwellings; and

WHEREAS, as to the sloping condition, the applicant notes that there is a difference in the elevation across the site from the northeast corner along Douglaston Parkway to the

southwest corner at Northern Boulevard of approximately 15'-7"; and

WHEREAS, due to this condition, a masonry retaining wall is required along the Douglaston Parkway frontage at varying heights to secure the adjacent sidewalk; and

WHEREAS, the applicant represents that the slope creates a pit-like condition, which would not be compatible with a complying single-family home situated near Douglaston Parkway, that would result in first floor windows being nearly flush with the Douglaston Parkway street level; and

WHEREAS, further, the applicant notes that the corner lot is irregularly-shaped and that the provision of the two required front yards, open space and rear yard would result in the bulk of the building shifting away from the street frontage and towards the adjacent site, or would require additional height to accommodate the proposed floor area; and

WHEREAS, the proposed front wall and total height, including encroachment into the sky exposure plane, permits the construction of uniform floor plates and a more efficient design; and

WHEREAS, the applicant represents that a multiple-dwelling building, with the inclusion of a partial subsurface parking level is required to overcome the grade difference and elevate the first floor of the building above the street; and

WHEREAS, as to the soil contamination, the applicant represents that (1) the existence of a trench drain at the southwestern corner of the site will require significant remediation, (2) an area of oil-like stained soil has been identified at the site, and (3) there is a likely presence of underground storage tanks at the site; and

WHEREAS, the applicant submitted a study from an environmental consultant, which supports these assertions; and

WHEREAS, the applicant represents that due to these conditions, any development of the property will require environmental monitoring and remediation, which will increase the construction costs and contribute to the infeasibility of as-of-right development; and

WHEREAS, the Board notes that the prior approved use of the site for automotive uses dates back to before 1961 and predates the enactment of modern environmental protection regulations and safeguards for such uses; and

WHEREAS, as to the site's location at a heavily-trafficked intersection, the applicant notes that Northern Boulevard and Douglaston Parkway are both major thoroughfares, and the location is not marketable for single-family home development; and

WHEREAS, specifically, the applicant notes that nearby commercial uses and multi-dwelling buildings are more compatible because they do not require the expectation of privacy associated with less dense residential development; and

WHEREAS, the applicant performed a survey along two miles of Northern Boulevard in the area, which revealed that there are no one-family or two-family homes directly on Northern Boulevard and only one such home was adjacent to it; and

WHEREAS, the applicant states that no other sites



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# MINUTES

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located on Northern Boulevard are similarly zoned R1-2 and surrounded by large non-conforming multi-family and commercial uses and located at a major intersection; and

WHEREAS, the Board does not accept that the site's location at a heavily trafficked intersection presents a unique condition that creates practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees that the site's topography and irregularity, the increased construction costs as a result of contamination, in combination with the site's location at a heavily trafficked intersection may result in one or two-family homes that are not marketable; and

WHEREAS, the applicant represents that the waivers are required to develop marketable dwelling units with sufficient floor area to overcome the premium construction costs, while maintaining a building with a bulk and density that is 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 financial analyses of: (1) an as-of-right scenario of two single-family homes with frontage on Northern Boulevard; (2) a 2.75 FAR multiple dwelling building with 40 units; (3) a lesser variance scenario of 0.60 FAR with ten dwelling units (reflecting an R3-2 scenario); and (4) a lesser variance scenario of 1.51 FAR (reflecting an R5 infill development); and

WHEREAS, the applicant concluded that the 2.75 FAR scenario was the only scenario of the four analyzed that provided a reasonable rate of return; and

WHEREAS, as noted, throughout the hearing process, the Board directed the applicant to reduce the degree of waivers requested 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 that the proposed three-story (1.57 FAR) building with 24 dwelling units is the minimum capable of yielding a reasonable return; and

WHEREAS, thus, the applicant asserts that the use, number of dwelling units, FAR, height, front yard, rear yard, and open space waivers are required to overcome the premium construction costs and to construct a marketable residential use, given the constraints of the site; 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 on both Northern Boulevard and Douglaston Parkway is characterized by a mix of uses and a significant number of multi-family residential buildings, including a six-story building directly adjacent to the site and four additional six-story and seven-story buildings within close proximity to the site, each of which is occupied by from 44 to 148 dwelling units; and

WHEREAS, the applicant notes that, in addition to having fewer dwelling units than the five afore-mentioned buildings, the proposed building also has less floor area and the second lowest FAR; and

WHEREAS, in response to the Opposition's concerns about (1) the building's bulk, number of dwelling units and compatibility with neighborhood character; and (2) the potential increase in traffic generated by the building's residents and at the Board's direction, the applicant reduced (i) the total height of the building from 70'-6" to 30'-0", (ii) reduced the number of proposed dwelling units from 40 to 24, and (iii) reduced the number of parking spaces from 63 to 37 (including three reservoir spaces); and

WHEREAS, at the Board's direction, the applicant also eliminated one of the parking levels and associated entrances to the site on Northern Boulevard to address concerns about traffic circulation and safety; and

WHEREAS, the applicant notes that 34 of the parking spaces will be attended and three will be reservoir spaces; the single entrance to the parking level will be approximately 140 feet from the intersection of Northern Boulevard and Douglaston Parkway; and

WHEREAS, the Board has determined that the reduced bulk (at 1.57 FAR), number of dwelling units and parking spaces reflects a design that is compatible with neighborhood character and is consistent with an R5 infill development, which permits an FAR of up to 1.65; and

WHEREAS, specifically, the final iteration provides for a front wall and total building height of 30 feet (34 feet including the parapet wall), which reflects a front wall height only five feet to nine feet in excess of the maximum permitted, and a total height that would be permitted but for the encroachment into the sky exposure plane; and

WHEREAS, the Board notes that the applicant will provide more than one parking space for each dwelling unit; 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 condition to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which predates modern environmental regulations; and

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# MINUTES

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WHEREAS, the Board notes that the applicant initially claimed that additional floor area, height, dwelling units and parking spaces 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 were 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 1.57 FAR distributed appropriately on the site; and

WHEREAS, the Board notes that the applicant has significantly reduced the number of dwelling units from the 40 initially proposed to 24, reduced the total height from 70'-6" to 30'-0", and reduced the number of parking spaces from 63 to 37 (including three reservoir spaces); and

WHEREAS, the Board notes that the applicant also initially proposed two parking levels with two entrances; and

WHEREAS, the Opposition claims that the applicant has failed to submit evidence or advance any legal arguments as to why the two prior variances granted in 1938 (gasoline service station) and 1991 (three-story and penthouse office building) are no longer feasible as a minimum variance; and

WHEREAS, the applicant states that neither the previous grant for a gasoline service station, nor that for a three-story office building represent either a lesser development scenario or a minimum variance scenario, since each would be a more intense use of the property than the proposed development; and

WHEREAS, the Board agrees that the applicant has analyzed several lesser development scenarios in order to meet the minimum variance finding and that the two previous grants would analyze commercial developments that typically have greater impacts than multiple dwellings in residential neighborhoods; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Opposition raised the following supplemental concerns: (1) that the number of Notices of Liability issued by the NYC Department of Transportation for driving infractions at the intersection reflects the hazardous nature of the intersection; (2) the economic analysis does not reflect that as-of-right development is infeasible, (3) the building will produce a significant traffic impact, (4) the site is not unique and the development is not compatible with neighborhood character, (5) single-family homes are located within a 1100 foot radii of the site, and (6) the contamination of the site constitutes a self-created hardship; and

WHEREAS, in response, the applicant states that: (1) violation information is inconclusive as there is no context for the number of infractions cited or their nature and no evidence substantiates the claim that the intersection is most dangerous; (2) the economic analysis reflects a loss for the as-of-right

development; (3) the environmental analysis reflects that even the initial proposal for 40 dwelling units and 63 parking spaces would have no adverse impact on traffic conditions; (4) an aggregate of factors may create uniqueness (see *Douglaston Civic Association v. Klein*, 67 A.D.2d 54 (2d Dep't 1979), aff'd 51 N.Y.2d 963 (1980)) and the site's uniqueness was previously recognized in two prior variance cases, (5) the nearest single-family homes are located on interior neighborhood streets which are not comparable to the subject site's location on a more heavily trafficked thoroughfare, and (7) as noted, the Board acknowledges that the contamination of the site predates modern environmental regulations and is not deemed to be self-created; 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. 06BSA104Q, dated June 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, the Department of Environmental Protection's Bureau of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a January, 2006 Environmental Assessment Statement and (2) an November, 2006 Phase I Environmental Site Assessment report; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a Restrictive Declaration was executed on February 18, 2007 and recorded on March 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

# MINUTES

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 R1-2 zoning district, a proposed three-story residential building with 24 dwelling units and 34 accessory parking spaces (with three additional reservoir spaces), which is not a permitted use, exceeds the maximum permitted FAR, does not provide the required open space, front yard, or rear yard, encroaches into the sky exposure plane, and exceeds the maximum number of dwelling units, contrary to ZR §§ 22-12, 23-141, 23-45, 23-631, 23-47 and 23-22, *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 15, 2008”– six (6) sheets and “Received September 3, 2008”– three (3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of three stories, a maximum of 24 dwelling units, a total height and streetwall height of 30’-0”, a floor area of 22,860 sq. ft. (1.57 FAR), front yards with minimum depths of 15’-0” and 10’-1 ½”, a rear yard depth of 15’-0”, a minimum open space of 52 percent, and 34 parking spaces (with three reservoir spaces), as illustrated on the BSA-approved plans;

THAT the parking spaces shall be limited to accessory parking for the proposed residential development;

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;

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 9, 2008.

## 39-08-BZ

### CEQR #08-BSA-060R

APPLICANT – Eric Palatnik, P.C., for Kenbar Development, owner; Synergy Fitness, lessees.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of the subject building. The proposal is contrary to §32-10. C2-1 district. PREMISES AFFECTED – 77 Richmond Hill Road, middle of the Ken-Bar Plaza shopping center on Richmond Hill Road, Block 2380, Lot 500, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 12, 2008, acting on Department of Buildings Application No. 510022878, reads in pertinent part:

“Proposed use of the premises for a health club facility (physical culture establishment) within an existing retail strip mall, is not permitted as-of-right in C2-1 district, and is contrary to Section 32-00 of Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-1 zoning district, the legalization of a physical culture establishment (PCE) on the first floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in *The City Record*, with a continued hearing on July 29, 2008 and then to decision on September 9, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on Richmond Hill Road at the Kenbar Plaza Shopping Center; and

WHEREAS, the PCE occupies a portion of the first floor of a one-story commercial building; the PCE occupies 8,580 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Synergy Fitness; and

WHEREAS, the applicant represents that the services at the PCE include cardiovascular exercise machines, weight-training equipment, and group instruction; and

WHEREAS, the hours of operation are: Monday through Saturday, from 4:30 a.m. to 9:00 p.m.; Sunday, from 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, at hearing, the Board raised concerns with the apparent blocking of an exit by fitness equipment, as noted during two site visits; and

WHEREAS, the applicant submitted a photograph indicating that there is no longer an obstruction to egress

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# MINUTES

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from the exit; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since November 9, 2007, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time, between November 9, 2007 and the date of this grant, when the PCE operated without the special permit; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.08BSA060R, dated May 29, 2008; 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.

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 C2-1 zoning district, the legalization of a physical culture establishment in a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 9, 2008"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 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 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 Certificate of Occupancy shall be obtained within one year of the date of this grant, by September 9, 2009;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT the occupancy of the PCE shall be as reviewed and approved by DOB;

THAT DOB shall inspect and approve compliance with all conditions of this grant prior to the issuance of a 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);

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 9, 2008.

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## **11-07-BZ**

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41<sup>st</sup> Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

## **COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Peter Hirshman, Eliot Berpy and other.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.

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## **245-07-BZ**

APPLICANT – Law Offices of Howard Goldman, LLC, for Hawthorne Village, LLC, owner.

SUBJECT – Application October 30, 2007 – Variance (§72-21) to allow the residential conversion of an existing five-story industrial building. Proposed project will contain 147 dwelling units, ground floor retail space and 59 accessory parking spaces. Proposal is contrary to use regulations

# MINUTES

(§42-00). M1-2 district.

PREMISES AFFECTED – 220 Water Street, between Water and Bridge Streets, Block 41, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Chris Wright.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for deferred decision.

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## 257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

## COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Michael Phillips.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for decision, hearing closed.

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## 35-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Ed Jaworski.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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## 42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper, Leslie Flug, Judith Baron and Ed Jaworski.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 51-08-BZ

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR §24-11 (lot coverage, FAR, & open space), §24-382 (required rear yard equivalent), §24-522 and §23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Francis R. Angelino, Joan Krevin, Harpert Dhaliwal and Hyman Mamiye.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86<sup>th</sup> Street, LLC, owner; TSI Bay Ridge 86<sup>th</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR §32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86<sup>th</sup> Street, north side of 86<sup>th</sup> Street and east of 4<sup>th</sup> Avenue, Block 6035, Lot 64, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

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# MINUTES

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APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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**158-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Kay Robyn Askenazi and Shay Ashkenazi, owners.

SUBJECT – Application June 6, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141); less than the minimum side yards (§23-461) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1814 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue R and Avenue S, Block 6832, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Louis Goldberg, Anthony Gracebbie, Marvin K. and Ed Jaworski.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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**179-08-BZ**

APPLICANT – Rizzo Group, for 600 Broadway Partners, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 22, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the fourth, fifth, and sixth floors in a six-story building. The proposal is contrary to ZR §42-10. M1-5 district.

PREMISES AFFECTED – 600 Broadway, southeast corner of Houston Street, Block 511, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Kenneth Barbina.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 38

September 25, 2008

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### DIRECTORY

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**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|   |     |
|---|-----|
| DOCKET .....                              | 621 |
| <b>SPECIAL HEARING</b> of October 8, 2008 |     |
| Morning .....                             | 622 |
| <b>CALENDAR</b> of October 28, 2008       |     |
| Morning .....                             | 622 |
| Afternoon .....                           | 623 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, September 16, 2008**

Morning Calendar .....624

**Affecting Calendar Numbers:**

217-03-BZ            142 Pennsylvania Avenue, Brooklyn  
182-85-BZ           206-08 20<sup>th</sup> Street, Brooklyn  
183-85-BZ           206-08 20<sup>th</sup> Street, Brooklyn  
605-86-BZ           7606 7<sup>th</sup> Avenue, Brooklyn  
47-08-A             7228 Thursby Avenue, Queens  
176-08-A            105 Beach 217<sup>th</sup> Street, Queens  
33-08-A             67 Brighton 1<sup>st</sup> Lane, Brooklyn

Afternoon Calendar .....626

**Affecting Calendar Numbers:**

201-07-BZ           2317 Ralph Avenue, Brooklyn  
248-07-BZ           32-15 60<sup>th</sup> Street, Queens  
271-07-BZ           213-219 West 23<sup>rd</sup> Street, Manhattan  
41-08-BZ            64-35 223<sup>rd</sup> Place, Queens  
67-08-BZ            3842 Bedford Avenue, Brooklyn  
102-08-BZ           103 Beachview Avenue, Staten Island  
167-08-BZ           253 5<sup>th</sup> Avenue, Manhattan  
220-07-BZ           847 Kent Avenue, Brooklyn  
268-07-BZ           1644 48<sup>th</sup> Street, Brooklyn  
9-08-BZ             555 Foster Road, Staten Island  
178-07-BZ           2261-2289 Bragg Street and Avenue W, Brooklyn  
135-08-BZ           71-52 172<sup>nd</sup> Street, Queens  
157-08-BZ           365 Bay Street, Staten Island  
208-08-BZ           2117-2123 Avenue M, Brooklyn

Correction .....640

**Affecting Calendar Numbers:**

196-07-A thru       9 Federal Place, Staten Island  
199-07-A



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# DOCKET

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New Case Filed Up to September 16, 2008

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**235-08-BZ**

1508 Union Street, Located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot(s) 41, Borough of **Brooklyn**, **Community Board: 9**. Special Permit pursuant to §73-50 to legalize the enlargement of a commercial building within the required 30 foot rear yard required along a residential district boundary line coincident with a rear lot line. C8-2 District

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**OCTOBER 8, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 8, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL PUBLIC HEARING**

**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**

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**140-07-A**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application May 25, 2007 – Appeal 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, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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*Jeff Mulligan, Executive Director*

**OCTOBER 28, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 28, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**739-76-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application September 16, 2008 – Extension of Term & Extension Time to obtain a Certificate of Occupancy for a (UG15) Amusement Arcade (Peter Pan Games), in a C4-1 zoning district which will expire on April 10, 2009.

PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**117-97-BZ**

APPLICANT – Vito J. Fossella, P.E. (LPEC), for Gosehine Garcia, owner.

SUBJECT – Application August 28, 2008 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a legal non-conforming (UG6) eating and drinking establishment (Basille's) in an R3-2 zoning district which expired on September 15, 2008.

PREMISES AFFECTED – 1112 Forest Avenue, south side of Forest Avenue, 25' west of the intersection of Forest Avenue and Greenleaf Place, Block 352, Lot 47, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**197-00-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for SLG Graybar Sublease LLC, owner; Equinox 44th Street, Incorporated, lessee.

SUBJECT – Application August 8, 2008 – Application to amend a special permit previously granted by the Board of Standards and Appeals to permit, in a C5-3 (MiD) zoning district, a 1,010 sq. ft. extension of an existing physical culture establishment ("Equinox Fitness") within an existing commercial building.

PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208'4" north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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# CALENDAR

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## APPEALS CALENDAR

### 149-08-A

APPLICANT – Jack Lester, for Neighbors, et al, owner.  
SUBJECT – Application May 29, 2008 – Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.  
PREMISES AFFECTED – 808 Columbus Avenue, 97<sup>th</sup> and 100<sup>th</sup> Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.  
**COMMUNITY BOARD #7M**

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### 217-08-BZY

APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Steven Reich, owner.  
SUBJECT – Application October 28, 2008 – Extension of time to complete construction (11-332) of an enlargement to an existing development commenced prior to the text amendment on July 23, 2008. R6 zoning district.  
PREMISES AFFECTED – 126 First Place, southside of First Place, 300' east of the intersection of Court Street and First Place, Block 459, Lot 17, Borough of Brooklyn.  
**COMMUNITY BOARD #6BK**

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**OCTOBER 28, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 28, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### 134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.  
SUBJECT – Application April 30, 2008 – Variance (72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.  
PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

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### 195-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Aron Bistrizky, owner.  
SUBJECT – Application July 16, 2008 – 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 required rear yard (23-47) and less than the required side yard (23-461) in an R-2 zoning district.  
PREMISES AFFECTED – 1350 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue N and Avenue M, Block 7662, Lot 72, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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### 196-08-BZ

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.  
SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.  
PREMISES AFFECTED – 792 Tenth Avenue aka 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.  
**COMMUNITY BOARD #4M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 16, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**217-03-BZ**

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

**182-85-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 19, 2007 – Extension of Term/Waiver of a previously granted Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment (Fox Glass), in an R6B zoning district, which expired on September 9, 2006.

PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

APPEARANCES –

For Applicant: Mark McCarthy.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for continued hearing.

**183-85-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 9, 2007 – Extension of Term/waiver of a previously granted Variance (§72-21) for the operation of a (UG16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, in an R6B zoning district, which expired on November 18, 2006.

PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup>

and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

APPEARANCES –

For Applicant: Mark McCarthy.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for continued hearing.

**605-86-BZ**

APPLICANT – Anthony M. Salvati, Architects, for Bernard Wechsler, owner.

SUBJECT – Application November 19, 2007 – Extension of Term of a Variance (§72-21) previously granted for a (UG4) two story medical office building in an R5B(BR) zoning district which expired on March 31, 2007; an Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 1998 and a Waiver of the rules.

PREMISES AFFECTED – 7606 7<sup>th</sup> Avenue, southeast corner of 76<sup>th</sup> Street and 7<sup>th</sup> Avenue, Block 5953, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Mark McCarthy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for decision, hearing closed.

**APPEALS CALENDAR**

**47-08-A**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50' west of intersection with Beach 72<sup>nd</sup> Street, Bock 16066, Lot 46, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough

# MINUTES

Commissioner, dated January 31, 2008, acting on Department of Buildings Application No. 410031665 reads, in pertinent part:

“1). Proposed construction is located within the bed of a mapped street contrary to section 35 of the General City Law. Refer to the Board of Standard and Appeals;” and

WHEREAS, a public hearing was held on this application on June 3, 2008 after due notice by publication in the *City Record*, with continued hearings on June 24, 2008, July 29, 2008, and August 26, 2008, then to closure and decision on September 16, 2008; and

WHEREAS, by letter dated March 11, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated May 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated August 26, 2008, the Department of Transportation states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated January 31, 2008, acting on Department of Buildings Application No. 410031665, 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 3, 2008”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; 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 16, 2008.

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## 176-08-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Elizabeth Conlon, lessee.

SUBJECT – Application July 7, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street contrary to General City Law Section 36. R4.

PREMISES AFFECTED – 105 Beach 217<sup>th</sup> Street, east side

Beach 217<sup>th</sup> Street, 80’ south of Breezy Point Boulevard, Block 16450, p/o Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD –**

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 10, 2008, acting on Department of Buildings Application No. 410094838, reads in pertinent part:

“A1- The street giving access to the existing building to be altered is not duly placed on the 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 the total perimeter of the building fronting directly upon a legally mapped street, contrary to Section 27-291 of the Administrative Code;” and

WHEREAS, a public hearing was held on this application on September 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated, July 28, 2008 the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated June 10, 2008, acting on Department of Buildings Application No. 410094838 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 July 7, 2008 – 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 DOB shall review the proposed plans to ensure that it complies with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

# 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2008.

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## 33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> Lane, a/k/a 209-213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane, 63.19'W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Yuriy Menzak.

For Administration: Anthony Scaduto.

**ACTION OF THE BOARD** – Laid over to October 20, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:15 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, SEPTEMBER 16, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 201-07-BZ

#### CEQR #08-BSA-012K

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 §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.

#### ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 20, 2007, acting on Department of Buildings Application No. 301935057, reads in pertinent part:

“Proposed bank Use Group 6 in an R3-2 district is contrary to ZR 22-00 and BSA Calendar No. 07-57-BZ; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of a one-story commercial building (Use Group 6) to be used as a bank branch with accessory parking which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in *The City Record*, with a continued hearing on January 15, 2008; and

WHEREAS, the subject application was withdrawn at the request of the applicant on January 30, 2008; the applicant rescinded said withdrawal on February 22, 2008 and the application was set for continued hearing on February 26, 2008 and May 20, 2008, and then to decision on July 29, 2008 which was deferred until September 16, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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# MINUTES

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WHEREAS, Community Board 18, Brooklyn, recommended approval of this application, subject to a condition limiting parking to bank patrons; and

WHEREAS, the proposed building will have one story with a total floor area of 3,258 sq. ft., an FAR of 0.17, a front yard of 7'-3", a side yard of 16'-6", a total height of approximately 25'-11" and 16 parking spaces; and

WHEREAS, the subject site is located within an R3-2 zoning district on the southeast corner of Ralph Avenue and Avenue M; and

WHEREAS, the site has an irregular trapezoidal shape, with approximately 100'-0" feet of frontage on Ralph Avenue, 110'-0" of frontage on Avenue M and 170'-0" of frontage on East 65<sup>th</sup> Street; and

WHEREAS, the site is currently occupied by a gasoline service station and has a lot area of 18,654 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 23, 1957, when, under BSA Cal. No. 7-57-BZ, the Board granted an application to permit the use of the site as a gasoline service station, with accessory lubricatorium, minor repairs, car wash, store room, office, store, parking and storage of motor vehicles; and

WHEREAS, subsequently, the term of this grant has been extended by the Board at various times, most recently on February 28, 2006 for a term of 10 years, expiring on September 30, 2015; and

WHEREAS, the applicant proposes to demolish the existing gasoline service station and to develop a commercial Use Group 6 building to be operated as a Commerce Bank branch with drive-up banking services; and

WHEREAS, as noted above, the proposal requires a use waiver; 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 development: (1) the site's irregular shape; (2) the site's soil conditions; and (3) the preponderance of adjacent commercial uses; and

WHEREAS, as to the site's irregular shape, the applicant represents that it is a through lot/ corner parcel that is irregularly shaped due to its location at the intersection of Ralph Avenue, Avenue M and East 65<sup>th</sup> Street; and

WHEREAS, the subject lot has a lot depth ranging from 109 feet at its shortest point, to 170 feet at its longest point; the applicant states that the lot's shape and dimensions enable complying homes to be built on only one of its three frontages; and

WHEREAS, the applicant further states that an attempt to develop housing at relatively normal depths results in oversized and oddly-shaped yards; and

WHEREAS, as to the soil conditions, the applicant represents that soil tests reflect that there is contamination by several chemical pollutants; and

WHEREAS, specifically, the soil boring analysis reflects that there are at least ten volatile and semi-volatile

organic compounds, among other contaminants, present at the site; and

WHEREAS, the Board notes that the prior approved use of the site as a gasoline service station, automotive repair shop and vehicle storage facility predates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant states that the site's environmental conditions impede the development of the site for a conforming residential use; and

WHEREAS, the applicant has documented substantial premium construction costs associated with the remediation of the site for a conforming residential use; and

WHEREAS, as to its location, the applicant states that the area in which the site is located is characterized by a high degree of commercial uses; and

WHEREAS, the applicant further states that the site is bordered on the north, south and east by zoning districts permitting commercial uses; and

WHEREAS, the applicant represents that the preponderance of adjacent commercial uses stifles demand for a complying residential development; 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 initially submitted a feasibility study which analyzed an as of right development consisting of four two-family homes totaling 11,192 square feet of floor area; and

WHEREAS, the study concluded that the conforming scenario would not realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze the feasibility of a development consisting of five two-family homes; and

WHEREAS, feasibility study determined that the development of five two-family homes also would not realize a reasonable return; and

WHEREAS, the applicant represents that residential development would also entail significantly higher remediation costs than the proposed development; and

WHEREAS, the applicant further represents that the excavation, soil removal and vapor mitigation costs which would be necessitated by a residential development would not be necessary for the proposed development, which will be built on a slab, which was determined to be feasible; and

WHEREAS, at hearing, the Board asked the applicant to explain why the existing automotive service station use was no longer viable; and

WHEREAS, a response by the applicant stated that modern automotive service stations rely largely on accessory uses, such as convenience stores or car washes to generate profits, but that neither such use is permitted under the existing Board grant; and

WHEREAS, based upon the above, the Board has

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# MINUTES

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determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning district regulations 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 bank branch will operate seven days a week, but will open no earlier than 7:30 a.m. on Mondays through Saturdays and will close before 8:30 p.m. on those days; on Sundays the bank would open no earlier than 10:00 a.m. and close no later than 6:00 p.m.;

WHEREAS, as noted above, the applicant further represents that the surrounding area is occupied by an abundance of commercial uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that within a 400-ft. radius of the site, approximately three-quarters of the frontage along the east and west sides of Ralph Avenue and the north side of Avenue M are zoned for commercial uses; and

WHEREAS, the applicant further represents that it is fully compliant with the bulk and signage regulations applying to nearby commercial districts, as well as with the bulk regulations applying to the R3-2 district; and

WHEREAS, the applicant states that the proposed variance would replace a gasoline service station (UG 16) with a bank (UG 6), which would be a use more compatible with the residential district; and

WHEREAS, the site plan indicates that landscaping, including shrubbery and plantings will screen the open parking area, in conformance with the new landscaping standards set forth in ZR §§ 25-60, Article III Chapter 6, and 37-90; and

WHEREAS, at hearing, the Board raised concerns regarding the original proposal which included an entrance from East 65<sup>th</sup> Street, a primarily residential street, as well as with the location of the bank building and drive through and their proximity to an adjacent residential area; and

WHEREAS, in a submission to the Board, the applicant provided two alternative site plans showing the bank building situated closer to Avenue M and Ralph Avenue, and further from residential uses; and

WHEREAS, the applicant represents that the alternative plans are infeasible because they reduce the number of parking spaces and create a less efficient traffic flow for automobiles and bank patrons; and

WHEREAS, the Board notes that given the traffic patterns and circulation on local streets in the area, the elimination of a curb cut would reduce the number of vehicles traveling on East 65<sup>th</sup> Street; and

WHEREAS, the Board directed the applicant to eliminate vehicular access from East 65<sup>th</sup> Street; and

WHEREAS, the applicant submitted a revised site plan showing the elimination of the East 65<sup>th</sup> Street curb cut; and

WHEREAS, Community Board 18, Brooklyn recommended limiting parking to bank patrons; the Board notes that the parking on the site is accessory to the bank and that no public parking is provided; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's pre-existing subsoil conditions, slope and its location on an intersection adjacent to commercial uses; and

WHEREAS, the Board notes that the applicant had originally proposed to provide a curb cut within 18 feet of the intersection of East 65<sup>th</sup> Street and Avenue M, adjacent to residential uses; and

WHEREAS, the revised plans now propose to relocate the curb cut to Avenue M, which is characterized by commercial uses; 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, a Restrictive Declaration was executed on September 6, 2008 and recorded against the subject property on September 12, 2008 to address hazardous materials concerns; and

WHEREAS, the applicant shall conduct additional Phase II testing to determine whether remediation is required; if remediation is necessary, the applicant shall prepare a Remedial Action Plan (RAP) which shall be subject to review and approval by the Department of Environmental Protection ("DEP"); and

WHEREAS, if a RAP is required, DEP shall issue a Notice to Proceed letter to the applicant; and

WHEREAS, if a RAP is not required, DEP shall issue a Notice of No Objections; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

*Therefore it is Resolved*, that the Board of Standards and Appeals adopts DCP's Negative Declaration under 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 proposed construction of a one-story commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the



# MINUTES

objections above noted, filed with this application marked "Received May 6, 2008"--seven (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 3,258 sq. ft., an FAR of 0.17, a front yard of 7'-3", a side yard of 16'-6", a total height of approximately 25'-11" and 16 parking spaces;

THAT landscaping, including shrubbery and plantings screening the open parking area, shall comply with the commercial parking lot regulations set forth in ZR §§ 25-60, Article III Chapter 6, and 37-90;

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 16, 2008.

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## 248-07-BZ

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.  
SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to (§ 23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, September 16, 2008.

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## 271-07-BZ

### CEQR #08-BSA-037M

APPLICANT – The Rizzo Group, for Mitchell Marks, owner; Club Ventures II, LLC., lessee.

SUBJECT – Application November 28, 2007 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (PCE) in the C2-7A portion of the zoning district. A variance is also requested to allow the PCE use in the 22'3" portion of the site in the R8A zoning district. The proposal is contrary to §§ 22-10 and 32-18.

PREMISES AFFECTED – 213-219 West 23<sup>rd</sup> Street, north side of 23<sup>rd</sup> Street between Seventh and Eighth Avenues, Block 773, Lot 34, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Kenneth Barbina, Esq.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 5, 2007, acting on Department of Buildings Application No. 104856648, reads in pertinent part:

1. The proposed Physical Culture Establishment is not permitted in the R8A residential district as and is contrary to ZR 22-10
2. The proposed Physical Culture Establishment is not permitted as of right within the C2-7A district and thus is contrary to ZR 32-18. PCE must be legalized pursuant to 73-36;" and

WHEREAS, this is an application under ZR § 73-36 and 73-03, to permit, on a site partially within an R8A zoning district and partially within a C2-7A zoning district, the legalization of a physical culture establishment (PCE) on the first floor, second floor, cellar and cellar mezzanine level of a ten-story residential building; and an application under ZR § 72-21 to permit, on a site, within an R8A zoning district, a PCE use on a portion of the first floor, second floor, and cellar level of the same residential building, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on April 1, 2008 after due notice by publication in *The City Record*, with a continued hearings on May 13, 2008 and August 26, 2008, and then to decision on September 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, has no objection to approval of this application; and

WHEREAS, the subject site is located on the north side of West 23<sup>rd</sup> Street, between Seventh Avenue and Eighth Avenue; and

WHEREAS, the subject site is occupied by a ten-story building previously occupied by the McBurney YMCA which is now occupied by residential condominiums; and

WHEREAS, the PCE is operated as the David Barton Gym; and

WHEREAS, the PCE occupies a total of 31,809 sq. ft of floor area, with 8,852 sq. ft. of floor area on the first floor, second floor, and cellar levels, respectively, and 5,253

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# MINUTES

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sq. ft. of floor area on the cellar mezzanine level; and

WHEREAS, subject site and building has a frontage along 23<sup>rd</sup> Street of 75'-0" and a depth of 121'-0"; and

WHEREAS, the applicant states that the subject building was constructed in 1869, predating the mapping of the current zoning district; and

WHEREAS, Tax Lot 34 is divided horizontally by a zoning district boundary, with the southern portion, extending to a depth of 98'-9" from the 23<sup>rd</sup> Street lot line, located within a C2-7A district, and a northern interior portion, extending 22'-3" south from the northern lot line, located within an R8AA zoning district; and

WHEREAS, a variance is required because 4,338 sq. ft. of the PCE's floor area (approximately 14 percent of the total PCE floor area) is located within the R8A zoning district, in which a special permit for a PCE use may not be granted; and

WHEREAS, the applicant states that the following unique physical conditions inherent to the existing building create an unnecessary hardship in complying strictly with the applicable use provisions of the Zoning Resolution: (i) the division of the lot by a district zoning boundary; and (ii) the inaccessibility of the R8A portion of the subject property; and

WHEREAS, the applicant states that subject building was constructed in 1869 and was occupied from 1904 until 2000 by the YMCA as a non-residential building with sleeping accommodations; and

WHEREAS, the applicant states that subject building was formerly part of a larger through-block building which extended from 23<sup>rd</sup> Street to 24<sup>th</sup> Street (the "former building"), with a total depth of 197'-6" and that, beginning in 1904, recreational uses were sited in the portion of the building which fronted 23<sup>rd</sup> Street; and

WHEREAS, a certificate of occupancy indicates that recreational uses including a weight room, exercise rooms, running track and swimming pool were located in the cellar through eighth floor of the former building; and

WHEREAS, the applicant further states that the former building was vertically divided in 2000 into two buildings now consisting of (i) a building fronting 24<sup>th</sup> Street which is owned and operated as a community facility with sleeping accommodations (the "24<sup>th</sup> Street Building"), and (ii) a market-rate residential building fronting 23<sup>rd</sup> Street (the "23<sup>rd</sup> Street Building"); and

WHEREAS, according to plans submitted by the applicant, the two buildings were divided at a depth of 121 feet from the southern lot line at 23<sup>rd</sup> Street; and

WHEREAS, the applicant represents that the dividing point for the 23<sup>rd</sup> Street Building and the 24<sup>th</sup> Street Building was determined by the structural system of the former building, in which recreational uses were located in the portion fronting on 23<sup>rd</sup> Street and residential uses were located in the portion fronting on 24<sup>th</sup> Street; and

WHEREAS, the boundary of the C2-7A zoning district extends to a depth of 100 feet from the street frontage of the 23<sup>rd</sup> Street Building, with an interior portion

of Lot 24 comprising approximately 1,669 sq. ft. of lot area thereby lying within the R8A zoning district; and

WHEREAS, the applicant states that only residential or community facility uses are permitted as-of-right within the portion of the subject site which is within the R8A zoning district; and

WHEREAS, the applicant states that a conforming use of this interior lot area is constrained by its "landlocked" location which can only be accessed from the area fronting 23<sup>rd</sup> Street within the C2-7A district; and

WHEREAS, the applicant states that the impracticability of access burdens the use of the space for residential or community facility use, which would result in its vacancy and in an inability to produce income; thus creating an economic hardship; and

WHEREAS, the Board finds that there are unique physical conditions inherent to the site created by the location of a zoning district boundary which bisects an existing building and creates space within the cellar, first and second floor which is inaccessible from a street and which can be accessed only through an area which is zoned for commercial use; and

WHEREAS, the Board further finds that the limitations of the R8A area in terms of use, create an unnecessary hardship in complying strictly with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the applicant has submitted a feasibility study which examined the economic viability of using only the floor area within the C2-7A district for PCE use and for conforming uses; the analysis demonstrated that neither a conforming use, nor a PCE, within the C2-7A area alone would yield the owner a reasonable return; and

WHEREAS, the applicant states that the existing configuration of the 23<sup>rd</sup> Street Building constrains the ability to use the three stories within the R8A district for residential purposes and therefore that alternative was not analyzed; and

WHEREAS, the Board raised concerns regarding the calculation of site value and questioned the calculations of revenue generated by the mezzanine and cellar space which were satisfied by a subsequent submission by the applicant; and

WHEREAS, the hours of operation will be: Monday through Friday from 5:30 a.m. to midnight; Saturday from 8:00 a.m. to 9:00 p.m., and Sunday from 5:00 a.m. to 11:00 p.m.; and

WHEREAS, at hearing, the Board directed the applicant to remove non-complying banners and other signage; and

WHEREAS, the applicant submitted photographs indicating that all non-complying signage had been removed; and

WHEREAS, 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, or be detrimental to the public welfare; and

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# MINUTES

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WHEREAS, the unnecessary hardship associated with a conforming use of the zoning lot was not caused by the owner, nor by a predecessor in interest, but is inherent in the site and its location; and

WHEREAS, the hardship results from the application of the Zoning Resolution to the subject zoning lot; and

WHEREAS, therefore, 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 Z.R. §72-21; and

WHEREAS, the Board notes that the subject application meets all the requirements of the special permit for a PCE, except for the required zoning district; and

WHEREAS, the applicant represents that the services at the PCE will include fitness training and cardiovascular and equipment; 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 applicant states that the subject site has been used as a PCE since 1904; 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, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-03 & 73-36; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 (ak); 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. 08BSA037M, dated March 24 2008; 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.

*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 of the required findings under ZR § 73-36 and 73-03, to permit, on a site partially within an R8A zoning district and partially within a C2-7A zoning district, the legalization of a physical culture establishment (PCE) on the first floor, second floor, cellar and cellar mezzanine level of a residential building; and makes each of the required findings under ZR § 72-21 to permit, on a site, within an R8A zoning district, a PCE use on an 4,338 sq. ft. area of the first floor, second floor, and cellar level of a residential building, contrary to ZR § 22-10; *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 28, 2007- (5) sheets; and *on further condition*;

THAT the grant of this variance and term of the special permit shall be ten years, expiring on September 19, 2015;

THAT all massages will be performed only by New York State licensed massage therapists;

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 from 5:30 a.m. to midnight; Saturday from 8:00 a.m. to 9:00 p.m., and Sunday from 5:00 a.m. to 11:00 p.m.; and

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 substantial construction shall be completed in accordance with Z.R. §72-23; 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2008.

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**41-08-BZ**

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# MINUTES

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## CEQR #08-BSA-062Q

APPLICANT – Omnipoint Communications Inc., for Mid Queens Ltd., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application February 27, 2008 – Special Permit (§73-30) to permit a proposed 65 foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 64-35 223<sup>rd</sup> Place, Block 7658, Lot 2, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Robert Gardioso.

For Opposition: Antonio Whitaker and Steven E.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated February 20, 2008, acting on Department of Buildings Application No. 410029963, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to ZR § 22-00 and therefore 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 telecommunications pole (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 August 19, 2008, after due notice by publication in *The City Record*, and then to decision on September 16, 2008; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application; and

WHEREAS, a representative of Council Member Weprin testified on his behalf in opposition to the application; and

WHEREAS, a number of local residents testified in opposition to the application citing concerns with aesthetics and health; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the proposed telecommunications pole will be located at a site which is occupied by a two-story apartment complex with 180-dwelling units; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a light pole with a height of 65 feet, with internally-mounted antennas and related equipment, located within a fenced in area; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 further represents that the height of the pole is the minimum necessary to provide the required wireless coverage; and

WHEREAS, the applicant states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; 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, at hearing the Board asked the applicant to clarify whether the siting of the monopole and equipment would result in the loss of parking spaces within the residential complex; and

WHEREAS, the applicant stated that additional parking spaces would be made available to replace any lost parking spaces; 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. 08-BSA-062Q, dated February 27, 2008; 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

# MINUTES

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 R3-2 zoning district, the proposed construction of a 65-foot telecommunications pole (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 February 27, 2008"-(6) sheets; and on further condition;

THAT any fencing 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, September 16, 2008.

## 67-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Jack M. Skaba, owner.

SUBJECT – Application March 31, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3842 Bedford Avenue, west side of Bedford Avenue, Block 6807, Lot 22, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 11, 2008, acting on Department of Buildings Application No. 310067799, reads in pertinent part:

“Proposed enlargement of a single family residence within an R3-2 zoning district:

- 1) Exceeds floor area ratio as per ZR § 23-141,
- 2) Exceeds permitted lot coverage ratio as per ZR § 23-141,
- 3) Provides less than required open space ratio as per ZR § 23-141,
- 4) Provides less than 30’-0” rear yard required per ZR § 23-47,
- 5) Provides side yards less than required 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 ratio, lot coverage, 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 July 29, 2008, 2008, after due notice by publication in *The City Record*, and then to decision on September 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; 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, between Quentin Road and Avenue R; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 1,838.5 sq. ft. (0.46 FAR); and

WHEREAS, the premises are 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 1,838.5 sq. ft. (0.46 FAR), to 4,000 sq. ft. (1.0 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 50 percent (a minimum of 65 percent is required) and a lot coverage ratio of 50 percent (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement will provide one side yard along the southern lot line with a width of 8’-

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# MINUTES

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0" and will maintain the existing non-complying side yard along the northern lot line with a width of 3'-10" (two side yards with minimum widths of 5'-0" and 8'-0", respectively and a total minimum width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the existing non-complying front yard has a depth of 7'-1"; the applicant does not propose to increase the degree of non-compliance; and

WHEREAS, at hearing the Board questioned how much of the original home was being retained; and

WHEREAS, the applicant submitted revised plans showing which portions of the existing home were being retained; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, lot coverage, 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 August 28, 2008"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 4,000 sq. ft. (1.0 FAR), lot coverage of 50 percent, an open space ratio of 50 percent, one side yard with a minimum width of 8'-0", one side yard with a minimum width of 3'-10", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height and compliance with the sky exposure plane;

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 16, 2008.

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## 102-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a one family residence on a vacant undersized lot that does not provide sufficient side yards (§23-461) and does not provide one of the required parking spaces (§25-22) within a R3-1 zoning Low Density Growth Management district.

PREMISES AFFECTED – 103 Beachview Avenue, 40' west of intersection of Beachview Avenue and Idlesee Place, Block 3724, Lot 30, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

## ACTION OF THE BOARD –

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016313, reads in pertinent part:

"The proposed construction of a one family, Use Group 1 building in zoning district R3-1 with deficient side yard is contrary to ZR 23-461, and proposed parking . . . is contrary to ZR 25-22"; 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 single-family home that does not provide the required side yards or off-street parking spaces and is contrary to ZR §§ 23-461 and 25-22; and

WHEREAS, a public hearing was held on this application on June 24, 2008, after due notice by publication in *The City Record*, with a continued hearing on August 19, 2008, and then to decision on September 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

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# MINUTES

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WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, a number of local residents testified in opposition to the application citing concerns with parking and over-development; and

WHEREAS, Council Member James S. Oddo provided written testimony in opposition to the application; and

WHEREAS, the site is located on the north side of Beachview Avenue, between Idlease Place and Laconia Avenue, in an R3-1 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 75 feet, and a total lot area of approximately 1,500 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with cellar single-family home with one off-street parking space; and

WHEREAS, the proposed home will have the following complying parameters: 900 sq. ft. of floor area (0.6 FAR), a wall height of 25'-0", a total height of 31 feet, a front yard of 15'-0", and a rear yard of 30'-0"; and

WHEREAS, however, the applicant proposes to provide two side yards each with a width of 2'-6" (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; and

WHEREAS, the applicant proposes to provide one parking space in the cellar of the proposed home; 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 narrowness of the subject lot; and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-33; and

WHEREAS, the Board notes that that Z.R. § 23-33 would eliminate a lot area requirement for a single-family dwelling, but not the side yard and parking objections; and

WHEREAS, the applicant represents that the requested side yard and parking waivers are therefore 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, the applicant represents that providing a driveway would reduce the width of the house to seven feet; 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 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, the applicant proposes to provide one off-street parking space in the cellar of the home; 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 the home complies with all relevant bulk regulations; and

WHEREAS, the applicant states that the height and design of the proposed home is dictated by its location within a designated flood hazard area, which requires that building floor area be located above the Base Flood Elevation; and

WHEREAS, the Department of Buildings' Technical Policy and Procedure Notice #1/04 respecting Special Flood Hazard Areas states that, "[e]xcept for floodproofed spaces . . . the floor level of any space below the base flood elevation shall be no lower than the level of adjacent grade on at least one side of the structure"; and

WHEREAS, the applicant states that, in the instant case, the adjacent grade is below the level of the base flood elevation on both sides of the home, so that the lowest level would not be useable for living purposes; and

WHEREAS, at hearing the Board asked the applicant whether the cellar height could be lowered; and

WHEREAS, the applicant states that lowering the cellar height so that the first floor was located at the Base Flood elevation would reduce the total building height by approximately three feet, but would also result in the elimination of the proposed interior garage space; and

WHEREAS, the applicant further states that the proposed perimeter wall height is less than 21 feet above the base flood elevation and is therefore compliant with the district height limitations; and

WHEREAS, the applicant represents that the home is similar in height to other recently constructed homes in the surrounding area, which were also required to conform to the

# MINUTES

floor hazard regulations; and

WHEREAS, the applicant submitted photographs showing that the subject site abuts a home of with a similar height and that other two-story homes are located in the surrounding area; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant has established that the subject lot is an undersized lot pursuant to ZR § 23-33; 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 the required side yards and off-street parking; and

WHEREAS, the applicant reduced the height of the first floor by one foot to a height of eight feet; 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; and

WHEREAS, a submission by the applicant confirms that the subject property is outside the jurisdiction of the Freshwater Wetlands Act and the Tidal Wetlands Act, and therefore that no permits from the NYS Department of Environmental Conservation are required for development of the property; 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 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 single-family home that does not provide the required side yards or off-street parking spaces and is contrary to ZR §§ 23-462 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 June 20, 2008"– (5) sheets and "August 11, 2008,"-(5) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 900 sq. ft. of floor area (0.6 FAR), a wall height of 25'-0", a total height of 31 feet, and two side yards with widths of 2'-6", as per the BSA-approved plans;

THAT the bonus area of 0.10 FAR shall be located only within the attic area beneath the sloped plane, as per the BSA-approved plans;

THAT the use of the cellar shall be limited to unfinished parking and storage;

THAT the above condition shall be included 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 significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2008.

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## 167-08-BZ

### CEQR #08-BSA-098M

APPLICANT – Sheldon Lobel, P.C., for Profile Enterprises, L.P., owner; for Garden Retreat Spa, LLC, lessee.

SUBJECT – Application June 19, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the second floor of an existing seven-story building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 253 5<sup>th</sup> Avenue, northeast corner of the intersection formed by 5<sup>th</sup> Avenue and West 28<sup>th</sup> Street, Block 858, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 20, 2008, acting on Department of Buildings Application No. 110112477, reads in pertinent part:

“Proposed use of a portion of the second floor as a physical culture health establishment is contrary to ZR section 32-10 in C5-2 zoning district and shall be referred to the Board of Standards and Appeals for approval;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site located within a C5-2 zoning district, the operation of a physical culture establishment (PCE) on a portion of the second floor of a seven-story commercial office building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, with a continued hearing on August 26, 2008 and then to decision on September 16, 2008; and



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# MINUTES

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WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 5, Manhattan, recommends disapproval of this application; and

WHEREAS, the subject site is located at the northeast corner of the intersection of Fifth Avenue and East 28<sup>th</sup> Street; and

WHEREAS, the PCE occupies approximately 1,874 sq. ft. of floor area on the second floor of the subject site; and

WHEREAS, the PCE is operated as Garden Retreat Spa and began operations on December 1, 2007; and

WHEREAS, the applicant represents that the services at the PCE include those of a full-service day spa including massage by licensed professionals; and

WHEREAS, the hours of operation are from: 10:00 a.m. to 12:00 a.m., seven days a week; and

WHEREAS, at hearing, the Board inquired as to the means of ingress and egress to and from the PCE after business hours; and

WHEREAS, the applicant responded that access to the PCE from the primary entrance on Fifth Avenue will be provided by a security system consisting of a closed circuit camera and door buzzer; and

WHEREAS, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 (ak); 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. 08BSA097M, dated June 18, 2008; 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 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 legalize, on a site within a C5-2 zoning district, the operation of a physical culture establishment on a portion of the second floor of a seven-story commercial office building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 17, 2008"-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 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 above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT prior to the issuance of any permits, DOB shall review compliance with all requirements concerning ingress and egress;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

THAT sound attenuation measures shall be installed and maintained in accordance with 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);

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.

# MINUTES

Adopted by the Board of Standards and Appeals,  
September 16, 2008.

## 220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§ 42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for an adjourned hearing.

## 268-07-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

## 9-08-BZ

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§ 72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§ 107-42); to vary side yards (§ 23-462) and front yards (§ 23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for decision, hearing closed.

## 178-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.  
PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman and Eliot Berry.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

## 135-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 71-52 172<sup>nd</sup> Street, northwest corner of the intersection of 73<sup>rd</sup> Avenue and 172<sup>nd</sup> Street, Block 6959, Lot 1, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel and Boris Munor.

For Opposition: Michael Spedalle and Laurence Lande.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

## 157-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Waterfront Owners, LLC, owners.

SUBJECT – Application June 5, 2008 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane

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# MINUTES

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and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district. PREMISES AFFECTED – 365 Bay Street, east side of Bay Street between Grant Street and St. Julian Place, Block 488, Lot 71, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Joshua Rinesmith.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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**208-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt and 2123 Avenue M, LLC, owner.

SUBJECT – Application August 11, 2008 – 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) and less than the minimum side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22<sup>nd</sup> Street, Block 7639, Lot 1 & 3 (tent 1), Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on January 15, 2008, under Calendar Nos. 196-07-A thru 199-07-A and printed in Volume 93, Bulletin No. 3, is hereby corrected to read as follows:

### 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** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated August 4, 2007, acting on Department of Buildings Application Nos. 510006208 and 510006217, read in pertinent part:

“The street giving access to the proposed construction of a new two family attached building Use Group 2 in R-5 Residential District is not duly placed on the official map of the City of New York contrary to General City Law 36 and therefore is referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated January 9, 2008, acting on Department of Buildings Application Nos. 510006226 and 510006235, read in pertinent part:

“The street giving access to the proposed construction of a new one family attached building Use Group 2 in R-5 Residential District is not duly placed on the official map of the City of New York contrary to General City Law 36 and therefore is referred to the Board of Standards and Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on December 4, 2007, after due notice by publication in the *City Record*, and then to continued hearing on January 15, 2008, with decision on that same date; and

WHEREAS, this application requests to build two one-

family homes (at 15 and 11 Federal Place) and two two-family homes (at 9 and 17 Federal Place) which do not front on a legally mapped street, contrary to Section 36 of the General City Law; and

WHEREAS, by letter dated September 8, 2007, the Fire Department states that it has reviewed the application and raised objections regarding access to the site as well as the layout of the proposed homes; and

WHEREAS, in response, the applicant states that all proposed homes will be fully sprinklered; the applicant submitted revised site plans which note that the homes will comply with Local Law 10 of 1999; and

WHEREAS, by letter dated December 24, 2007, the Fire Department states that it has reviewed the revised site plans and does not have any 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 August 4, 2007, and January 9, 2008, acting on Department of Buildings Application Nos. 510006208, 510006217, 510006226, and 510006235 are 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 drawings filed with the application marked “Received January 7, 2008”-(2) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall approve the lot subdivision prior to the issuance of permits;

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 15, 2008.

**\*The resolution has been corrected in the 4<sup>th</sup> WHEREAS. Corrected in Bulletin Nos. 38, Vol. 93, dated September 25, 2008.**

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*Jeff Mulligan, Executive Director*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 39

October 2, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

|                                     |         |
|-------------------------------------|---------|
| DOCKET .....                        | 643     |
| <b>CALENDAR</b> of October 28, 2008 |         |
| Morning .....                       | 644     |
| Afternoon .....                     | 644/645 |

# CONTENT

**MINUTES of Regular Meetings,  
Tuesday, September 23, 2008**

Morning Calendar .....646

**Affecting Calendar Numbers:**

709-55-BZ            2000 Rockaway Parkway, Brooklyn  
 681-68-BZ            137-42 Guy Brewer Boulevard, Queens  
 705-68-BZ            88-14/22 182<sup>nd</sup> Street, Queens  
 389-85-BZ            2090 Bronxdale Avenue, Bronx  
 222-90-BZ            80-02 Kew Gardens Road, Queens  
 68-94-BZ             2100 Bartow Avenue, Bronx  
 24-96-BZ             213 Madison Street, Manhattan  
 340-03-BZ            408 Greenwich Street, Manhattan  
 151-08-BZY          5-15 West 125<sup>th</sup> Street, Manhattan  
 168-08-A             1479 Rosedale Avenue, Bronx  
 152-08-A             515 West 23<sup>rd</sup> Street, Manhattan  
 177-08-A             515 West 23<sup>rd</sup> Street, Manhattan

Afternoon Calendar .....649

**Affecting Calendar Numbers:**

238-07-BZ            5-11 47<sup>th</sup> Avenue, Queens  
 245-07-BZ            220 Water Street, Brooklyn  
 94-08-BZ             1501 Pitkin Avenue, Brooklyn  
 145-08-BZ            1121 East 28<sup>th</sup> Street, Brooklyn  
 148-08-BZ            1383 East 27<sup>th</sup> Street, Brooklyn  
 165-08-BZ            11 Penn Plaza, Manhattan  
 243-07-BZ &  
   244-07-A            120 John Street, Staten Island  
 257-07-BZ            3 East 101<sup>st</sup> Street, Manhattan  
 291-07-BZ            1912 New York Avenue, Brooklyn  
 59-08-BZ             591 Forest Avenue, Staten Island  
 76-08-BZ             621 Beach 9<sup>th</sup> Street, Queens  
 79-08-BZ             117-23 132<sup>nd</sup> Street, Queens  
 84-08-BZ             67-24 Main Street, Queens  
 89-08-BZ             1101 Victory Boulevard, Staten Island  
 93-08-BZ             112-12, 112-18, 112-24 Astoria Boulevard, Queens  
 159-08-BZ            68-70 Spring Street, Manhattan  
 178-08-BZ            153 Norfolk Street, Brooklyn  
 185-08-BZ            170 Claremont Avenue, Manhattan  
 194-08-BZ            432 Lafayette Street, Manhattan

**MINUTES of Special Hearing,  
Wednesday, September 24, 2008**

Morning Calendar .....669

**Affecting Calendar Numbers:**

136-08-A             846 70<sup>th</sup> Street, Brooklyn  
 202-08-BZY          131 Second Place, Brooklyn  
 212-08-A             131 Second Place, Brooklyn

Correction .....670

**Affecting Calendar Numbers:**

713-55-BZ            181-05 Horace Harding Expressway, Queens  
 190-92-BZ            180 East End Avenue, Manhattan  
 170-93-A             220 Industrial Loop, Staten Island

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# DOCKET

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New Case Filed Up to September 23, 2008  
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**236-08-BZ**

1986 East 3rd Street, West side of East 3rd Street, approximately 100 feet south of Avenue S, Block 7105, Lot(s) 152, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home.  
-----

**237-08-BZ**

37 Hillside Avenue, South side of Hillside Avenue approximately 450' east of the intersection of Broadway and Hillside Avenue, Block 2170, Lot(s) 118, Borough of **Manhattan, Community Board: 12**. Variance to allow a mixed residential and community facility building, contrary to bulk regulations.  
-----

**238-08-BZ**

876 Kent Avenue, West side of Kent Avenue, approximately 91' north of the intersection of Myrtle Avenue, Block 1897, Lot(s) 56, Borough of **Brooklyn, Community Board: 3**. Variance to allow a residential building, contrary to use 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.**

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# CALENDAR

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**OCTOBER 28, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 28, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **739-76-BZ**

**APPLICANT** – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessee.

**SUBJECT** – Application September 16, 2008 – Extension of Term & Extension Time to obtain a Certificate of Occupancy for a (UG15) Amusement Arcade (Peter Pan Games), in a C4-1 zoning district which will expire on April 10, 2009.

**PREMISES AFFECTED** – 12-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.  
**COMMUNITY BOARD #7Q**

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### **117-97-BZ**

**APPLICANT** – Vito J. Fossella, P.E. (LPEC), for Gosehine Garcia, owner.

**SUBJECT** – Application August 28, 2008 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a legal non-conforming (UG6) eating and drinking establishment (Basille's) in an R3-2 zoning district which expired on September 15, 2008.

**PREMISES AFFECTED** – 1112 Forest Avenue, south side of Forest Avenue, 25' west of the intersection of Forest Avenue and Greenleaf Place, Block 352, Lot 47, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **197-00-BZ**

**APPLICANT** – Rothkrug, Rothkrug & Spector LLP, for SLG Graybar Sublease LLC, owner; Equinox 44th Street, Incorporated, lessee.

**SUBJECT** – Application August 8, 2008 – Application to amend a special permit previously granted by the Board of Standards and Appeals to permit, in a C5-3 (MiD) zoning district, a 1,010 sq. ft. extension of an existing physical culture establishment ("Equinox Fitness") within an existing commercial building.

**PREMISES AFFECTED** – 420 Lexington Avenue, west side of Lexington Avenue, 208'4" north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## **APPEALS CALENDAR**

### **149-08-A**

**APPLICANT** – Jack Lester, for Neighbors, et al, owner.  
**SUBJECT** – Application May 29, 2008 – Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.

**PREMISES AFFECTED** – 808 Columbus Avenue, 97<sup>th</sup> and 100<sup>th</sup> Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**OCTOBER 28, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 28, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----

## **ZONING CALENDAR**

### **203-07-BZ**

**APPLICANT** – Sheldon Lobel, P.C., for Gastar, Inc., owner.

**SUBJECT** – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§ 35-311 & § 36-21). R6/C2-2 district.

**PREMISES AFFECTED** – 137-35 Elder Avenue (aka 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### **134-08-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Asher Goldstein, owner.

**SUBJECT** – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

**PREMISES AFFECTED** – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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# CALENDAR

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## **170-08-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.

SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR Sections 24-11 (Floor area and lot coverage), 24-36 (Rear yard), 24-522 ((Height and setback), and 24-552 (Rear yard setback). R8 district.

PREMISES AFFECTED – 411-431 East 69<sup>th</sup> Street, block bounded by East 69<sup>th</sup> and East 70<sup>th</sup> Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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## **195-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Aron Bistritzky, owner.

SUBJECT – Application July 16, 2008 – 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 required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1350 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue N and Avenue M, Block 7662, Lot 72, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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## **196-08-BZ**

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.

SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.

PREMISES AFFECTED – 792 Tenth Avenue, a/k/a 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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REGULAR MEETING

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 23, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**709-55-BZIII**

APPLICANT – Walter T. Gorman, P.E., for L M T Realty Company, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application May 27, 2008 – Extension of Time to obtain a Certificate of Occupancy, in a C1-2/R4 zoning district, for a gasoline service station (Mobil) which expired on January 9, 2003; waiver of the rules and an Amendment to legalize existing condition contrary to previous approved plans.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lot 68, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy for a gasoline service station, and an amendment to legalize existing conditions that deviate from the previously approved plans; and

WHEREAS, a public hearing was held on this application on June 24, 2008 after due notice by publication in *The City Record*, with continued hearings on July 29, 2008 and September 9, 2008, and then to decision on September 23, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez; and

WHEREAS, the site is located at the northwest intersection of Rockaway Parkway and Seaview Avenue, within a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 16, 1956 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, the grant was extended on January 9, 2001 for a term of ten years from the expiration of the prior grant, to expire on February 2, 2010, with a condition that a certificate of occupancy be obtained by January 9, 2003; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight during the merger of the corporate owner; and

WHEREAS, the applicant therefore seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks to legalize site conditions that fail to conform to the previously approved plans, to reflect: (i) the location of an above ground lube oil tank in the northwest corner, (ii) the enlargement of the two curb cuts located on the northwestern side of Rockaway Parkway, (iii) the modification of the location of the curb cuts on Seaview Avenue and (iv) the use of a restroom as storage space; and

WHEREAS, at hearing the Board questioned the necessity of providing five curb cuts at the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting the removal of the curb cut located on the southwestern side of Seaview Avenue, and the curb cut located at the intersection of Rockaway Parkway and Seaview Avenue; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy and the amendment to the approved plans 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 16, 1956, so that as amended this portion of the resolution shall read: “to permit a six-month extension of time to obtain a certificate of occupancy, to expire on March 23, 2009, and to legalize existing conditions that do not comply with the previous approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received August 25, 2008”–(5) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained by March 23, 2009;

THAT all signage shall comply with C1-2 zoning district regulations;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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

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# MINUTES

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relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 310066781)

Adopted by the Board of Standards and Appeals September 23, 2008.

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## 681-68-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Sharon Cohen, owner.

SUBJECT – Application June 4, 2008 – Amendment to a previously granted Variance (§72-21) for the change of use on the first floor of an existing one story building from Offices (UG6) and Air-Freight Storage (UG16) to Retail Stores (UG6), in an R3-1 zoning district, with accessory storage in the cellar and accessory parking for patrons to remain.

PREMISES AFFECTED – 137-42 Guy Brewer Boulevard, northwest corner of 140<sup>th</sup> Avenue and Guy Brewer Boulevard, Block 12309, Lot 17, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

For Opposition: Ella Smith and Joshua T. Wojehocski.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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## 705-68-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Lanide Realty Corporation, owner; City Auto Corporation, lessee.

SUBJECT – Application March 27, 2008 – Extension of Term/waiver for a (UG8) parking lot in an R4-1 zoning district which expired on April 27, 2007.

PREMISES AFFECTED – 88-14/22 182<sup>nd</sup> Street, 128’ south of the intersection of Hillside Avenue and 182<sup>nd</sup> Street, Block 9917, Lots 7, 11, 143, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dole.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for decision, hearing closed.

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## 389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application June 13, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an

Amendment to legalize the conversion of the service bays to a convenience store.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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## 222-90-BZ

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for 80-02 Fee Owner LLC, owner; Jack LaLanne Fitness Centers d/b/a Bally Total Fitness; lessee.

SUBJECT – Application August 7, 2008 – Extension of Term/waiver for the continued operation of a previously granted PCE (Bally Total Fitness), in a C4-4 zoning district, which expired on August 13, 2006 and an Extension of Time to obtain a Certificate of Occupancy which expired on September 23, 1998.

PREMISES AFFECTED – 80-02 Kew Gardens Road, west side of block front at Union Turnpike, Block 3348, Lot 37, Borough of Queens.

### COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Barbara Hair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for decision, hearing closed.

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## 68-94-BZ

APPLICANT – Cozen O’Connor, for Bay Plaza Community Center LLC, owner; Jack LaLanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application August 14, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted special permit for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expired on March 12, 2008. The premise is located in a C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, southside of Baychester Avenue, Block 5141, Lot 810, Borough of Bronx.

### COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Barbara Hair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

# MINUTES

Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for decision, hearing closed.

## 24-96-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§ 11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Todd Dole.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

## 340-03-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, by Howard S. Weiss, Esq., for 408-410 Greenwich Street LLC.

SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 10 A.M., for an adjourned hearing.

## APPEALS CALENDAR

### 151-08-BZY

APPLICANT – Law Office of Howard Goldman, for 5-15 West 125<sup>th</sup> Street, lessee Harlem Community Development Corp., owner,

SUBJECT – Application May 29, 2008 – Extension of time to complete construction (11-331) under the prior zoning district regulations C4-4. C4-4A zoning district.

PREMISES AFFECTED – 5-15 West 125<sup>th</sup> Street, between Fifth Avenue and Malcom X Boulevard, Block 1723, Lots 23, 31, 45, 46, 144, Borough of Manhattan.

## COMMUNITY BOARD #10M

APPEARANCES – None.

**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, September 23, 2008.

### 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Lyra Altman and Joe Quintessenza.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

### 152-08-A

APPLICANT – Quinn McCabe LLP, for 23 High-Line LLC, c/o Alf Naman, owners.

SUBJECT – Application May 30, 2008 – Appeals seeking to vacate a Stop Work Order issued by the Department of Buildings for failure to obtain the authorization of the adjacent property owner. C6-3A, Special District WCH.

PREMISES AFFECTED – 515 W 23<sup>rd</sup> Street, north side of West 23<sup>rd</sup> Street, between 10<sup>th</sup> and 11<sup>th</sup> Avenues, Block 695, Lot 27, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Christopher McCabe, Paul Selver, Joseph Chiarelli, Stephen Desimone.

For Opposition: Charles Williams.

For Administration: Lauren Esposito and Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

# MINUTES

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 8, 2008, at 10 A.M., for continued hearing.

## 177-08-A

APPLICANT – Quinn McCabe LLP, for 23 High-Line LLC, c/o Alf Naman, owners.

SUBJECT – Application July 7, 2008 – Appeals seeking to vacate a Partial Stop Work Order issued by the Department of Buildings for failure to obtain the authorization of the adjacent property owner. C6-3A, Special District WCH.

PREMISES AFFECTED – 515 W 23<sup>rd</sup> Street, north side of West 23<sup>rd</sup> Street, between 10<sup>th</sup> and 11<sup>th</sup> Avenues, Block 695, Lot 27, Borough of Manhattan.

### COMMUNITY BOARD #4M

For Applicant: Christopher McCabe, Paul Selver, Joseph Chiarelli, Stephen Desimone.

For Opposition: Charles Williams.

For Administration: Lauren Esposito and Lisa Orrantia, Department of Buildings.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 8, 2008, at 10 A.M., for continued hearing.

*Jeff Mulligan, Executive Director*

Adjourned: P.M.

## REGULAR MEETING

**TUESDAY AFTERNOON, SEPTEMBER 23, 2008**

**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

## ZONING CALENDAR

### 238-07-BZ

#### CEQR #08-BSA-028Q

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O’Connor Capital Partners, owners; OCA Long Island City, LLC, lessees.

SUBJECT – Application October 23, 2007 – Variance (§72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§117-21 & §23-145), lot coverage (§117-21 & §23-145), minimum distance between windows (§117-21 & §23-711(b)) and height and setback (§117-21,

§23-633 & §23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180’ west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Howard Goldman.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 6, 2008, acting on Department of Buildings Application No. 402661945, reads, in pertinent part:

- “1. Proposed College Dormitory use (UG 3), residential use (UG 2), and non-profit community facility without sleeping accommodation (UG 4) in M1-4 district are contrary to ZR § 42-00;
2. Proposed commercial and residential FAR in lot portion of M1-4/R6A (LIC) district exceeds maximum permitted and is contrary to ZR § 117-21 and ZR § 23-145;
3. Proposed building lot coverage in lot portion of M1-4/R6A exceeds maximum permitted and is contrary to ZR § 117-21 and § 23-145;
4. Proposed building setback above the maximum base height in lot portion of M1-4/R6A (LIC) district is less than the minimum 15’-0” required and is contrary to ZR § 117-21 and § 23-633.
5. Proposed building height in lot portion of M1-4/R6A (LIC) district exceeds maximum permitted 70’-0” and is contrary to ZR § 117-21 and § 23-633.
6. Rear Setback in lot portion of M1-4/R6A (LIC) district is not provided and is contrary to ZR §117-21 and § 23-663.
7. Minimum distance required between building segments for window to window, window to wall and wall to wall are not adequately provided and contrary to ZR §117-21 & 23-711 (b).
8. Proposed wide outer court in M1-4 district is contrary to ZR § 24-632”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an M1-4 district and

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# MINUTES

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partially within an M1-4/R6A district within the Special Long Island City Mixed-Use District, the proposed construction of a twelve-story mixed-use residential / commercial retail building and a six-story student dormitory and faculty housing building, connected by a cellar-level accessory parking garage, that does not comply with zoning parameters for use, FAR, lot coverage, building height, minimum distance between building segments, court, front setback, and rear yard setback contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, 23-663 and 23-711; and

WHEREAS, this application is brought on behalf of OCA Long Island City, LLC. which proposes to develop a market-rate residential building with ground floor commercial uses and a City University of New York (“CUNY”) Graduate Center student and faculty residence on the subject site, and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in the *City Record*, with continued hearings on May 20, 2008, July 1, 2008 and August 19, 2008, and then to decision on September 23, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2 (Queens) recommends approval of this application subject to the following conditions; that: (1) a deed restriction limit the population of the proposed CUNY Graduate Center residence to CUNY graduate students and faculty; (2) the Queens Council on the Arts increase its outreach to Long Island City-based artists and residents; (3) the proposed garden courtyard be open to the public; (4) 20 percent of the residential dwelling units be set aside for affordable housing; (5) brownfield tax credits be directed to a local library or other community use, and (6) CUNY establish a mentoring relationship with a local school;<sup>1</sup> and

WHEREAS, the Queens Borough President submitted a letter in support and a representative testified at hearing in support of the subject application; and

WHEREAS, Council Member Eric Gioia submitted a letter in support of the subject application; and

WHEREAS, the Co-Chair of the Doctoral Students Council of the CUNY Graduate Center testified in support of the subject application; and

WHEREAS, a number of area residents testified in support and in opposition to the application; and

WHEREAS, additionally, a group of neighbors represented by counsel testified at hearing and made submissions into the record in opposition to the application (the “Opposition”); the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject site is a through-block site bounded by Fifth Street to the west, 46<sup>th</sup> Road to the north, and 47<sup>th</sup> Avenue on the south; and

WHEREAS, subject site consists of Tax Lots 12 (a/k/a Tax Lot 13), 15, 17, 18, 21, and 38, which comprise one zoning lot (the “Zoning Lot”); and

WHEREAS, the site has a total lot area of 66,838 sq. ft., with a lot area of 20,000 sq. ft. located within an M1-4/R6A (LIC) zoning district on Fifth Street and a lot area of approximately 46,838 sq. ft. located within an M1-4 district on the eastern portion of the subject site; and

WHEREAS, the subject site is developed with a mix of one-story to three-story vacant industrial buildings which are proposed to be demolished; and

WHEREAS, the applicant proposes: (i) a twelve-story mixed-use building containing residential use (U.G. 2), community facility (U.G.4), and commercial retail use (U.G. 6) (hereinafter “the mixed-use building”); and (ii) a six-story building containing living quarters for CUNY faculty (U.G. 2) and graduate students (U.G. 3); community facility use (U.G. 4) and (iii) 91 spaces of accessory parking (hereinafter “the CUNY building”); and

WHEREAS, the mixed-use building and the CUNY building are proposed to be connected at the cellar level where the accessory parking would be located; and

WHEREAS, the proposed project will have a total floor area of 349,400 sq. ft. (FAR of 5.23) over the entire zoning lot, comprising 169,185 sq. ft. of residential (U.G. 2) floor area, 172,815 sq. ft. of community facility floor area (U.G. 3 and U.G. 4) and 7,400 sq. ft. of commercial floor area (U.G. 6); and

WHEREAS, the mixed-use building is almost entirely within the M1-4/R6A portion of the Zoning Lot (on part of Lot 21); the CUNY building is entirely within the M1-4 portion of the Zoning Lot (on Lots 12, 15, 17, 18, part of Lot 21, and Lot 38), other than a small portion of the shared accessory garage; and

WHEREAS, the mixed-use building is proposed to have a total floor area of 163,920 sq. ft., a residential floor area of 151,520 sq. ft., community facility floor area of 5,000 sq. ft., and commercial retail floor area of 7,400 sq. ft.; and

WHEREAS, the mixed-use building is proposed to have 200 dwelling units, ground floor retail space, office, exhibition and program space to be occupied by the Queens Council for the Arts, a nonprofit organization, and a small portion of the below-grade parking garage floor space; and

WHEREAS, the CUNY building is proposed to contain 15,666 sq. ft. of Use Group 2 faculty housing (21 units) and 167,815 sq. ft. of Use Group 3 student dormitory suites (228 units housing 380 students) and 91 unattended accessory parking spaces located partially below grade (to be available to residents of both the mixed-use building and the CUNY building); and

WHEREAS, the proposed mixed-use building will have an FAR of 8.2 within the M1-4/R6A district (3.0 is the maximum permitted in an M1-4/R6A zoning district); a front setback of 10’-0” above the maximum base height (a 15’-0”

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1 The Board notes that the Community Board’s conditions fall outside its jurisdiction, but that the applicant has agreed to open the court to the public.

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# MINUTES

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setback is the minimum required on a narrow street in an M1-4/R6A zoning district); a total height of 129'-8" (70'-0" is the maximum permitted in an M1-4/R6A zone); a rear setback of 15'-0" is provided at 109'-0" in height (10'-0" is required in an M1-4/R6A zone above the maximum base height of 60 ft.), a minimum distance between windows of 50'-0" and between windows and a wall of 35'-0" (a minimum window-to window distance of 60'-0" and a minimum window-to-wall distance of 40'-0" are required); and a corner lot coverage of 84.5 percent (80 percent is the maximum permitted lot coverage); and

WHEREAS, the CUNY building will have the following parameters: an outer court on Lot 18 measuring 50'-0" in width and 80'-0" in depth (a width of 80'-0" would be required in an M1-4 zoning district); and

WHEREAS, graduate student housing and faculty housing are not permitted uses in the M1-4 district; and

WHEREAS, thus the subject application was filed to permit the proposed residential and community facility uses; and

WHEREAS, the applicant initially proposed a mixed-use building with thirteen-stories and a total floor area of 171,474 sq. ft., a residential floor area of 158,574 sq. ft., a community facility floor area of 4,500 sq. ft. and a commercial floor area of 7,500 sq. ft., and

WHEREAS, the original application has been slightly modified with respect to the number of CUNY faculty units and graduate student units and community facility floor area; and

WHEREAS, the applicant also modified the proposal to eliminate 7,054 sq. ft. of residential floor area, and reduced the height of the building from 140'-0" to 129'-8", thereby reducing the variances requested for FAR and maximum building height; and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant states that the site's unique degree of contamination creates an unnecessary hardship in complying with the zoning requirements for commercial and residential FAR, lot coverage, height, front and rear setback, and minimum distance between buildings; and

WHEREAS, the applicant states that the site has a long industrial history and site assessment activities have confirmed the presence of heavy metals, petroleum, chlorinated solvents and hazardous wastes in soils and groundwater; and

WHEREAS, the applicant represents that extensive soil sampling of site has identified the presence of arsenic, mercury, cadmium, chromium, selenium, acetone and cyanide and that benzene, toluene and ethylbenzene have been detected in groundwater at upgradient and downgradient locations at concentrations significantly above New York State Class GA groundwater standards; and

WHEREAS, the applicant further represents that soil

testing has also revealed the presence of naphthalene at concentrations as high as 160 mg. per kg. and chlorinated solvents at concentrations exceeding Class GA groundwater standards; and

WHEREAS, at hearing, the applicant stated that PCBs (polychlorinated biphenyls) have also been identified on the site, probably resulting from the dumping of electrical transformers; and

WHEREAS, a submission by the applicant states that the parcels were developed prior to 1898 for use by an ink factory and a varnish works; previous site occupants also included a dry cleaning and spotting facility, a metal caster and dyer; and

WHEREAS, the applicant represents that these identified occupants were likely to have used industrial solvents, lubricating and cutting oils, plating bath solutions, paint, painting products and dye products as part of their operations; and

WHEREAS, the applicant further represents that Tax Lot 21 and Tax Lot 38 are subject to a federal Environmental Protection Agency (EPA) Administrative Order requiring hazardous material remediation, including encapsulation of contaminated soil containing lead, arsenic and selenium, and mandates that all renovations meet certain standards to ensure that the integrity of the encapsulation is maintained; and

WHEREAS, the applicant states that the requirements of the Administrative Order are incorporated into a deed restriction which is the only such deed restriction identified in Long Island City; and

WHEREAS, the applicant states that, in order to remove the deed restriction, the EPA requires that Lots 21 and 38 be placed in the New York State Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation ("DEC") to assist in the cleanup of heavily contaminated sites; and

WHEREAS, the applicant represents that a Brownfield Cleanup application for Lots 21 and 38 was filed in 2006 and that DEC has accepted the applicant's remedial investigation work plan ("RIWP") defining the nature and extent of the site contamination, the contaminant source areas, and an assessment of the contaminant disposal and transport; and

WHEREAS, based on the RIWP, the applicant began the remedial investigation process which has been substantially completed; and

WHEREAS, the applicant states that, based on the findings of its investigation, a remedial work plan (RWP) will be developed and implemented that will be designed to achieve a "Track 1 – Unrestricted Use" standard for the cleanup of the property, allowing for residential use without any land use restrictions; and

WHEREAS, upon completion of remediation, and its verification and approval by DEC, DEC will issue a certificate of completion ("COC") certifying that the site may be safely developed and permitting removal of the deed restriction; and

WHEREAS, the applicant represents that the issuance of a COC does not however guarantee approval of BCP tax



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# MINUTES

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credits; and

WHEREAS, according to a remediation plan submitted by the applicant, a Track 1 cleanup the subject site would require excavation to a depth of approximately 15 feet and the removal of approximately 10,000 cubic yards of soil; approximately 75 percent (7,500 cubic yards) requires disposal as petroleum-impacted soil and 25 percent (2,500 cubic yards) requires disposal as hazardous waste, as well as another 1,000 cubic yards of building rubble which encapsulates hazardous waste which requires removal as hazardous waste; and

WHEREAS, the applicant states that the remediation plan also includes the installation of a vapor barrier below grade to prevent the migration of soil vapor onto the site and into the proposed buildings, and the installation of steel sheeting in conjunction with a dewatering system around the perimeter of the site; and

WHEREAS, the applicant further states that the excavation of the site is additionally complicated by the DEC requirement that the applicant characterize the entire subsurface of the property and re-characterize the soils prior to disposal, by the need to avoid breaching a clay layer 15 feet below grade which protects the aquifer from being contaminated, as well as by the necessary development of an on-site dewatering facility; and

WHEREAS, the applicant represents that the need to protect the surrounding community from the release of hazardous materials during excavation, and the difficulty in disposing of PCBs also complicates the site's remediation and adds to its expense; and

WHEREAS, the applicant states that excavation to a depth of 15 feet is required on the Brownfield portion of the site to meet DEC's cleanup requirements and that excavation of the entire site including the non-Brownfield portion (Tax Lots 12, 15, 17 and 18) is necessary to protect the health of residents and the surrounding community; and

WHEREAS, the applicant represents that enclosing the entire site within steel sheeting prevents the off-site migration of contaminants, which is of particular concern due to the potential effect of recently installed sheeting along the East River to Anable Basin, and the proposed sheeting along the eastern boundary of the BCP site, which might otherwise combine to shift the flow of groundwater toward the southeast, thereby discharging contaminants to the untreated non-BCP portion of the site; and

WHEREAS, the applicant states that cleanup of the entire site is also necessary because procuring financing for redevelopment projects in the current financial climate is becoming more difficult and a lender may be reluctant to finance a project with a separate and inconsistent cleanup on the site, particularly if residual material is allowed to remain on a non-Brownfield area, and

WHEREAS, the Opposition argues that the applicant has failed to prove that the degree of environmental contamination on Lots 21 and 38 is unique in Long Island City, where contaminated conditions are "a common occurrence" given the long history of industrial use in the area;

and

WHEREAS, the Opposition states that an EPA map of zip code area 11101 indicates contamination of 545 sites within Long Island City and Astoria, and that the prevalence of these conditions defies a finding of uniqueness; and

WHEREAS, the Board notes that the Opposition has proffered no evidence, to show that other sites within the surrounding area exhibit a similar degree of contamination, or that their cleanup would have to meet similar standards of remediation; and

WHEREAS, the Opposition also argues that the proposed Track 1 level cleanup, estimated to cost approximately \$10.2 million, is unnecessary and that a "Track 2" level Brownfield cleanup, which allows contamination to remain on the site, could be applied instead at far less expense; and

WHEREAS, the applicant states that it cannot remediate the site less expensively because the decision as to the appropriate level of site remediation is determined by DEC, and the agency is increasingly requiring cleanups to meet Track 1 objectives unless doing so is physically or economically infeasible; and

WHEREAS, the applicant further states that the requirements for the cleanup proposed by the Opposition can be just as expensive to meet as the proposed cleanup and would result in recorded environmental easement and land use restrictions, including post-remediation soil management, monitoring and reporting requirements, that are not required for Track 1 cleanups; and

WHEREAS, the applicant represents that these sustained land use restrictions could therefore give the appearance of a continuing environmental problem which would not be viable for lenders or for CUNY; and

WHEREAS, the Board agrees that the site cleanup proposed by the applicant is necessary and rational; and

WHEREAS, the Opposition additionally argues that costly excavation and remediation would not be necessary if the applicant had chosen instead to develop the site with a slab-on-grade foundation, as was the case with several other projects recently developed as-of-right on contaminated sites in the surrounding area; and

WHEREAS, the applicant states that new developments in the surrounding area cited by the Opposition were able to be developed with a slab on grade foundation because the extraordinary conditions requiring removal of subsurface soils or groundwater treatment were absent, and their excavation and full-site remediation were not necessitated by an EPA deed restriction, as is the case with the subject site; and

WHEREAS, because the cited projects were not burdened by similar remediation costs, variances to height and bulk were not needed to ensure their financial feasibility; and

WHEREAS, the Opposition also contends that the applicant has not provided sufficient information about the contamination of Lots 12, 15, 17 and 18 and the soil in the surrounding neighborhood to establish that the property is singularly burdened by its environmental conditions; and

WHEREAS, the Board notes that Lots 12, 15, 17 and 18

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# MINUTES

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are among those lots proposed to be occupied by CUNY, a nonprofit educational institution, and a showing of physical hardship or practical difficulty is not necessary; and

WHEREAS, the CUNY Graduate Center proposes to provide 228 graduate student units and 21 faculty housing units within the CUNY building, which it will own and operate; and

WHEREAS, the applicant represents that the waivers to use and court are sought to enable the CUNY Graduate Center to meet its programmatic needs; and

WHEREAS, the Board notes at the outset that the CUNY Graduate Center, as a non-profit educational institution, may use its programmatic needs as a basis for the requested waivers; and

WHEREAS, under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of educational institutions, are entitled to significant deference by zoning boards (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the applicant represents that providing housing to its graduate students and faculty is a significant programmatic need of CUNY and that, unlike New York's private universities, CUNY has no graduate student or faculty housing; and

WHEREAS, at hearing, the President of the CUNY Graduate Center testified that graduate students enrolled in the CUNY Graduate Center serve as part-time instructors throughout the CUNY system under academic fellowships with stipends of \$18,000 per year; and

WHEREAS, the applicant submitted a study of the student housing market in New York City which found that the rents of private housing units were 21 percent to 54 percent higher than the rents at university-sponsored facilities; and

WHEREAS, the study noted that 709 of the 3,393 full-time students then enrolled in the CUNY Graduate Center came from outside New York City and would therefore be likely to need university-sponsored housing; and

WHEREAS, at hearing, the Executive Officer of the CUNY Graduate Program for Speech and Language testified that the lack of CUNY-sponsored housing had hampered her ability to recruit high-achieving students to her program; and

WHEREAS, the Co-Chair of the Doctoral Students Council of the CUNY Graduate Center testified at hearing as to the hardship imposed by rental costs on the 4,300 students now enrolled; and

WHEREAS, the applicant states that the project site was selected by CUNY for its dormitory and faculty housing because of its accessibility to the Graduate Center which is located only one subway stop away from the project site; and

WHEREAS, the Board finds that the applicant has established the programmatic need of the CUNY Graduate Center for the development of the CUNY building and has demonstrated that the extreme contamination and costly remediation of the portion of the site within the M1-4/R6A district presents an unnecessary hardship and practical

difficulty to its development in compliance with the applicable zoning regulation; and

ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the “(b) finding”), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since the CUNY Graduate Center is a non-profit institution and the waivers to permit dormitory and faculty units are associated with its community facility use and are sought 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 requested variance, and therefore the financial analysis is adjusted accordingly; and

WHEREAS, an analysis which evaluated the financial feasibility of a conforming development of the entire site was provided by the applicant; and

WHEREAS, the applicant states that the overall environmental cleanup cost for the project site is estimated at \$10.2 million, and that the requested variances are necessary in order to achieve a reasonable economic return from its development; and

WHEREAS, the applicant initially submitted a financial analysis examining the feasibility of: (i) a development scenario that includes a conforming residential use on the M1-4/R6A portion of the site and a conforming industrial development on the portion of the site within the M1-4 zoning district; (ii) a lesser alternative with an as-of-right mixed-use development on the M1-4/R6A portion of the site and the proposed CUNY development within the M1-4 portion; (iii) a lesser alternative with the proposed residential square footage, an increased retail component and a smaller CUNY building; as well as (iv) the original proposed project; the analysis demonstrated that only the proposed project achieved a reasonable rate of return; and

WHEREAS, at hearing, the Board raised concerns as to whether the market rate portion of the development was subsidizing the CUNY facility, and whether this subsidy was the cause for the requested variance; and

WHEREAS, a submission by the applicant explained that CUNY is paying fair market value for its portion of the subject site and is assuming the cost of construction and operation of its facility; and

WHEREAS, the applicant stated that a letter of intent between the developer and CUNY initially set the total of land value and cleanup costs for the CUNY development at approximately \$20 million, apportioned between the fair market value of CUNY's share of the site (approximately \$13.9 million) and the remediation costs of CUNY's share of the site (\$6.7 million); and

WHEREAS, during the course of the hearing, the applicant subsequently lowered the CUNY land value to \$18.8 million to reflect the reduction of building net floor

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# MINUTES

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area by 1,550 sq. ft., and the reduced value attributable to dwelling units being developed below-grade; and

WHEREAS, at hearing the Board asked the applicant to examine lesser variance alternatives which request less additional floor area for the mixed-use building, and to explain the basis for the projected construction financing rate used in the financial analysis; and

WHEREAS, in response to the Board's request, the applicant examined three alternatives; (i) a fifty percent reduction in the 13<sup>th</sup> floor; (ii) a 12-story mixed-use building; and (iii) an 11-story mixed-use building and lowered the construction financing rate to conform to recent interest rate reductions; and

WHEREAS, the revised financial analysis showed that none of these three scenarios yielded a reasonable rate of return, while the proposed project provided a marginally positive rate of return; and

WHEREAS, the Opposition contends that the cost of remediation could be offset by the available Brownfield Cleanup tax credits, and that the financial analysis is undermined by its failure to account for the potential offset; and

WHEREAS, the applicant represents that the receipt of Brownfield Cleanup tax credits granted by the New York State Department of Taxation and Finance is speculative; and

WHEREAS, the applicant states that, under the regulations in effect at the time of its application, the value of the tax credit could range from 12 percent to 14 percent of (i) the costs of investigation, remediation, demolition, excavation, grading and temporary fencing, and (ii) tangible property costs associated with the development of the site, including buildings and structural components and that tax credits received under the Brownfield program would be subject to federal income taxes at an effective rate of 50 percent, thereby reducing the projected the after-tax value of the maximum Brownfield credit available to subsidize the remediation of the project site to \$3 million; and

WHEREAS, at hearing, the Board raised a concern that the omission of the potential Brownfield tax credits from the financial analysis could inflate the requested variance; and

WHEREAS, in response, the applicant revised the financial analysis to reflect the reduction in floor area and the effect of the Brownfield tax credit; the revised analysis examines the mixed-use project's rate of return with and without the tax credits, as well as the effect of the tax credits on an as-of-right development scenario; and

WHEREAS, the financial analysis demonstrates that, even with the Brownfield tax credit, an as-of-right project could not achieve a reasonable financial return while the project at the reduced height but with the tax credit achieved a modest financial return; and

WHEREAS, the applicant has modified the proposed project to reflect the projected receipt of approximately \$3 million in after-tax Brownfield tax credits by reducing the height of the mixed-use building by one floor, with a consequential overall reduction in residential floor area of

7,054 sq. ft., which the applicant represents is roughly equivalent to the projected value of the potential tax credits; and

WHEREAS, the Opposition asserts that the financial analysis is flawed because it failed to consider alternative conforming scenarios, such as a commercial/ retail use of the 95,880 sq. ft. of floor area within the M1-4 portion of the site; and

WHEREAS, the Opposition further argues that the proposed excavation and remediation would be unnecessary if the site were instead developed with conforming commercial/ retail uses; and

WHEREAS, a response by the applicant indicates that the scenario proposed by the Opposition would be infeasible because: (i) it would require two levels but could not provide loading, parking or servicing on site; (ii) the proposed \$40 per sq. foot rent could not be generated for space on a second level; (iii) there is no proven market in that location for the proposed volume of retail space; (iv) the construction costs and operating costs of a retail project far exceed that of an industrial development, particularly because typical retail leases require owners to provide heat and to pay the base year taxes; and

WHEREAS, the applicant submitted a pro forma of a single level retail project containing 54,000 sq. ft. of floor area over the project site at the same rents proposed by the Opposition, which demonstrated that using the higher levels of construction finishes, plumbing and demising walls required by such a project would render it financially infeasible; and

WHEREAS, the applicant also notes that the infeasibility of a conforming development can be inferred from the site's vacancy over a period of many years; and

WHEREAS, the Opposition also argues that the financial feasibility analysis is flawed because the applicant has not performed sufficient testing to establish the contamination of the site and to support the estimated cost of its cleanup; and

WHEREAS, the applicant represents that sufficient testing has been performed to establish the \$10.2 million estimate and, further, that any additional findings will only serve to increase the cost of remediation; and

WHEREAS, the Opposition also asked the applicant to explore certain design changes to the mixed-use building, specifically, the adoption of loft-style apartment layouts and multiple setbacks that it contends would create increase the square footage of penthouse units and enhance the unit values, consequently allowing a reduction in the building's height and bulk; and

WHEREAS, a submission by the applicant explains that the unit design for the mixed-use project was based on assessment of the current real estate market, and that the proposed design had been found to offer a higher financial return than a design with larger unit sizes and higher floor to floor heights; and

WHEREAS, the applicant further stated that the setbacks proposed by the Opposition had been incorporated

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# MINUTES

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into the project design and that the financial analysis before the Board reflected the increased resulting value; and

WHEREAS, the Board notes that the Opposition has presented no evidence supporting its contention that its alternate design would generate a higher return than the design proposed by the Applicant; and

WHEREAS, based upon its review of the applicant's financial analysis, 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

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of FAR, lot coverage, building height, minimum distance between building segments, front setback, and rear yard setback sought to permit the mixed-use building, and the waiver for use sought for the CUNY building, 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 applicant proposes an overall development of the subject site with an FAR of 5.2 (347,400 sq. ft.), with an FAR of 8.2 proposed for the westerly portion of the site within the M1-4/ R6A district, and an FAR of 3.92 proposed for the easterly portion of the site within the M1-4 district; and

WHEREAS, the applicant represents that the proposed floor area is within the overall envelope for the site, which would permit an overall FAR of 5.45 (364,447 sq. ft.), based on the maximum FAR of 3.0 within the M1-4/R6A portion and the maximum FAR of 6.5 permitted for community facility uses within the M1-4 portion; and

WHEREAS, the Board notes that the proposed overall FAR of 5.2 is within the FAR contemplated by the zoning of the subject site; and

WHEREAS, the applicant further represents that the heights and massing of the proposed project are compatible with the scale of the development in the surrounding area, stating that the project massing places the bulk of the floor area on Fifth Street opposite a new park and open area and proximate to the high density buildings of the Queens West Development located to the west of the project site; and

WHEREAS, the applicant states that the Queens West development includes building heights of 44 stories, 39 stories and 32 stories and that later phases of the project include seven residential towers ranging from 200 to 400 feet in height; and

WHEREAS, the applicant states that additional projects at the Silvercup site and Anable Basin, three blocks to the southwest and northwest of the project site, respectively, are proposed at heights ranging from 31 to 48 stories; and

WHEREAS, the applicant further states that the proposed 12-story mixed-use building at approximately 130'-0" complies with relevant light and air requirements and is considerably shorter than the 20 to 50-story buildings

which have approved to the south, west and north of the subject site; and

WHEREAS, the applicant notes that the westerly portion of the subject site comprising 20,000 sq. ft., is located within the Hunters Point Subdistrict rezoning area and was rezoned to permit mixed-use developments like the proposed project, and that the blocks to the south of the project site extending to Borden Avenue are mixed-use in character and were rezoned to permit residential and community facility use consistent with the proposed CUNY building; and

WHEREAS, the applicant states that the CUNY building complies with all the applicable height and setback regulations of the M1-4 zoning district and its six-story height conforms to the predominant midblock character of the surrounding area; and

WHEREAS, the Opposition asserts that the project is inconsistent with the intent of the Hunters Point rezoning to preserve the character and scale of the "uplands" Long Island City neighborhood and to differentiate that part of the community from the high-rise residential towers of the Queens West Waterfront Project; and

WHEREAS, the Opposition submitted a series of computer-generated streetscapes demonstrating that the proposed development would be significantly out of scale with the surrounding community; and

WHEREAS, at hearing the applicant demonstrated with "before" and "after" montages that the images submitted by the Opposition had exaggerated the height of the proposed development by eliminating all tall existing buildings surrounding it and by distorting the perspectives; and

WHEREAS, the applicant submitted a map showing recent and proposed developments indicating that both the mixed-use building and the CUNY building are considerably shorter than other recent uplands developments proposed within two blocks to the north south and east; and

WHEREAS, the applicant further states and that the east-west view corridor will be maintained and extended, that setbacks are provided on all street frontages above the fifth floor and that each of the faculty units in the CUNY project will set back by five feet; and

WHEREAS, the applicant further states that the project has been designed to facilitate its integration within the surrounding community; and

WHEREAS, the applicant represents that a publicly accessible-interior garden of approximately 5,000 sq. ft. will be provided, as well as street trees surrounding the three frontages, and that the four project components have been architecturally coordinated to provide active street frontages; and

WHEREAS, the applicant states that represents that accessory parking is provided below-grade within the building to preserve active street frontages, and that the parking facility has been designed to permit ingress and egress from entrances along 46<sup>th</sup> Road to minimize traffic congestion along 5<sup>th</sup> Street and Vernon Boulevard; and

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# MINUTES

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WHEREAS, the applicant further states that providing accessory parking reduces the demand for on-street parking spaces; and

WHEREAS, a shadow analysis of the proposed project indicates that incremental shadows would be cast by the mixed-use building on a new open space under construction to its west during morning hours beginning an hour and a half after sunrise; however, the surface will consist of artificial turf with a surrounding running track and will therefore not be light sensitive; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states and the Board agrees, that the practical difficulties and unnecessary hardship associated with the environmental remediation of the project site have not been created by the applicant or a predecessor in title; and

ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant states that the requested the waivers of FAR, lot coverage, building height, front setback, and rear yard setback represent the minimum variance necessary to allow the mixed-use building to achieve a reasonable financial return, given its extensive environmental remediation costs, and to meet CUNY's programmatic needs; and

WHEREAS, the applicant originally proposed a project with a total floor area of 356,454 sq. ft., and a 13-story mixed-use building; the applicant modified the proposal to reduce the height of the mixed-use building by one floor to 12 stories and to reduce the total floor area of the project to 349,400 sq. ft., thereby offsetting the value of the potential receipt of the Brownfield tax credits; and

WHEREAS, the Board notes that the applicant also evaluated the economic feasibility of two lesser variance alternatives, which demonstrated that only the proposed project achieved a reasonable rate of return; and

WHEREAS, the Opposition has argued that a grant of use and bulk variances is unusual and excessive; and

WHEREAS, the Board finds that there is practical difficulty due to the unique conditions of the site which requires additional floor area to offset the remediation costs and other bulk waivers to accommodate the added bulk in a manner most compatible with the scale and bulk of the property and the surrounding area; and

WHEREAS, the Opposition contends that the minimum variance is unknown because testing on the site is

incomplete and the ultimate remediation costs are therefore unknown; and

WHEREAS, as discussed above, the applicant represents and the Board finds that sufficient testing has been performed to establish the \$10.2 million estimate for the cost of site remediation and, further, that the financial analysis was adjusted to incorporated the potential receipt of the Brownfield tax credit; and

WHEREAS, Opposition argues that the proposed parking is unnecessary and increases the construction costs and proposes that it be removed to reduce the requested height and bulk variances; and

WHEREAS, the applicant states that because excavation of the site to a depth of 15 feet is necessary for its remediation, the development cost of the parking garage is low but that the elimination of its anticipated revenue would undermine the financial feasibility of the project, further, that providing on-site parking within the project will be an asset to the surrounding community as available on-street parking in the area is limited; and

WHEREAS, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA28Q, dated August 2008; 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 Transportation ("DOT") reviewed the proposed project and issued a sign-off letter on August 13, 2008; and

WHEREAS, the New York City Landmarks Preservation Commission reviewed this project and confirmed that the project site does not contain any areas of historic/architectural or archaeological significance; therefore, no impacts on historic/architectural or archaeological resources are expected as a result from the proposed action; and

WHEREAS, the New York City Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the applicant: (1) an August 2008 Environmental Assessment Statement; (2) an October 2007

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# MINUTES

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Phase I Environmental Site Assessment; (3) an April 2008 Phase II Subsurface Investigation Workplan; (4) a March 2007 Health and Safety Plan Report (“HASP”); (5) an August 2008 Remedial Investigation Report (Phase II sampling results); (6) a September 2008 Stationary Source Screening Analysis; and (7) a September 2008 Industrial Source Analysis; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation pursuant to a Restrictive Declaration executed on September 19, 2008 and submitted for recording against the subject property on September 22, 2008; and

WHEREAS, a Remedial Action Plan (“RAP”) and a Construction Health and Safety Plan Report (“CHASP”) must be submitted to DEP for review and approval; and

WHEREAS, the RAP and the remedial work plan to be submitted to DEC will both include the installation of a below grade vapor barrier to prevent the migration of soil vapor onto the site; and

WHEREAS, DEP review and approval of the manufacturer’s specifications and a sample of the vapor barrier material is required prior to its installation; and

WHEREAS, after approval of the RAP and CHASP, DEP will remit a Notice to Proceed to the Department of Buildings (“DOB”); and

WHEREAS, after implementation of the remediation, one or more Remedial Closure Report(s) certified by a professional engineer shall be submitted to DEP; subsequent to its approval, DEP will forward Notice(s) of Satisfaction to DOB; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential stationary and mobile source air quality impacts of the proposed action; and

WHEREAS, a stationary source screening analysis for the heating, ventilating, and air conditioning equipment (HVAC) performed using CEQR Technical Manual methodology determined that the proposed project is not anticipated to result in potential significant impacts on adjacent receptors; and

WHEREAS, another screening analysis determined that the emission stack of the CUNY building must be located at least 160 feet from the façade of the mixed-use building to avoid any significant air quality impacts; and

WHEREAS, an industrial source impact assessment demonstrated that the air quality of the proposed project would not be adversely affected by surrounding industrial/manufacturing uses; and

WHEREAS, a stationary source screening analysis and mobile source screening analysis determined that the proposed project would not result in any significant noise impacts as a result of using the building mechanical systems at sensitive receptor locations; and

WHEREAS, based on the traffic study, the proposed project would not double traffic levels in passenger car equivalents; therefore the project is not expected to create significant adverse impacts from mobile source emissions; and

WHEREAS, the applicant will provide a minimum of 35 dBA window/wall attenuation to achieve an interior noise level of 45 dBA and use a dedicated HVAC system as an alternate means of ventilation in order to maintain a closed-window condition, therefore satisfying CEQR interior noise requirements and requirements of the Special Long Island City Mixed-use District; and

WHEREAS, the environmental assessment found that the mixed-use building would cast incremental shadows on a new open space under construction to its west during morning hours; however, since the park’s surface will not be light-sensitive, such shadows are not considered to have a significant effect on the environment; 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 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 each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an M1-4 district and partially within an M1-4/R6A district within the Special Long Island City Mixed-Use District, the proposed construction of a twelve-story mixed-use residential/commercial retail building and a six-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage that does not comply with zoning parameters for use, FAR, lot coverage, building height, minimum distance between building segments, court, front setback, and rear yard setback contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, 23-633 and 23-711; *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 17, 2008”- (19) sheets; and *on further condition*:

THAT the proposed Zoning Lot shall have a maximum FAR of 5.23,

THAT the building on within the M1-4/R6A portion of the zoning lot shall have the following parameters: a floor area of 163,920 sq. ft.; a front setback of 10’-0” above the maximum base height; a total height of 129’-8”; a rear setback of 15’-0” at a height of 109’-0”; a minimum distance between windows of 50’-0” and between windows and a wall of 35’-0”; and a corner lot coverage of 84.5 percent; and the building within the M1-4 portion of the Zoning Lot will have a floor area of 183,480 sq. ft. and an outer court measuring 50’-0” in width and 80’-0” in depth;

THAT a RAP and CHASP shall be submitted to DEP for review and approval;

THAT the applicant shall submit its Remedial Work

# MINUTES

Plan to DEP;

THAT the emission stack of the building within the M1-4 portion of the Zoning Lot shall be located at least 160 feet from the façade of the building within the M1-4/R6A portion of the zoning lot;

THAT a minimum of 35 dBA window/wall attenuation shall be provided;

THAT issuance of building permits shall be conditioned on DEP review and approval of the specifications and sample material of its proposed vapor barrier;

THAT the issuance of building permits shall be conditioned on the receipt of a DEP Notice to Proceed;

THAT issuance of building permits shall be conditioned on the issuance of a certificate of completion by DEC;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT DEP review and approval is required prior to the approval by DOB of any changes to the BSA-approved site plan or building plans;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; 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;

THAT the Department of Buildings must 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 23, 2008.

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## 245-07-BZ

### CEQR #08-BSA-031K

APPLICANT – Law Offices of Howard Goldman, LLC, for Hawthorne Village, LLC, owner.

SUBJECT – Application October 30, 2007 – Variance (§72-21) to allow the residential conversion of an existing five-story industrial building. Proposed project will contain 147 dwelling units, ground floor retail space and 59 accessory parking spaces. Proposal is contrary to use regulations (§42-00). M1-2 district.

PREMISES AFFECTED – 220 Water Street, between Water and Bridge Streets, Block 41, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 19, 2007 acting on Department of Buildings Application No. 310030098, reads in pertinent part:

“ZR 42-00; Proposed residential use (use group 2A) is not permitted in a manufacturing district”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site within an M1-2 zoning district within the DUMBO Historic District, the conversion of a five-story warehouse building from manufacturing use to Use Group 2 residential use, contrary to Z.R. § 42-00; and

WHEREAS, a public hearing was held on this application on June 17, 2008 after due notice by publication in the *City Record*, with a continued hearing on July 29, 2008, and then to decision on September 23, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2 Brooklyn, recommends approval of the subject application; and

WHEREAS, the subject site is a through-block site located on the south side of Water Street between Jay Street and Bridge Street within an M1-2 zoning district within the DUMBO Historic District; and

WHEREAS, the site has 220’-0” of frontage on both Water and Front streets and occupies the entire block-front along Bridge Street measuring 200’-0” and has a total lot area of 44,000 sq. ft.; and

WHEREAS, the site is currently occupied by a five-story factory/ warehouse building with a floor area of 195,686 sq. ft.; and

WHEREAS, the applicant proposes a residential development with 135 dwelling units, ground floor retail uses and 59 accessory parking spaces; and

WHEREAS, the initial application proposed 147 residential units; and

WHEREAS, the proposed building would have a total zoning floor area of 174,417 sq. ft. (4.0 FAR); including 4,750 sq. ft of retail space and 27,950 sq. ft of accessory parking located in the basement; and

WHEREAS, the applicant represents that the subject building has historically been occupied by a shoe manufacturer and other light manufacturing concerns and is currently substantially vacant due to its functional obsolescence; 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 historic building is obsolete for a conforming use due to (1) its configuration; (2) the size of its

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# MINUTES

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loading dock, (3) its narrow column spacing, (4) its non-complying elevators, and (5) low ceiling height; and the existing building is built on a slope and on a narrow street; and

WHEREAS, as to its configuration, the applicant states that the building was constructed in two separate segments; a northern portion constructed around 1890 which contains wood floors and is defined as “combustible,” and a southern portion constructed around 1920, containing concrete floors, defined as “non-combustible; and

WHEREAS, the applicant states that the two discrete building portions are treated differently by the Building Code and that the reuse of the building would require that the “combustible” wood portion be partitioned from the remainder of the building; and

WHEREAS, the applicant further states that the two segments are separated by a large interior courtyard which limits access between the two buildings and hinders the efficiency of the floor-plates; and

WHEREAS, as to the building’s loading docks, the applicant represents that the two existing loading docks have openings measuring 7’-0” by 8’-0” and 9’-0” by 12’-0”, respectively; and that both are too small to meet modern industrial standards and are non-compliant with zoning requirements for loading; and

WHEREAS, as to the building’s column spaces, the applicant represents that the existing columns divide the floor plates into 22’-0” by 10’-0” bays within the 1890 portion of the building, and divide the floor plates into 14’-0” by 14’-0” bays within the 1920 portion, and that the small bays constrict the maneuverability of goods and materials; and

WHEREAS, as to its freight elevators, the applicant represents that the existing freight elevators are not code-compliant and do not meet the capacity standards required to serve a manufacturing building of this size; and

WHEREAS, as to the building’s ceiling heights, the applicant represents that the building’s floor-to-ceiling heights measure approximately 12’-0” to 13’-0” which are inadequate in height for the storage of industrial goods and materials; and

WHEREAS, as to its grade, the applicant represents that the site has a significant downward slope to its west and south that allows only its Water Street entrance to be at grade; and

WHEREAS, the applicant represents that such grade change hampers the installation of larger street-level loading docks and would necessitate the installation of a ramping system; and

WHEREAS, the applicant further represents that the Water Street entrance is on a narrow street measuring 50 feet in width, which constrains the maneuverability of trucks and servicing; and

WHEREAS, the applicant submitted photographs and a report by a licensed engineer that documented the unique physical conditions on the subject site; and

WHEREAS, based upon its review of submitted evidence, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties in using the entirety of the site in conformity with the current zoning; and

WHEREAS, the applicant represents that the obsolete condition of the building precludes any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return; and

WHEREAS, the applicant provided a letter from a real estate broker evidencing its unsuccessful effort to market the site for commercial/industrial lease or purchase between December, 2003 and February, 2005; and

WHEREAS, the applicant submitted a financial feasibility report that studied the economic viability of the following scenarios: (1) conforming industrial use; (2) commercial office use; (3) the proposed conversion (135 dwelling units and 59 accessory parking spaces); and (4) a lesser-variance scenario that replaces the parking area with conforming commercial space; and

WHEREAS, this study demonstrates that neither conforming scenario, nor the lesser-variance scenario would yield a reasonable return; only the proposed development would realize a reasonable rate of return; and

WHEREAS, at hearing, the Board raised concerns regarding the calculation of site value in the feasibility report which was partly based on the sales prices of buildings located in districts where residential use is allowed as-of-right; and

WHEREAS, the applicant responded by providing additional building sale comparables in manufacturing districts that reconfirmed the initial site value; and

WHEREAS, therefore, based on 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 conformity with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood or impact neighboring conforming uses; and

WHEREAS, the applicant represents that the proposed conversion and the introduction of 135 additional dwelling units is consistent with the neighborhood character of DUMBO; and

WHEREAS, the applicant represents that an M1-2/R8 (MX-2) district, where residential use is allowed as-of-right, is located directly south of the site across Front Street and that an R6B district is established on the block directly to the east of the site; and

WHEREAS, additionally, the applicant submitted a land use map documenting legal residential uses directly north of the site across Water Street and directly to the east of the site across Bridge Street; and

WHEREAS, the applicant is proposing 59 residential accessory parking spaces in the basement of the subject building; and

WHEREAS, the Board notes that the proposed accessory parking spaces will ensure that the proposed residential conversion would not reduce the availability of on-street parking spaces in the neighborhood; and

WHEREAS, the Board notes that the Landmarks Preservation Commission (LPC) issued a Certificate of Appropriateness for the proposed project on September 2,



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# MINUTES

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2008; and

WHEREAS, each dwelling unit shall be equipped with ceiling-hung air-conditioning unit as required by the LPC Certificate of Appropriateness; 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 applicant represents that the specific hardship present at the site was not caused either by the owner or a predecessor in title; and

WHEREAS, therefore, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the number of residential units proposed has been reduced from 147, as initially proposed, to 135; and

WHEREAS, the applicant has provided a financial feasibility study of a lesser-variance scenario that retained the ground floor as conforming use; which did not show a reasonable rate of 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 Z.R. § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.12 and 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. 08BSA031K dated October 30, 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; 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) an October 2007 Environmental Assessment Statement, (2) a June 2004 Phase I Environmental Site Assessment (3) June 2004 and July 2004 Phase II Limited Subsurface Investigation reports; (4) December 2006 Remedial Investigation Report; (5) May 2007 Remedial Action Work Plan; (6) August 2008 Construction Health and Safety Plan (CHASP); and (7) a June 2008 Industrial Source Screening Analysis; and

WHEREAS, these submissions specifically examined the proposed action for potential impacts for hazardous materials, noise and air quality; and

WHEREAS, the environmental assessment identified hazardous materials present on the subject site, a Restrictive Declaration was therefore executed and recorded against the property on August 11, 2008 to protect construction workers and future occupants from exposure; and

WHEREAS, a Remedial Closure Report certified by a Professional Engineer must be submitted to DEP showing that all remedial requirements have been properly implemented before proceeding with construction; and

WHEREAS, the issuance of a Notice of Satisfaction is contingent on DEP approval of the Remedial Closure Report; and

WHEREAS, with respect to noise, as the proposed project would be a sensitive receptor, a noise monitoring study was conducted to determine the level of window/wall attenuation required to achieve acceptable interior noise levels; and

WHEREAS, since the existing noise levels fall within the "marginally acceptable" category, the building shall be designed to provide attenuation of 25 dBA in order to maintain interior levels of 45 dBA or lower in the residential units; 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.

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 I 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 Z.R. § 72-21, to permit, on a site within an M1-2 zoning district, the conversion of a five-story building from manufacturing use to Use Group 2 residential use, contrary to Z.R. § 42-00; 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 July 15, 2008" –(11) sheets and "Received September 4, 2008" –(1) sheet; and on further condition:

THAT there shall be a maximum of 169,667 sq. ft. of residential zoning floor area;

THAT there shall be a maximum of 135 residential units in the building;

THAT there shall be a minimum of 59 accessory parking spaces;

THAT required light and air for each dwelling unit will be approved by DOB;

# MINUTES

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT the interior layout and all exiting requirements 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 DEP shall be contacted to coordinate the timing and completion of field testing and soil remediation activities;

THAT the building shall be designed to provide attenuation of 25 dBA in order to maintain interior levels of 45 dBA or lower in the residential units;

THAT the issuance of building permits shall be conditioned on the issuance of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2008.

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## 94-08-BZ

### CEQR #08-BSA-084K

APPLICANT – Law Offices of Howard Goldman, LLC, for ZTI Corp., owner; Pitkin Managers, LLC, lessee.

SUBJECT – Application April 16, 2008 – Variance (§72-21) to waive all the required accessory parking (23 spaces) for the residential portion of a mixed-use redevelopment of an existing theatre building; contrary to §25-00. C4-3 district.

PREMISES AFFECTED – 1501 Pitkin Avenue, between Legion Street and Saratoga Avenues, Block 3492, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #16BK

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 20, 2008, acting on

Department of Buildings Application No. 310106989, reads in pertinent part:

“Respectfully request formal denial of proposed parking on attached plans. Parking does not comply with Section 25-00 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site within a C4-3 zoning district, a waiver of the required accessory parking for the residential units of a proposed mixed-use conversion of an existing building, contrary to ZR § 25-00; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, and then to decision on September 23, 2008; and

WHEREAS, this application is brought on behalf of POKO Partners LLC, a property manager and developer of low-income housing; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, the site is located on a trapezoidal-shaped property bounded by East New York Avenue on the north, Legion Street on the west, Pitkin Avenue on the south, and Saratoga Avenue on the east, in a C4-3 zoning district; and

WHEREAS, the site has 211.3 feet of frontage on East New York Avenue, 100.2 feet of frontage on Legion Street, 200 feet of frontage on Pitkin Avenue, and approximately 169 feet of frontage Saratoga Avenue and has a total lot area of 27,000 sq. ft.; and

WHEREAS, the site is occupied by a vacant theater built in 1930 with a total floor area of 50,000 sq. ft.; and

WHEREAS, the applicant proposes to convert the existing theater building to a seven-story mixed-use development with two floors of retail, commercial and community facility use (50,618 sq. ft.) and five floors (78,631 sq. ft.) of residential use; and

WHEREAS, the building is proposed to have 66 residential units and a total floor area of 129,249 sq. ft. (4.79 FAR); and

WHEREAS, because of its pre-existing non-compliance with off-street accessory parking requirements, the applicant states that the Department of Buildings has granted a waiver for the required parking for the commercial, retail and community facility floor area; and

WHEREAS, the applicant states, however, that pursuant to ZR § 25-33, the project would be subject to an accessory parking requirement of 33 spaces for the residential units; and

WHEREAS, the applicant represents that no parking spaces can be provided on-site and therefore seeks a waiver of the full accessory parking requirement; and

WHEREAS, the applicant represents that the development and use of the site, otherwise conforms with all zoning district regulations; and

WHEREAS, the Board notes that the conversion of the

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# MINUTES

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building must be approved by DOB for compliance with all zoning district regulations; and

WHEREAS, accordingly, the Board's review was limited to the request to waive the accessory parking requirement; and

WHEREAS, the applicant states that the following are unique physical conditions which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: the site is developed with an obsolete theater building in severe disrepair which covers the entire tax lot and that has structural limitations which preclude parking within the existing structure; and

WHEREAS, as to the lot coverage, the applicant represents that the existing building covers the entire lot area, leaving no open space available for off-street parking; and

WHEREAS, regarding the structural limitations of the existing building, the applicant states that the existing cellar is shallow and only partially excavated, making it impossible to provide sub-surface accessory parking on the site; and

WHEREAS, the applicant further states that accessory parking could be provided on the site only by construction of an indoor garage on the ground floor, including structural support, mechanicals, paving and a system for ingress and egress; and

WHEREAS, the applicant represents that the ground floor is currently improved with a stage and theater seating and therefore lacks the infrastructure necessary to create a conforming 33-space garage; and

WHEREAS, the applicant further represents that providing accessory parking on the ground floor would require elimination of the retail space, and that the consequential elimination of this rental stream would make the project infeasible; and

WHEREAS, at hearing, the Board asked the applicant to explain why parking was not feasible in the cellar; and

WHEREAS, in response, the applicant stated that inconsistent cellar heights and levels would require costly demolition and the construction of ramps; and

WHEREAS, the applicant further stated that such excavation would likely weaken the structure of the existing building, given its age and poor condition; 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 conformance with the applicable zoning regulations; and

WHEREAS, as noted above, the site is occupied by a deteriorated theater which can no longer be used for the purpose for which it was built; and

WHEREAS, the applicant states that, as a consequence of the obsolescence of the existing theater, the subject building is predominately vacant, with occupancy limited to several small ground-floor retail establishments with square footage of less than 5,000 sq. ft.; and

WHEREAS, these retail stores provide only limited rental revenue; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as of right mixed-use scenario providing the required accessory parking on the ground floor; and (2) the proposed mixed-use project with no parking; and

WHEREAS, the applicant asserts that the as of right scenario would result in a negative rate of return and that the proposed use is the minimum necessary to achieve 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 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 represents that the development and use of the site, except for the requested accessory parking waiver, conforms with all zoning district regulations and is consistent with the community and neighborhood character; and

WHEREAS, the applicant notes that project site is located in a C4-3 corridor within an R6 zoning district, which permits medium density multiple dwellings consistent in size with the proposed project; and

WHEREAS, the applicant further states that Pitkin Avenue is one of the most active commercial centers in the area and is characterized by two-story and four-story commercial buildings, a number of which have upper stories devoted to residential use; and

WHEREAS, the applicant submitted a survey conducted on a typical weekday between the hours of 8:00 a.m. and 9:00 a.m. and between noon and 2:00 p.m., and on a Saturday between the hours of 8:00 a.m. and 2:00 p.m., which reflected that, within a quarter-mile radius of the site, more than 570 on-street parking spaces were available during a weekday morning, more than 900 spaces were available during the weekday afternoon, and 875 parking spaces were available on a typical Saturday; and

WHEREAS, the applicant represents that the conversion of the building will not generate significant parking demand because the proposed residential units would be occupied by persons with income levels at or below 50 percent of the Area Median Income who are expected to own few cars; and

WHEREAS, the applicant points out that the building is historically significant and is relatively intact; providing an accessory parking waiver would also allow the retention of more of the facade's decorative elements; and

WHEREAS, based upon its review of the record, the Board finds that the proposed waiver of the required accessory parking will neither alter the essential character of the neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the hardship herein

# MINUTES

was not created by the owner or a predecessor in title but arises due to the full lot coverage of the existing building and its structural limitations; and

WHEREAS, the applicant represents that the proposed represents 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.08-BSA-084K, dated April 9, 2008; 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, to permit within an C4-3 zoning district, the elimination of 33 accessory parking spaces for a proposed mixed-use conversion of an existing building, contrary to ZR § 25-00; *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 16, 2008"-(12) sheets; and *on further condition*:

THAT the internal floor layouts on each floor 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, construction will proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2008.

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## 145-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Faige Neuman and Stephen Neuman, owner.

SUBJECT – Application May 16, 2008 – 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); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1121 East 28<sup>th</sup> Street, east side of East 28<sup>th</sup> Street, between Avenue K and Avenue L, Block 7628, Lot 37, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Fredrick Becker.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 16, 2008, acting on Department of Buildings Application No. 310126388 reads, in pertinent part:

- “1) Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.
- 2) Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the minimum required open space of 150.
- 3) Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30’.
- 4) Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed side yards are less than the 5’-0” minimum side yard required;”  
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 yard and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this

# MINUTES

application on August 26, 2008, after due notice by publication in *The City Record*, and then to decision on September 23, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 28<sup>th</sup> Street, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with floor area of 1,292 sq. ft. (0.65 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from 1,292 sq. ft. (0.65 FAR), to 2,000 sq. ft. (1.0 FAR); the maximum floor area permitted is 1,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide an open space ratio of 48 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with widths of 3'-8" along the northern lot line, and 7 1/2" along the southern lot line, respectively (side yards with a total width of 10'-0" and a minimum width of 5'-0" each are required), as the site qualifies as a pre-existing narrow lot; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum depth of 30'-0" is required); and

WHEREAS, at hearing, the Board requested that the applicant clearly establish that the second floor of the home is at least 15'-0" from the front yard property line; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the distance from the second floor of the home is located 15'-0" from the front yard property 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 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 yard, 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 September 19, 2008"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 2,000 sq. ft. (1.0 FAR), an open space ratio of 48 percent, one side yard with a width of 3'-8", one side yard with a width of 7 1/2", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 23, 2008.

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## 148-08-BZ

APPLICANT – Dennis D Dell' Angelo, for Michael Hass, owner.

SUBJECT – Application May 28, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); less than the required side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1383 East 27<sup>th</sup> Street, east side of East 27<sup>th</sup> Street, 60' north of Avenue N, Block 7663, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Marc Dell' Angelo.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

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# MINUTES

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WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 27, 2008, acting on Department of Buildings Application No. 310144019, reads in pertinent part:

- “1) Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to sec. 23-141 of the NYC zoning resolution.
- 2) Proposed horizontal enlargement provides less than the required side yards contrary to sec. 23-46 of the NYC zoning resolution and less than the required rear yard contrary to sec. 23-47 of the NYC 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, side yards and rear yard, contrary to ZR §§ 23-141, 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, and then to decision on September 23, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of 27<sup>th</sup> 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 single-family home with floor area of approximately 1,661 sq. ft. (0.41 FAR); and

WHEREAS, the premises are 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 approximately 1,661 sq. ft. (0.41 FAR), to 3,956 sq. ft. (0.98 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 53 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement will provide one side yard along the southern lot line with a width of 8'-0¼" and will maintain the existing non-complying side yard along the northern lot line with a width of 4'-11¾" (two side yards with minimum widths of 5'-0" and 8'-0", respectively, and a total minimum width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum depth of 30'-0" is required); and

WHEREAS, at hearing the Board questioned which portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted revised plans showing the portions of the existing home that

were being retained; 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 August 8, 2008”–(11) sheets, “August 11, 2008”–(1) sheet and “September 5, 2008”–(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,955.9 sq. ft. (0.98 FAR), an open space ratio of 53 percent, one side yard with a width of 8'-0¼", one side yard with a width of 4'-11¾", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height and compliance with the sky exposure plane;

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 23, 2008.

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# MINUTES

## 165-08-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP; for Vornado Office Management LLC, owner; Bally Sports Club, Incorporated, lessee.

SUBJECT – Application June 18, 2008 – Special Permit (§73-36) to allow a physical culture establishment on four levels in an existing 26-story building. The proposal is contrary to ZR § 32-10. C6-6 & C6-4.5 MiD districts.

PREMISES AFFECTED – 11 Penn Plaza, a/k/a 166 West 32<sup>nd</sup> Street, south side of West 32<sup>nd</sup> Street between Seventh and Sixth Avenues. Block 807, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES – None.

**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

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

## 243-07-BZ/244-07-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (§23-141); less than the minimum front yards (§23-45) and less than the required amount of parking (§23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

## 257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The

proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

### COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Susan Golden.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for deferred decision.

## 291-07-BZ

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to §24-35 (side yards), §24-391 (rear yard), §24-34 (front yard), and §24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for decision, hearing closed.

## 59-08-BZ

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

# MINUTES

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

## 76-08-BZ

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.

SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR section 24-36. R5 district.

PREMISES AFFECTED – 621 Beach 9<sup>th</sup> Street, south of Caffney Avenue, Block 1558, Lot 15, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

## 79-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Giuseppe Porretto, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) for the construction of a single family residence on a vacant lot. This application seeks to vary (§23-32) for undersized lot width and lot area; (§23-461) for less than the required side yards and (§21-15) for a proposed lot line building which is not allowed in an R3-2 zoning district.

PREMISES AFFECTED – 117-23 132<sup>nd</sup> Street, easterly side of 132<sup>nd</sup> Street, 220; southerly of Foch Boulevard, Block 11696, Lot 55, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

## 84-08-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; L & M Service Station, lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§§11-411, 11-412 & 73-01 (d)) to reinstate and amend the variance granted under Cal. No. 410-48-BZ for an

automotive service station with accessory uses located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 67-24 Main Street, a/k/a 68-12 Main Street, West side Street 315.5' north of 68<sup>th</sup> Drive, Block 6486, Lot 38, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

## 89-08-BZ

APPLICANT – Eric Palatnik, P.C., for Majorie Wilpon, owner.

SUBJECT – Application April 11, 2008 – Special Permit (§73-125) to allow a medical office (UG 4) in an existing one-story commercial office building, allowed by prior variance. R3X (HS) district.

PREMISES AFFECTED – 1101 Victory Boulevard, northwest corner of Victory Boulevard and Melrose Avenue, Block 247, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for decision, hearing closed.

## 93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.



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# MINUTES

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## 159-08-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal and Jack Freeman.

For Opposition: Jennifer Polovejsky and Paul Velazquez.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 178-08-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.

SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judith Baron and Susan Klapper.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 185-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Claremont LaSalle, Incorporated c/o Manhattan Modern Management, owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to allow the enlargement of a six-story building and installation of an elevator, contrary to bulk regulations.

PREMISES AFFECTED – 170 Claremont Avenue, corner lot located on the eastside of Claremont Avenue and south side of LaSalle Street, Block 1993, Lot 43, Borough of Manhattan.

### COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Carole Slater, John Gillis, Jack Dagleish.

For Opposition: Donald L. Coned.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, for continued hearing.

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## 194-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Colonnade Management LLC, owner.

SUBJECT – Application July 16, 2008 – Special Permit (§73-19) to allow a Use Group 3 school on the first floor of an existing four-story mixed-use building. The proposal is contrary to ZR Section 42-10. M1-5B district.

PREMISES AFFECTED – 432 Lafayette Street, westerly side of Lafayette Street, 229'-11" south of Astor Place, Block 545, Lot 38, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:30 P.M.*

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# MINUTES

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**SPECIAL HEARING  
WEDNESDAY MORNING, SEPTEMBER 24, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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**APPEALS CALENDAR**

**136-08-A**

APPLICANT – John Beckmann.  
OWNER: Pauline & Gus Englezos.  
SUBJECT – Application May 2, 2008 – An appeal seeking  
to revoke a permit that allows off- street parking in the front  
yard of an attached dwelling contrary to §25-621. R4-1  
Zoning District.  
PREMISES AFFECTED – 846 70<sup>th</sup> Street, between 8<sup>th</sup>  
Avenue and Fort Hamilton Parkway, Block 5896, Lot 25,  
Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –  
For Applicant: John Beckman, Stephen DiBrienza, Council  
Member Vincent Gentile, Joseph Greenwood, Dean  
Resinya, Joanne Semman, Josephine Beckman, Ronald  
Gross, Susan Pelarlie, Lou Gancila, Victoria Hofmo and  
Jane Cuccurello.

For Opposition: Gus Englezos and Ganine Gayland,  
Department of Buildings.

**THE VOTE TO CLOSE HEARING –**

Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD –** Laid over to October  
28, 2008, at 10 A.M., for decision, hearing closed.

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**202-08-BZY**

APPLICANT – Greenberg Traurig by Deirdre Carson, for  
Oliver Development, LLC, owner.  
SUBJECT – Application August 1, 2008 – Extension of  
time (§11-331) to complete construction of a minor  
development commenced prior to a text amendment on July  
23, 2008. R6 Zoning district.  
PREMISES AFFECTED – 131 Second Place, northwest  
corner of Second Place and Smith Street, Block 459, Lot 24,  
Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –  
For Applicant: Deirdre Carson, Neil Wexley, Szlvztore  
Buddy Scotto and Michael Brown.  
For Opposition: Paul Nelson for Assembly Joan L. Millman,  
Levoy Branch, Maria Pagano, John Hatheway, Gary G.  
Reilly, Doanld S., Vincent Favorito., Lucy DeCarlo, Mike

Saluatore, Bette Stoltz, Maryann Yary, Zoe Pellegrino, and  
Barbara Deinhasdt.

**ACTION OF THE BOARD –** Laid over to October  
28, 2008, at 10 A.M., for continued hearing.

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**212-08-A**

APPLICANT – Greenberg Traurig by Deirdre Carson for  
Oliver Development, LLC, owner.  
SUBJECT – Application August 1, 2008 – Appeal seeking a  
determination that the owner has acquired a common law  
vested right to continue development under the prior zoning  
district regulations. R6 zoning district.  
PREMISES AFFECTED – 131 Second Place, northwest  
corner of Second Place and Smith Street, block 459, Lot 24,  
Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –  
For Applicant: Deirdre Carson, Neil Wexley, Szlvztore  
Buddy Scotto and Michael Brown.  
For Opposition: Paul Nelson for Assembly Joan L. Millman,  
Levoy Branch, Maria Pagano, John Hatheway, Gary G.  
Reilly, Doanld S., Vincent Favorito., Lucy DeCarlo, Mike  
Saluatore, Bette Stoltz, Maryann Yary, Zoe Pellegrino, and  
Barbara Deinhasdt.

**ACTION OF THE BOARD –** Laid over to October  
28, 2008, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 5:00 P.M.*

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# MINUTES

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## \*CORRECTION

This resolution adopted on July 29, 2008, under Calendar No. 713-55-BZ and printed in Volume 93, Bulletin No. 31, is hereby modified to read as follows:

### 713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a gasoline service station (Mobil), in a C2-2/R3-2 zoning district, which expired on May 22, 2003.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side blockfront between Utopia Parkway and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Patrick C. Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of time to obtain a certificate of occupancy, which expired on May 21, 2003; and

WHEREAS, a public hearing was held on this application on July 1, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 22, 2008, and then to decision on July 29, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the site is located on the north side of the Horace Harding Expressway between Utopia Parkway and 182<sup>nd</sup> Street, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956, when, under the subject calendar number, the Board granted a variance to permit the occupation of the premises by a gasoline station and accessory uses; 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 21, 2002, for a period of ten years, to expire on December 11, 2011, with a condition that a certificate of occupancy be obtained by May 21, 2003; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy in part because a landscaped area had been paved over contrary to the BSA-approved plans; and

WHEREAS, on January 31, 2005, at the applicant's request, the Board issued a letter to the Department of Buildings, stating no objection to the paved area; and

WHEREAS, based upon the above, 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 December 11, 1956, so that as amended this portion of the resolution shall read: "to permit a six-month extension of time to obtain a certificate of occupancy, to expire on January 29, 2009; *on condition* that all use and operations shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 23, 2008"- (6)sheets; and on *further condition*:

THAT a certificate of occupancy shall be obtained by January 29, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Application No. 410058681)

Adopted by the Board of Standards and Appeals July 29, 2008.

**\*\*The resolution has been corrected in the DOB Application No. which read: "N.B. No. 3233" now reads, "Application No. 410058681", and to add Approved Plans dated "Received May 23, 2008"-(6) sheets. Corrected in Bulletin No. 39, Vol. 93, dated October 2, 2008.**

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# MINUTES

## \*CORRECTION

This resolution adopted on January 9, 2007, under Calendar No. 190-92-BZ and printed in Volume 92, Bulletin Nos. 1-3, is hereby modified to read as follows:

### 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 88<sup>th</sup> and East 89<sup>th</sup> 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 88<sup>th</sup> Street and East 89<sup>th</sup> 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 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. 104453850)

Adopted by the Board of Standards and Appeals, January 9, 2007.

**\*The resolution has been corrected in the DOB Application No. which read: "DOB Application. No. 104183571" now reads, "Application No. 104453850 Corrected in Bulletin No. 39, Vol. 93, dated October 2, 2008.**

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# MINUTES

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**\*CORRECTION**

**Application No. which read: "Applic. No. 500067642" now reads, "Applic. No. 500468059". Corrected in Bulletin No. 39, Vol. 93, dated October 2, 2008.**

This resolution adopted on May 17, 1994, under Calendar No. 170-93-A and printed in Volume LXXIX, Bulletin No. 31, is hereby modified to read as follows:

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*Jeff Mulligan, Executive Director*

**170-93-A**

APPLICANT – Vito J. Fossella, for Louis Russo, owner.  
SUBJECT – Application December 13, 1993 – Proposed building not fronting on a legally mapped street is contrary to Section 36 Article 3 of the General City Law.

PREMISES AFFECTED – 220 Industrial Loop, west side, 1695.35' north of Arthur Kill Road, Block 7206, Lot 130, Borough of Staten Island.

APPEAREANCES –

For Applicant: Victor Han.

**ACTION OF THE BOARD** – Appeal granted on condition.

THE VOTE TO CLOSE HEARING –

Affirmative: Chairman Silva, Vice-Chair Schlissel, Commissioner Palladino and Commissioner Joseph.....4

Negative.....0

Absent: Commissioner Chen.....1

THE VOTE TO GRANT –

Affirmative: Chairman Silva, Vice-Chair Schlissel, Commissioner Palladino and Commissioner Joseph.....4

Negative.....0

Absent: Commissioner Chen.....1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated November 16, 1993, acting on Applic. #500468059, reads;

“Street giving access to the proposed building is not placed on the official map of the City of New York, therefore;

1. No Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law”; and

WHEREAS, the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Resolved, that the decision of the Borough Commissioner, dated November 16, 1993, acting on Applic. No. 500468059, Objection No.1, is modified under the power vested in the Board limited to the objection noted, on condition that the sidewalk, curb, curb cut and pavement to the middle of the street shall comply with the requirements of the Department of Transportation; that the building shall substantially conform to drawings filed with the application marked, “Received December 13, 1993”-one(1) sheet and “Received March 1, 1994”-one(1) sheet; and that all applicable laws, rules and regulations shall be complied with.

Adopted by the Board of Standards and Appeals, May 17, 1994.

**\*The resolution has been corrected in the DOB**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 40

October 17, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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|                        |  |
|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

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### CONTENTS

|                                      |     |
|--------------------------------------|-----|
| DOCKET .....                         | 676 |
| <b>CALENDAR</b> of November 18, 2008 |     |
| Morning .....                        | 677 |
| Afternoon .....                      | 678 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, October 7, 2008**

Morning Calendar .....679

**Affecting Calendar Numbers:**

|                           |  |
|---------------------------|--|
| 605-86-BZ                 | 7606 7 <sup>th</sup> Avenue, Brooklyn                            |
| 222-90-BZ                 | 80-02 Kew Gardens Road, Queens                                   |
| 68-94-BZ                  | 2100 Bartow Avenue, Bronx  |
| 182-85-BZ                 | 206-08 20 <sup>th</sup> Street, Brooklyn                         |
| 183-85-BZ                 | 206-08 20 <sup>th</sup> Street, Brooklyn                         |
| 360-01-BZ                 | 2228 Gerritsen Avenue, Brooklyn                                  |
| 340-03-BZ                 | 408 Greenwich Street, Manhattan                                  |
| 257-04-BZ                 | 252/260 Atlantic Avenue, aka 83-89 Boerum Place, Brooklyn        |
| 736-45-BZ                 | 3740 Broadway, Manhattan   |
| 94-58-BZ                  | 22-55/25-75 Brooklyn Queens Expressway, Queens                   |
| 141-58-BZ                 | 201-203 East 202 <sup>nd</sup> Street, Bronx                     |
| 198-66-BZ                 | 300 East 74 <sup>th</sup> Street, Manhattan                      |
| 170-96-BZ                 | 8501 Flatlands Avenue, Brooklyn                                  |
| 20-02-BZ                  | 303 Park Avenue South, Manhattan                                 |
| 230-07-BZY                | 90-22 176 <sup>th</sup> Street, Queens                           |
| 39-07-A thru<br>40-07-A   | 3248, 3250 Wickham Avenue, Bronx                                 |
| 251-07-A thru<br>254-07-A | 63/65 Houston Street and 104/106 Willowbrook Road, Staten Island |
| 34-08-A                   | 144 North 8 <sup>th</sup> Street, Brooklyn                       |
| 70-08-A thru<br>72-08-A   | 215C, 215B, 215A Van Name Avenue, Staten Island                  |
| 73-08-A thru<br>75-08-A   | 354 Van Name, Staten Island                                      |
| 81-08-A &<br>82-08-A      | 514-516 & 515 East 5 <sup>th</sup> Street, Manhattan             |
| 168-08-A                  | 63 Brighton 2 <sup>nd</sup> Place, Brooklyn                      |

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# CONTENT

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Afternoon Calendar .....686

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 291-07-BZ | 1912 New York Avenue, Brooklyn              |
| 9-08-BZ   | 555 Foster Road, Staten Island              |
| 89-08-BZ  | 1101 Victory Boulevard, Staten Island       |
| 194-08-BZ | 432 Lafayette Street, Manhattan             |
| 51-07-BZ  | 70-44 to 58 Kissena Boulevard, Queens       |
| 257-07-BZ | 3 East 101 <sup>st</sup> Street, Manhattan  |
| 268-07-BZ | 1644 48 <sup>th</sup> Street, Brooklyn      |
| 35-08-BZ  | 1856 East 24 <sup>th</sup> Street, Brooklyn |
| 46-08-BZ  | 491 Bedford Avenue, Brooklyn                |
| 61-08-BZ  | 439 86 <sup>th</sup> Street, Brooklyn       |
| 155-08-BZ | 282 Beaumont Street, Brooklyn               |
| 158-08-BZ | 1814 East 27 <sup>th</sup> Street, Brooklyn |
| 175-08-BZ | 141 Allen Street, Manhattan                 |
| 179-08-BZ | 600 Broadway, Manhattan                     |
| 189-08-BZ | 232 Mercer Street, Manhattan                |
| 190-08-BZ | 41-43 Bond Street, Manhattan                |
| 203-08-BZ | 1245 East 23 <sup>rd</sup> Street, Brooklyn |
| 208-08-BZ | 2117-2123 Avenue M, Brooklyn                |
| 214-08-BZ | 1855 East 24 <sup>th</sup> Street, Brooklyn |

**MINUTES of Special Hearing,  
Wednesday, October 8, 2008**

Morning Calendar .....699

**Affecting Calendar Numbers:**

|                   |  |
|-------------------|--|
| 152-08-A/177-08-A | 515 W 23 <sup>rd</sup> Street, Manhattan |
| 229-06-A          | 607 Bayside Drive, Queens                |
| 140-07-A          | 607 Bayside Drive, Queens                |



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# DOCKET

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New Case Filed Up to October 7, 2008  
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**239-08-A**

23 Hudson Walk, East side of Hudson Walk 90' north of Breezy Point Boulevard, Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction of an existing home not fronting on a legally mapped street, contrary to General City Law Section 36, Article 3.  
-----

**240-08-A**

167 Bayside Drive, South/side of Bayside Drive 100' west of mapped Beach 178th Street, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Construction within mapped street, contrary to Section 35 of the General City Law, Article 3.  
-----

**241-08-BZ**

546 Midland Avenue, The southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot(s) 29, Borough of **Staten Island, Community Board: 2**. Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to GCL36 . R4  
-----

**242-08-A**

53 Beach 216th Street, East side of Tioga Walk 225.04' south of 6th Avenue, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to GCL 35. R4  
-----

**243-08-A**

489 Amsterdam Avenue, Between 83rd and 84th Streets., Block 1214, Lot(s) 64, Borough of **Manhattan, Community Board: 7**. Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Section 36 of the GCL and partially in the bed of a mapped street contrary to Section 35 of the GCL. R4 zoning district .  
-----

**244-08-BZ**

139-153 East 53rd Street, North side of 53rd Street between 3rd Avenue and Lexington Avenue, Block 1308, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-00) to seek permit to operate a physical culture establishment.  
-----

**245-08-BZY**

219-05 North Conduit Boulevard, Premises is bounded by Springfield Boulevard, 144<sup>th</sup> Avenue, and North Conduit Boulevard, Block 13085, Lot(s) 4, Borough of **Queens, Community Board: 13**. Extension of time to complete construction (11-331) of minor development commenced under the prior C2-2/R3-2 district regulations . C1-1/R3X.  
-----

**246-08-BZ**

4400 Third Avenue, Entire block bounded by Third Avenue, East 184th Street, Quarry Road, and East 181<sup>st</sup> Street, Block 3064, Lot(s) 1, 20, (tent) 100, Borough of **Bronx, Community Board: 6**. Special Permit/Variance(73-481, 73-49,72-21) To allow construction of a five story hospital with facility parking.  
-----

**247-08-BZ**

3454 Nostrand Avenue, Approximately 49 feet along Nostrand Avenue and approximately 49 feet along Graysend Neck Road, Block 7362, Lot(s) 10, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-01, 73-03,73-243) to allow a drive-through facility at Starbucks Coffeehouse.  
-----

**248-08-BZ**

3550 Eastchester Road, The Eastern side of Eastchester Road between Hicks Street and Needham Avenue, Block 4726, Lot(s) 7,36,38, Borough of **Bronx, Community Board: 12**. Variance to allow the development of religious-based school and church, contrary to the use regulations.  
-----

**249-08-BZ**

130 Adelaide Avenue, West side of Adelaide Avenue, 497 ft. south of intersection with Guyon Avenue, Block 4705, Lot(s) 151, Borough of **Staten Island, Community Board: 3**. Variance to allow a one family dwelling, contrary to use 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.**

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# CALENDAR

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NOVEMBER 18, 2008, 10:00 A.M.

APPEALS CALENDAR

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 18, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## SPECIAL ORDER CALENDAR

### 863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.  
SUBJECT – Application September 25, 2008 – Extension of Term of a previously granted variance for a (UG16A) auto repair establishment, in an R-2 zoning district, which will expire on November 25, 2008.

PREMISES AFFECTED – 259-16 Union Turnpike, south east corner of 259<sup>th</sup> Street, Block 8678, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**

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### 297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application October 6, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a (UG16) Gasoline Service Station (Mobil), in a C2-2/R6B zoning district, which will expire on February 12, 2009.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side of blockfront between Northern Boulevard and 45<sup>th</sup> Road, Block 7333, Lot 201, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### 159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center Incorporated, owner; Dolphin Fitness Clubs, lessee.

SUBJECT – Application October 6, 2008 – Extension of Time to complete construction to allow the legalization of a P.C.E. on the second floor of a two story commercial building (Stillwell Sports Center) and an Extension of Time to Obtain a Certificate of Occupancy, in a C8-2 zoning district, which expired on May 27, 2008.

PREMISES AFFECTED – 2402 86<sup>th</sup> Street, southeast corner of 86<sup>th</sup> Street and 24<sup>th</sup> Avenue, Block 6864, Lot 37, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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### 60-08-A

APPLICANT – Eric Palatnik, P.C., for F & Z Properties, owners.

SUBJECT – Application March 21, 2008 – Proposed construction of a four Story Community Facility located within the bed of a mapped street (102nd Street) contrary to General City Law Section 35. R6B (C1-4) zoning district.  
PREMISES AFFECTED – 101-20 39<sup>th</sup> Avenue (formerly 101-20, 101-22 & 101-24 103<sup>rd</sup> Street, between 102<sup>nd</sup> and 103<sup>rd</sup> Streets, Block 1770, Lot 22, Borough of Queens.

**COMMUNITY BOARD #3Q**

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### 121-08-A thru 132-08-A

APPLICANT – Philip L. Rampulla, for Rocco Berardi, owner.

SUBJECT – Application April 24, 2008 – Proposed construction of twelve homes not fronting a legally mapped street contrary to General City Law Section 36. R3x (SSRD) Series - 121-08-A thru 132-08-A.

PREMISES AFFECTED – 80, 70, 60, 59, 79, 15, 25, 39, 55, 50, 40, 30, Gallant Loop, Block 6517, Lot 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### 231-08-A

APPLICANT – Gerard E. Meyer, for Breezy Point Cooperative Inc., owner; Stephen D'Antonio, lessee.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning

PREMISES AFFECTED – 118 Beach 221<sup>st</sup> Street, southwest side of Beach 221<sup>st</sup> Street, 320' southeast of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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**NOVEMBER 18, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, November 18, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**172-08-BZ**

APPLICANT – Mitchell A. Korbey, Esq., for Sunnyside Jewish Center, owners.

SUBJECT – Application June 27, 2008 – Variance (§72-21) to permit the conversion of an existing two-story residential building to a house of worship. The proposal is contrary to ZR Section 24-35 (a) (Side yards). R5 district.

PREMISES AFFECTED – 40-20 47<sup>th</sup> Avenue, aka 4702-4710 41<sup>st</sup> Street, southwest corner of 47<sup>th</sup> Avenue and 41<sup>st</sup> Street, Block 198, Lot 36, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**188-08-BZ**

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.

PREMISES AFFECTED – 35 East 76<sup>th</sup> Street, (975-983 Madison; 981 Madison; 35-53 East 76<sup>th</sup> Street) northeast corner of Madison Avenue and East 76<sup>th</sup> Street, Block 1391, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**199-08-BZ**

APPLICANT – Rizzo Group, LLP, for Acadia PA East Fordham Acqustns, LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 28, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the third floor in an existing 14-story mixed-use building. The proposal is contrary to ZR Section 32-10. C4-4 district.

PREMISES AFFECTED – 400 East Fordham Road (aka 2506-2526 Webster Ave./4747-4763 Park Ave.) Block 3033, Lot 12, Borough of Bronx.

**COMMUNITY BOARD #6BX**

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**224-08-BZ**

APPLICANT – Omnipoint Communications Inc., for Remzija Suljovic, Rizo Muratovic, Brahim Muratovic, owners; Omnipoint Communications Inc., lessee.

SUBJECT – Application August 29, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower, to mount nine small panel antennas and related equipment cabinets on the rooftop.

PREMISES AFFECTED – 47-10 Laurel Hill Boulevard, south side of Laurel Hill Boulevard, bounded by 47<sup>th</sup> Street, to the west and 48<sup>th</sup> Street to the east, Block 2305, Lot 22, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**225-08-BZ**

APPLICANT – Lewis E. Garfinkel, R.A., for Lewis Sternlicht, owner.

SUBJECT – Application September 2, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family residence. This application seeks to vary open space and floor area (23-141(a)); side yards (23-461) and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1155 East 24<sup>th</sup> Street, between Avenue K and Avenue L, Block 7624, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**230-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.

SUBJECT – Application September 5, 2008 – 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); and less than minimum rear yard requirement (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1019 East 23<sup>rd</sup> Street, East side of 23<sup>rd</sup> Street between Avenue J and Avenue K, Block 7605, Lot 36, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 7, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**605-86-BZ**

APPLICANT – Anthony M. Salvati, Architects, for Bernard Wechsler, owner.

SUBJECT – Application November 19, 2007 – Extension of Term of a Variance (§72-21) previously granted for a (UG4) two story medical office building in an R5B(BR) zoning district which expired on March 31, 2007; an Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 1998 and a Waiver of the rules.

PREMISES AFFECTED – 7606 7<sup>th</sup> Avenue, southeast corner of 76<sup>th</sup> Street and 7<sup>th</sup> Avenue, Block 5953, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Mark McCarthy.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening of a previously granted variance permitting medical office use (Use Group 4), an extension of term, and an extension of the time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on September 16, 2008 after due notice by publication in the *City Record*, and then to decision on October 7, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Ottley-Brown and Commissioner Montanez; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of 76<sup>th</sup> Street and 7<sup>th</sup> Avenue, in an R5B zoning district within the Special Bay Ridge District; and

WHEREAS, the site is currently occupied by a two-story residential building with medical office use on both floors and one accessory parking space; and

WHEREAS, the site has been under the jurisdiction of the Board since March 31, 1987, when, under the subject

calendar number, the Board granted a variance under Z.R. § 72-21 to permit medical office use on the second floor of the subject building; and

WHEREAS, on June 10, 1997, the Board granted a ten-year extension of term, to expire March 31, 2007; and

WHEREAS, the applicant now seeks to extend the term and extend the time to obtain a new certificate of occupancy; and

WHEREAS, the Board may extend the term of an expired variance; and

WHEREAS, based upon the above, the Board finds the requested extensions to be 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 the resolution, as adopted March 31, 1987, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from the expiration of the prior grant, to expire on March 31, 2017, and to extend the time to obtain a certificate of occupancy; *on condition*:

THAT this grant shall be for a term of ten years, to expire on March 31, 2017;

THAT a new certificate of occupancy be obtained within six months of the date of this grant, by April 7, 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;

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. 302226909)

Adopted by the Board of Standards and Appeals, October 7, 2008.

**222-90-BZ**

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for 80-02 Fee Owner LLC, owner; Jack LaLanne Fitness Centers d/b/a Bally Total Fitness; lessee.

SUBJECT – Application August 7, 2008 – Extension of Term/waiver for the continued operation of a previously granted PCE (Bally Total Fitness), in a C4-4 zoning district, which expired on August 13, 2006 and an Extension of Time to obtain a Certificate of Occupancy which expired on September 23, 1998.

PREMISES AFFECTED – 80-02 Kew Gardens Road, west side of block front at Union Turnpike, Block 3348, Lot 37, Borough of Queens.

**COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Barbara Hair.

# MINUTES

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening of a previously granted special permit for a physical culture establishment (Use Group 9), an extension of term which expired on September 23, 2007, and an extension of the time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on September 23, 2008 after due notice by publication in the *City Record*, and then to decision on October 7, 2008; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the site is located at the southwestern intersection of Kew Gardens Road and Union Turnpike, within a C4-4 zoning district; and

WHEREAS, the PCE is operated as “Bally Total Fitness”; and

WHEREAS, the site has been under the jurisdiction of the Board since August 13, 1991, when, under the subject calendar number, the Board granted a special permit under Z.R. §73-36 for a physical culture establishment at the site; and

WHEREAS, on September 23, 1997, the Board granted a ten-year extension of term, to expire August 13, 2006; and

WHEREAS, the applicant now seeks to extend the term and extend the time to obtain a new certificate of occupancy; and

WHEREAS, the Board may extend the term of an expired special permit; and

WHEREAS, the applicant also seeks approval of minor changes to the previously approved plans; specifically, the removal of a ballet bar and the installation of turnstiles; and

WHEREAS, based upon the above, the Board finds the requested extensions and modification to the approved plans to be 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 the resolution, as adopted August 13, 1991, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from the expiration of the prior grant, to expire on August 13, 2016, and to extend the time to obtain a certificate of occupancy; *on condition*:

THAT this grant shall be for a term of ten years, to expire on August 13, 2016;

THAT a new certificate of occupancy be obtained within six months of the date of this grant, by March 7, 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;

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. 400594843)

Adopted by the Board of Standards and Appeals, October 7, 2008.

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## 68-94-BZ

APPLICANT – Cozen O’Connor, for Bay Plaza Community Center LLC, owner; Jack LaLanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application August 14, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted special permit for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expired on March 12, 2008. The premise is located in a C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, southside of Baychester Avenue, Block 5141, Lot 810, Borough of Bronx.

## COMMUNITY BOARD #10BX

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a previously granted special permit for the operation of a physical culture establishment (PCE), which expired on March 12, 2008; and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in *The City Record*, and then to decision on October 7, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the site is located on the south side of Bartow Avenue, between Baychester Avenue and the Hutchinson River Parkway, within a C4-3 zoning district; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-op City Bay Plaza shopping

# MINUTES

center and occupies 20,290 sq. ft. of floor area; and  
WHEREAS, the PCE is operated as “Bally Total Fitness”; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C3-4 district, the operation of a PCE for a term of ten years; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years, to expire on November 1, 2014; and

WHEREAS, a condition of the prior grant was that a certificate of occupancy be obtained by September 12, 2006; and

WHEREAS, on September 12, 2006 the Board granted an 18-month extension of time to obtain a certificate of occupancy, to expire March 12, 2008; and

WHEREAS, the applicant represents that its application to DOB for a certificate of occupancy for the PCE is pending and that it is conditioned on approval by the Board of the instant application; and

WHEREAS, based upon its review of the record, the Board finds that an 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, dated November 1, 1994, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to April 7, 2009; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by April 7, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 7, 2008.

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## 182-85-BZ

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 19, 2007 – Extension of Term/Waiver of a previously granted Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor’s establishment (Fox Glass), in an R6B zoning district, which expired on September 9, 2006. PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Mark McCarthy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for decision, hearing closed.

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## 183-85-BZ

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 9, 2007 – Extension of Term/waiver of a previously granted Variance (§72-21) for the operation of a (UG16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, in an R6B zoning district, which expired on November 18, 2006.

PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Mark McCarthy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for decision, hearing closed.

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## 360-01-BZ

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.

SUBJECT – Application July 1, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.

PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Carl A. Sulfaro, Esq.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for decision, hearing closed.

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## 340-03-BZ

# MINUTES

APPLICANT – Davidoff Malito & Hutcher, LLP, by Howard S. Weiss, Esq., for 408-410 Greenwich Street LLC.  
SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich Street, Block 217, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Howard Weiss and Robert Pauls.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

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## 257-04-BZ

APPLICANT – Cozen O'Connor Attorneys, for Boerum Place, LLC, owner.

SUBJECT – Application May 19, 2008 – Original bulk variance was granted on 8/23/05. SOC Amendment filed on 5/19/08 pursuant to ZR §§72-01 & 72-22 to modify the street wall with dormers and to extend the elevator bulkhead to allow ADA access to the roof. No changes proposed to floor area or any waiver previously granted by the Board. R6, R6A, C2-3 & C2-4 districts.

PREMISES AFFECTED – 252/260 Atlantic Avenue, aka 83-89 Boerum Place, aka 239/247 Pacific Street, east side of Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for decision, hearing closed.

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## 736-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Midel Property Associates, LLC, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application June 3, 2008 – Extension of Term/waiver for a previously granted variance for the operation of a gasoline service station (Mobil), in a C2-4/R8 zoning district, which expired on March 17, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 8, 2000.

PREMISES AFFECTED – 3740 Broadway, northeast

corner of West 155<sup>th</sup> Street, Block 2114, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Patrick Gorman.

For Opposition: James E. Scott, Kim McEvoy, Stacey Murphy.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

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## 94-58-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Nor-East S/S Incorporated, lessee.

SUBJECT – Application June 19, 2008 – Extension of Term/waiver for the continued operation of a gasoline service station (Mobil), in an R-4 zoning district, which expired on September 30, 2003

PREMISES AFFECTED – 22-55/25-75 Brooklyn Queens Expressway, northeast corner of 30<sup>th</sup> Avenue, Block 1046, Lot 1, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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## 141-58-BZ

APPLICANT – Kenneth H. Koons, for East 201 Street Realty Corporation, owner.

SUBJECT – Application August 14, 2008 – Extension of Term of a UG7 Funeral Home in an R8C-(Special Grand Concourse Preservation) zoning district which expired on July 15, 2008.

PREMISES AFFECTED – 201-203 East 202<sup>nd</sup> Street, northeast corner Grand Concourse, Block 3307, Lots 67 & 68, Borough of Bronx.

## COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Kenneth Koons.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

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## 198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application July 25, 2008 – Extension of Time to Complete Construction of an existing plaza for a residential high rise building, in a C1-9 zoning district,

# MINUTES

which expired on June 19, 2008 and an Extension of Time to obtain a Certificate of Occupancy which expires on June 19, 2009.

PREMISES AFFECTED – 300 East 74<sup>th</sup> Street, between First and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Lily Salm.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for decision, hearing closed.

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## 170-96-BZ

APPLICANT – Martyn & Don Weston, Architects, for 8501 Flatlands Avenue, owner.

SUBJECT – Application July 30, 2008 – Extension of Term/Amendment/Waiver (§72-01 & §72-22) to reopen the term of 10 years for an automobile repair facility located in an R5 zoning district.

PREMISES AFFECTED – 8501 Flatlands Avenue, northeast corner of East 85<sup>th</sup> Street, Block 8006, Lots 6 and 7, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Don Weston and Ben Delarea

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

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## 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 23<sup>rd</sup> Street, Block 879, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Administration: Nick Lecakes.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 230-07-BZY

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Alco Builders, Inc., owner.

SUBJECT – Application October 9, 2007 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on September 10, 2007. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61, Borough of Queens.

## COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez.....5

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 three-story multi-family residential building; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with continued hearings on June 24, 2008 and August 19, 2008, and then to decision on October 7, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, certain neighbors and the owner of the adjacent home, through counsel, appeared in opposition to the application (collectively the “Opposition”); and

WHEREAS, the site is located on 176<sup>th</sup> Street between Jamaica Avenue and 90<sup>th</sup> Avenue and has a lot area of 5,280 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a three-story multi-family dwelling (Use Group 2), with approximately 10,623 sq. ft. of floor area (1.72 FAR) (the



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# MINUTES

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“Building”); and

WHEREAS, the subject site is part of a five-building development on a single zoning lot; the applicant represents that the other four buildings have vested, therefore this application requests no action concerning them; and

WHEREAS, the subject premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district (the “Building”); and

WHEREAS, on July 5, 2007, DOB issued New Building Permit No. 402568431-01-NB (the “NB Permit”) for the Building; and

WHEREAS, however, on September 10, 2007 (the “Enactment Date”), the City Council voted to adopt the Jamaica 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

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 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 a 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

WHEREAS, however, the threshold issue is that any work performed in support of a vesting claim must be performed pursuant to a valid permit; and

WHEREAS, it is well settled that vested rights cannot be acquired in reliance upon an invalid permit (see *Matter of Natchev v. Klein*, 41 N.Y.2d 834, 834 (1977); *Jayne Estates*

*v. Raynor*, 22 N.Y.2d 417, 422 (1968));

WHEREAS, even where DOB erroneously issues a permit due to its own initial failure to notice that a builder's plans do not comply with provisions of the Zoning Resolution, no vested rights are acquired, since the permit could not have been validly granted in the first place (see *Perrotta v. City of New York*, 107 A.D.2d 320, 325 (1<sup>st</sup> Dep't aff'd 66 N.Y.2d 859 (985) and *GRA V, LLC v. Srinivasan*, 862 N.Y.S.2d 358 (1<sup>st</sup> Dep't 2008)); and

WHEREAS, as stated by the Court in *Perrotta*, “[a] determination as to whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise” (107 A.D.2d at 324); and

WHEREAS, on April 25, 2008, DOB performed a special audit of the building plans during the hearing process to determine whether the permit had been properly issued; and

WHEREAS, this audit resulted in three objections, two of which were reconsidered upon further review; and

WHEREAS, DOB issued a ten-day notice of intent to revoke the permit on April 29, 2008 based on the outstanding objection, concerning the noncompliance of the plans with the required dimensions of an inner court pursuant to ZR § 23-851; and

WHEREAS, the applicant attended a meeting with a plan examiner on May 21, 2008 in response to the letter of intent to revoke, but failed to resolve the objection; and

WHEREAS, DOB revoked the permit on June 17, 2008; and

WHEREAS, on September 26, 2008, the applicant met with the DOB Technical Affairs Unit to review the objection concerning to ZR § 23-851, but was unable to demonstrate that the objection was improperly issued; and

WHEREAS, accordingly, DOB has determined that the permit was invalid ab initio and the right to complete the work cannot have vested; and

WHEREAS, the Board agrees with DOB that any work performed cannot be considered for vesting purposes because the plans would not have complied with the zoning requirements and therefore no permits could be properly issued to permit the construction that was performed; and

WHEREAS, accordingly, because the permits were erroneously issued for a non-compliant building and were therefore invalid when issued, DOB rejects the Appellant's vesting claim; and

WHEREAS, the Board agrees with DOB and notes that New York State courts have consistently held that vested rights may only be granted for work performed pursuant to valid permits; and

WHEREAS, accordingly, 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.

*Therefore it is Resolved* that this application to renew DOB Permit No. 402568431-01-NB pursuant to ZR § 11-331

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# MINUTES

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is denied.

Adopted by the Board of Standards and Appeals,  
October 7, 2008.

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## **39-07-A thru 40-07-A**

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of two, 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED –3248, 3250 Wickham 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 November 18, 2008, at 10 A.M., for continued hearing.

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## **251-07-A thru 254-07-A**

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner.

SUBJECT – Application November 2, 2007 – 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.

PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: James E. Scott, Kim McEvoy and Stacey Murphy.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 10 A.M., for continued hearing.

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## **34-08-A**

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth (“NAG”) and People’s Firehouse, Inc. (“PFI”).

OWNER: North Seven Associates LLC

SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR §23-142 and ZR §12-10 which fails to provide adequate open space on the zoning lot to support the Building's floor area.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Kevin Christopher Shea, Philip DePaolo and Peter Gillespie.

For Opposition: Lisa Orrantia and Peter Geis.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

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## **70-08-A thru 72-08-A**

APPLICANT – Eric Palatnik, P.C., for TOCS Developers, Inc., owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.

PREMISES AFFECTED – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

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## **73-08-A thru 75-08-A**

APPLICANT – Eric Palatnik, P.C., for S.B. Holding, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

PREMISES AFFECTED –354 Van Name, northeast of the corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

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## **81-08-A & 82-08-A**

APPLICANT – Harvey Epstein, Esq., for 514-516 East 5<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 4, 2008 – Appeal seeking to revoke permit and approvals for a vertical enlargement of an existing non- fireproof tenement building which fails to comply with the applicable provisions of the MDL regarding fire safety standards. R7-2 zoning district.

PREMISES AFFECTED – 514-516 & 515 East 5<sup>th</sup> Street, between A and Avenue B, Block 401, Lot 17, 18 & 56, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Harvey Epstein, Rosie Mendez (NYC Councilmember), Brian Cook (Manhattan Borough

# MINUTES

President), John Foy, C#3; Wasim Lone and Monroe Schapiro

For Opposition: Mark Davis and Marvin Mitzner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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## 168-08-A

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110’ north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

## COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Peter Geis.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:15 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 7, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 291-07-BZ

#### CEQR #09-BSA-042Q

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory rabbi's quarters. The proposal is contrary to §24-35 (side yards), §24-391 (rear yard), §24-34 (front yard), and §24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 24, 2008, acting on Department of Buildings Application No. 310005776, reads, in pertinent part:

- “1. Proposed plans are contrary to ZR 24-35 in that the existing minimum side yard is less than the required minimum 8’-0”;
2. Proposed plans are contrary to ZR 24-391 in that the proposed rear yard is less than 30’-0”;
3. Proposed plans are contrary to ZR 24-34 in that the existing minimum front yard is less than the required minimum 15’-0”;
4. Proposed plans are contrary to ZR 24-521 in that the existing front wall height exceeds the maximum 35’-0”;
5. Proposed plans are contrary to ZR 24-551 in that the minimum side setback does not comply; and
6. Proposed plans are contrary to ZR 25-31 in that the minimum parking is not provided;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R4

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# MINUTES

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zoning district, the proposed conversion and enlargement of an existing two-story and cellar home into a three-story and cellar building to be occupied by a synagogue and accessory Rabbi's residence, which does not comply with front, rear and side yard, front wall height, side setback and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-391, 24-34, 24-521, 24-551, and 25-31; and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in *The City Record*, with continued hearings on July 15, 2008 and August 19, 2008 and then to decision on October 7, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, an adjacent property owner initially opposed the application but later submitted a consent to the proposed variance; and

WHEREAS, this application is being brought on behalf of Congregation Tifereth Torna Eliezer, Inc., a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the east side of New York Avenue between Avenue J and Avenue K within an R4 zoning district and has a lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is occupied by a detached two-story home which is non-compliant with respect to zoning requirements for front yard, side yard and rear yard; and

WHEREAS, the proposal provides for the following uses: (1) mikvah bath and synagogue use the cellar level, (2) a synagogue on the first floor; and (3) an accessory Rabbi's residence on the second and third floors; and

WHEREAS, the applicant initially proposed a synagogue building with the following parameters: approximately 6,597 sq. ft. of community facility floor area, an FAR of 1.65, a lot coverage of 46 percent, and a front yard waiver for the first through third floors; and

WHEREAS, the proposal was revised during the hearing process, the current proposal provides for a synagogue building with 5,952 sq. ft. of floor area, an FAR of 1.49, a lot coverage of 41 percent, and a setback at the third floor of 6'-0" from the New York Avenue frontage; and

WHEREAS, additionally, the applicant proposes: a height of 36'-4" (35'-0" is the maximum permitted in the subject zoning district); a front yard with a depth of 4'-8" at the first and second floors and a depth of 10'-8" at the third floor (a minimum depth of 15'-0" is required); one side yard with a width of 3'-9" on the southern lot line, and one side yard with a partial width of 7'-1" on the northern lot line (two side yards with minimum widths of 8'-0" each are required); a rear yard above the first floor of 29'-1.5" (a minimum rear

yard of 30'-0" is required); no side setback (a minimum setback of 18'-2" is required above 35'-0"); and no accessory parking (ten accessory parking spaces are required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the congregation of approximately 200 families; and (2) to provide a residence for the Synagogue's rabbi; and

WHEREAS, the applicant further states that its existing synagogue located nearby at 1880-1882 New York Avenue consists of 1,250 sq. ft. of floor area on a zoning lot containing 3,000 sq. ft. of lot area; and

WHEREAS, the applicant represents that the small size of its existing building does not allow it to serve its growing congregation and the limitations of its zoning lot do not permit sufficient expansion of its facility to accommodate its congregants; 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, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see *Jewish Recon. Syn. v. Vill. of Roslyn*, 38 N.Y.2d 283 (1975)); and

WHEREAS, the applicant represents that the existing building also constrains its ability to develop the site in compliance with applicable regulations; and

WHEREAS, the applicant states that the variances to rear yard, front yard and side yard along the southern lot line are necessitated by its construction on the footprint of the existing building and by the existing non-compliant conditions on the site, and the variance to height is necessitated by the height of the existing home, which makes a height of 36'-4" necessary to allow for a sufficient floor to ceiling height at the proposed third floor; and

WHEREAS, the applicant further states that the variance for a portion of the side yard at the first floor along the northern lot line is necessary to meet its programmatic need to provide an area within the Synagogue for the Ark of the Torah, required by religious doctrine to be set back in the room in which it is located; and

WHEREAS, the applicant further represents that the requested yard and side setback waivers would enable the

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# MINUTES

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Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that the proposed building height of 36'-4" would require a side setback of 18'-2" and that the required setback, coupled with the lot width of 40'-0", would result in a floor plate for the third floor that is infeasible and impractical; and

WHEREAS, at hearing, the Board asked the applicant to further demonstrate the necessity for the side yard waivers; and

WHEREAS, in response, the applicant submitted plans showing the occupancy counts for the revised proposed building as well as for an as-of-right building which indicate that, based on minimum square footage requirements, the proposed building could accommodate 282 congregants while a building with the required side yards could accommodate 250 persons, and

WHEREAS, the Board notes that the synagogue spaces within the as-of-right footprint have obstructed sight lines and would therefore have a smaller feasible capacity than would be inferred from the square footage of the space; 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 states that that the proposed use and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant represents that the scale and bulk of the Synagogue is consistent with the with the scale of the two-and-a-half-story homes that characterize the area; and

WHEREAS, the applicant states that the proposed building is being built on the footprint of the existing building and maintains the site's existing non-compliances with respect to the front yard at the first and second floors, the side yard and the rear yard; and

WHEREAS, the applicant further states that the homes in the immediate area are also characterized by front yards and side yards similar to that proposed; and

WHEREAS, the Board asked the applicant to document the neighborhood context for the proposed front yard; and

WHEREAS, the applicant submitted photographs of nearby homes depicting front yards which exhibit non-compliance similar to that existing and proposed at the subject site; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent

buildings; and

WHEREAS, specifically, the Board suggested that the applicant provide a complying front yard above the second floor by shifting the bulk of the building to its rear; and

WHEREAS, a response by the applicant states that providing a complying front yard at the third floor would necessitate the loss of a number of bedrooms from the Rabbi's residence and that such a reduction would be incompatible with its programmatic needs; and

WHEREAS, in response, the applicant re-designed the building to provide a 6'-0" setback above the second floor along the New York Avenue frontage; and

WHEREAS, as to traffic and parking impacts, the applicant noted that the impacts 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, a submission by the applicant indicates that 96 percent of the congregation live within three-quarters of a mile from the subject site; and

WHEREAS, the applicant conducted a parking survey indicating the availability of 406 parking spaces within a one-quarter mile radius of the subject site during a weekday morning between the hours of 8:30 a.m. and 12:30 p.m., when the bulk of its weekday activities are scheduled; and

WHEREAS, at hearing, the Board raised concerns with the compliance of the subject site with applicable requirements for landscaping and tree planting; and

WHEREAS, the applicant represents that the landscaping is in full compliance with the regulations for a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06 and submitted revised plans indicating the landscaped areas of the subject site; and

WHEREAS, in response to concerns by the Board regarding fire safety, the applicant has agreed to install a sprinkler system on the cellar and first floor levels, and to install a smoke detection system throughout the entire building; both the smoke detection system and the sprinkler system shall be connected to a Fire Department approved central station; and

WHEREAS, applicant further amended its plans to provide that synagogue-related refuse be stored indoors until pick-up and to provide opaque windows on the rear façade; 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

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# MINUTES

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WHEREAS, as noted, throughout the hearing process, the applicant revised the proposal to provide a 6'-0" setback above the second floor along the New York Avenue frontage, thereby reducing the overall floor area and providing additional light and air to adjacent homes; 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(ak) 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. 08BSA042K, dated April 18, 2008; 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, a proposed enlargement and conversion of an existing two-story home into a three-story and cellar building to be occupied by a synagogue and accessory Rabbi's residence, which does not comply with front, rear and side yard, front wall height, side setback and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-391, 24-34, 24-521, 24-551, 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 September 22, 2008—Two (2) sheets and "Received

August 5, 2008"— Eleven (11) sheets; and *on further condition*:

THAT the building parameters shall be: a height of 36'-4"; a front yard with a depth of 4'8" at the first and second floors and a depth of 10'-8" at the third floor; one side yard with a width of 3'-9" on the southern lot line, and one side yard with a partial width of 7'-1" on the northern lot line; a rear yard above the first floor of 29'-1.5"; and no side setback;

THAT no accessory parking will be provided;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship and residence;

THAT no commercial catering shall take place onsite;

THAT landscaping shall comply with the regulations for a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06;

THAT a sprinkler system shall be installed on the cellar and first floor levels and a smoke detection system shall be installed throughout the entire building, as shown on the BSA-approved plans,

THAT the smoke detection system and the sprinkler system shall be connected to a Fire Department approved central station; and

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, October 7, 2008.

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## **9-08-BZ**

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§ 72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§ 107-42); to vary side yards (§ 23-462) and front yards (§ 23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

## **COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Stephanie ?.

**ACTION OF THE BOARD** – Application granted on

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# MINUTES

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condition.

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 13, 2007, acting on Department of Buildings Application No. 510022930, reads in pertinent part:

“Proposed front yards are contrary to Z.R. Section 23-45”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3X zoning district within the Special South Richmond Development District and Lower Density Growth Management Area, the proposed construction of a two-story single-family home that does not provide the required front yards and is contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, with continued hearings on May 13, 2008, June 17, 2008, July 29, 2008 and September 16, 2008, and then to decision on October 7, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommended disapproval of an earlier version of the application; and

WHEREAS, the site is a corner lot located on the southeast corner of the intersection of Stafford Avenue and Foster Road, in an R3X zoning district within the Special South Richmond Development District and Lower Density Growth Management Area; and

WHEREAS, the site has a total lot area of 3,199 sq. ft. and is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the site; and

WHEREAS, the applicant initially sought variances to all side yards and front yards on the site, to permit a home with front yards of 2'-0" on Foster Road and 2'-0" on Stafford Avenue (two front yards with minimum depths of 10'-0" and 20'-0", respectively, are required), and with side yards of 2'-0" on the southern lot line and 8'-0" on the eastern lot line (two side yards with minimum widths of 5'-0" and 20'-0", respectively, are required); and

WHEREAS, the applicant revised the proposal during the hearing process to provide a complying front yard of 10'-0" on Foster Road, a front yard of 15'-0" on Stafford Avenue (a front yard with a minimum depth of 20'-0" is required), a complying side yard of 5'-0" on the southern lot line, and a complying side yard of 20'-0" on the eastern lot line; and

WHEREAS, now the applicant seeks only a front yard variance; and

WHEREAS, the applicant has provided documentation establishing that the subject lot was owned separately and individually from all other adjoining tracts of land as of December 15, 1961, and as of the date of application for a building permit, and is therefore an undersized lot pursuant to ZR § 23-33; and

WHEREAS, the Board notes that Z.R. § 23-33 eliminates a lot area requirement for a single-family dwelling, but not the front yard objection; and

WHEREAS, the applicant represents 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 site is a corner lot that is small and has a shallow lot depth; and

WHEREAS, as to the size of the lot, the site has a width of 60 feet and a depth of approximately 55 feet; and

WHEREAS, the applicant submitted a 400-foot radius diagram indicating that the subject lot was the only vacant corner lot in the surrounding area with a shallow depth, and that most lots have depths of approximately 100 feet; and

WHEREAS, the applicant provided floor plans indicating that a complying home would have a width of 35 feet, a depth of approximately 22 feet, and a building footprint of approximately 768 sq. ft.; and

WHEREAS, the requested front yard waiver would allow the applicant to build a home with a width of 40 feet, a depth of approximately 22 feet, and a building footprint of approximately 880 sq. ft.; and

WHEREAS, the applicant represents that the requested front yard waiver is therefore necessary to develop the site with a marketable home; and

WHEREAS, at hearing, the Board asked the applicant to explain why a complying two-story single-family home was infeasible; and

WHEREAS, in response, the applicant submitted floor plans indicating that a complying home would necessitate the elimination of a proposed dining room on the first floor and a proposed third bedroom on the second floor; and

WHEREAS, the applicant represents that a new two-bedroom house would not be marketable since there is no demand for houses with fewer than three bedrooms; and

WHEREAS, additionally, the applicant submitted a survey of the homes within a 400 foot radius of the subject premises which establishes that the majority of homes within the surrounding area contain three bedrooms or more; 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 applicant represents that the grant of the variance is necessary to enable the owner to realize a reasonable return from the subject zoning lot; and

WHEREAS, as discussed above, the applicant states that

# MINUTES

complying development would result in a home that is unmarketable due to its inadequate number of bedrooms and lack of a dining room; 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 reasonable return from the subject zoning lot; 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 states that Stafford Avenue and Foster Road consist of detached and semi-detached single and two-family residences; and

WHEREAS, the applicant represents that the home's footprint and façade have been designed to be compatible with the streetscape of the surrounding area; and

WHEREAS, the applicant states that the proposed 15'-0" front yard is compatible with nearby residential development and the home complies with all relevant bulk regulations; and

WHEREAS, at hearing, the Board requested that the applicant show the front yard context for the surrounding area; and

WHEREAS, in response, the applicant provided a survey indicating that that the homes on the northwest and southwest corners at the intersection of Foster Road and Stafford Avenue each have 10'-0" front yards, the home on the northeast corner of the intersection has a 15'-0" front yard, and three homes immediately to the east of the subject site each have 18'-0" front yards; and

WHEREAS, the Board finds that the proposed 15'-0" front yard is consistent with front yards in the surrounding area; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant has established that the subject lot is an undersized lot pursuant to ZR § 23-33; 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, the original proposal sought to permit a home with front yards of 2'-0" on Foster Road and 2'-0" on Stafford Avenue, and with side yards of 2'-0" on the southern lot line and 8'-0" on the eastern lot line;

WHEREAS, during the hearing process, the applicant modified the proposal to provide a 15'-0" front yard on Stafford Avenue (a front yard with a minimum depth of 20'-0" is required), a complying 10'-0" front yard on Foster Road, a complying 5'-0" side yard on the southern lot line, and a complying 20'-0" side yard on the eastern lot line; and

WHEREAS, as noted above, the applicant complies with all requirements for an R3X zoning district within the Special South Richmond Development District and Lower Density

Growth Management Area, except for the required front 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; 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 the required findings under ZR § 72-21 to permit, in an R3X zoning district within the Special South Richmond Development District and Lower Density Growth Management Area, the proposed construction of a two-story single-family home that does not provide the required front yard and is 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 July 15, 2008"– (3) sheets; and *on further condition*:

THAT the parameters of the proposed home shall be as follows: a front yard of 15'-0" on Stafford Avenue, as per the BSA-approved plans; 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 significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2008.

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## 89-08-BZ

### CEQR #08-BSA-079R

APPLICANT – Eric Palatnik, P.C., for Majorie Wilpon, owner.

SUBJECT – Application April 11, 2008 – Special Permit (§73-125) to allow a medical office (UG 4) in an existing one-story commercial office building, allowed by prior variance. R3X (HS) district.

PREMISES AFFECTED – 1101 Victory Boulevard, northwest corner of Victory Boulevard and Melrose Avenue, Block 247, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

**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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 18, 2008, acting on Department of Buildings Application No. 510031500, reads in pertinent part:

“Section 22-14. Proposed conversion of one story office building with accessory...parking spaces, located in R3X residential zoning district, and permitted under BSA Resolution Cal. # 495-62-BZ, to medical offices with floor area more than 1,500 square feet is not permitted as of right and therefore referred to Board of Standards and Appeals for approval”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site in an R3X zoning district within the Special Hillside Preservation District, the conversion of a one-story commercial building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with five accessory parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on July 15, 2008 after due notice by publication in *The City Record*, with a continued hearing on September 23, 2008, and then to decision on October 7, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, and

WHEREAS, the subject site is located on the northwest corner of the intersection of Victory Boulevard and Melrose Avenue; and

WHEREAS, the site has a lot area of 11,448 sq. ft. and is located in an R3X zoning district within the Special Hillside Preservation District; and

WHEREAS, the site is occupied by a one-story commercial building with 2,100 sq. ft. of floor area; and

WHEREAS, the applicant proposes a Use Group 4 ambulatory diagnostic/treatment health care facility on the subject site with five accessory parking spaces; and

WHEREAS, the Board notes that medical office use of the subject premises was previously approved pursuant to BSA Cal. No. 495-62-BZ; the certificate of occupancy for the former medical use expired in 1972 and authorization has thereby lapsed; and

WHEREAS, the Board notes that a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district; and

WHEREAS, the special permit pursuant to ZR § 73-125 allows for an increase in the floor area of an ambulatory diagnostic/treatment health care facility use up to a

maximum of 10,000 sq. ft. on the site; and

WHEREAS, the proposed facility, at a floor area of 2,100 sq. ft., is within the floor area permitted by the special permit; and

WHEREAS, the existing building provides a front yard with a depth of 48 feet (a front yard with a depth of 15 feet is the minimum required), and side yards with widths of approximately ten feet and 49 feet, respectively (two side yards each with a minimum width of approximately nine feet are required);

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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the Board notes that the accessory parking for an ambulatory diagnostic/treatment health care facility of this size is five spaces (one space is required per 400 sq. ft. of floor area); and

WHEREAS, the applicant is providing the number of required spaces; and

WHEREAS, the plans indicate that landscaping is provided along the site’s frontages on Victory Boulevard and Melrose Avenue; and

WHEREAS, the applicant represents that the proposed facility is consistent with the neighborhood character which is characterized by a mix of residential uses and commercial office uses; and

WHEREAS, the applicant submitted a radius diagram indicating that non-residential uses are located directly adjacent to and directly fronting on the subject premises, and that three buildings with commercial office uses are located within a 200-foot radius of the subject premises; 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 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

# MINUTES

Assessment Statement, CEQR No. 08BSA07R9 dated May 22, 2008; 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, no other significant effects upon the environment that would require an Environmental Impact Statement 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 ZR §§ 73-125 and 73-03, to permit, on a site within an R3X zoning district within the Special Hillside Preservation District, the conversion of a one-story building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with five accessory parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 5, 200"–three (3) sheets; and *on further condition*:

THAT there shall be no change in the use of the building as an ambulatory diagnostic/treatment health care facility (Use Group 4) without prior application to and approval from the Board;

THAT landscaping shall be provided and maintained, as shown on the BSA-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT the parameters of the building shall be as follows: 2,100 sq. ft. of floor area and five parking spaces, as shown on the BSA-approved plans;

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, October 7, 2008.

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**194-08-BZ  
CEQR #09-BSA-010M**

APPLICANT – The Law Office of Fredrick A. Becker, for Colonnade Management LLC, owner.

SUBJECT – Application July 16, 2008 – Special Permit (§73-19) to allow a Use Group 3 school on the first floor of an existing four-story mixed-use building. The proposal is contrary to ZR Section 42-10. M1-5B district.

PREMISES AFFECTED – 432 Lafayette Street, westerly side of Lafayette Street, 229’-11” south of Astor Place, Block 545, Lot 38, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 16, 2008, acting on Department of Buildings Application No. 110179949, reads in pertinent part: "Provide BSA approvals. Proposed school use is contrary to section ZR 42-10"; and

WHEREAS, this is an application under ZR § 73-19 to permit, on a site within an M1-5B zoning district, the proposed operation of a school (Use Group 3) contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in the *City Record*, and then to decision on October 7, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of and will be operated by the Blue Man Creativity Center; and

WHEREAS, the site is located on the west side of Lafayette Street between Astor Place and 4th Street; and

WHEREAS, the site is located within an M1-5B zoning district and has a lot area of 3,684 sq. ft.; and

WHEREAS, the site is occupied by a four-story mixed-use residential and commercial building; and

WHEREAS, the applicant proposes to renovate the first floor of the existing building for use as a school (Use Group

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# MINUTES

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3) with a floor area of 1,622 sq. ft.; and

WHEREAS, the Board notes that the proposed use meets the ZR § 12-10 definition of school, as it is will operate under a permit issued pursuant to § 47.03 of the New York City Health Code; and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as of right, sufficient to meet the programmatic needs of the school; and

WHEREAS, the applicant represents that it sought a site adequate to accommodate six employees and approximately 16 students ranging in age from four to five years; and

WHEREAS, the applicant states that in order to insure the health, safety, and welfare of the students, the school requires: (i) a ground floor space that is separated from other uses or a space above the first floor with a private means of egress; (ii) child-sized bathrooms and fixtures or the ability to install them; and (iii) wide sidewalks in front of the premises and limited vehicular and pedestrian traffic; and

WHEREAS, the applicant represents that it worked with at least four major real estate brokers and spent several years searching for a suitable location for the school, and

WHEREAS, the applicant further represents that it evaluated the feasibility of various sites, including: 99-101 East 4<sup>th</sup> Street, 236 2<sup>nd</sup> Avenue, 666 Broadway, 137 2<sup>nd</sup> Avenue, and 146 Essex Street, but that none had a floor plate small enough to accommodate the school or was able to provide a private means of egress; and

WHEREAS, the applicant states that there were no available sites within the neighborhood with certificates of occupancy permitting school use, nor were any property owners willing to undertake the cost or effort to accommodate a school use; and

WHEREAS, the applicant represents that no available site was furnished with child-sized bathrooms and property owners were unwilling to install new plumbing lines to accommodate child-sized bathrooms; and

WHEREAS, the applicant states that none of the alternative sites investigated were therefore found to be able to accommodate the proposed school; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size for the school in a nearby zoning district where it is permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a

school is permitted as of right; and

WHEREAS, the applicant submitted a land use map which reflects that the rear of the subject zoning lot is located within 100 feet of Broadway, the westerly side of which is zoned C6-2 and C6-4, where the proposed use would be permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that adequate separation from noise, traffic and other adverse effects of the surrounding M1-5B zoning district is provided through the use of sound-attenuating window construction; and

WHEREAS, the applicant further represents that, although the majority of the site is within an M1-5B zoning district, the area does not contain manufacturing uses but is primarily developed with commercial retail uses which are compatible with the proposed school; and

WHEREAS, the applicant further represents that the site is fronted by a particularly wide sidewalk and that the subject portion of Lafayette Street is lightly trafficked; and

WHEREAS, the Board finds that the conditions surrounding the site and the use of sound-attenuating window construction will adequately separate the school from noise, traffic and other adverse effects of any the uses within the surrounding M1-5B zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that the school's hours will be Monday through Friday from 8:30 a.m. to 4:30 p.m.; and

WHEREAS, the applicant further states that no public transportation will be provided by the school; and

WHEREAS, the applicant represents that students will come primarily from the surrounding area and will arrive and depart on foot accompanied by adults; and

WHEREAS, the applicant further represents that the students will be carefully supervised upon arrival and departure by adults who accompany them to and from the school, and by school staff stationed at the entrance to the premises; and

WHEREAS, the Board referred the application to DOT's School Safety Engineering Office; and

WHEREAS, in response, DOT provided a letter indicating that it has no objection to the proposed school; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the school; and

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# MINUTES

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WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 090BSA010M, dated August 18, 2008; 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a school (Use Group 3), on a site within an M1-5B 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 July 16, 2008" (3) sheets, and *on further condition*:

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the issuance of a permanent certificate of occupancy be conditioned on the securing of a charter allowing operation of the school pursuant to the requirements

of the New York State Education Law;

THAT sound-attenuating windows shall be installed and maintained to limit the noise level of the surrounding M1-5B zoning district; and

THAT the premises shall comply with all applicable fire safety measures, as required and 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2008.

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## 51-07-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Irving Minkin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for decision, hearing closed.

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## 257-07-BZ

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5,

# MINUTES

59, Borough of Manhattan.

## COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Michael Phillips.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for deferred decision.

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## 268-07-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

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## 35-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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## 46-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.

SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility building. The proposals contrary to sections 24-11 (Floor area ratio and lot coverage) and 24-522 (front wall height,

setback, sky exposure plane and number of stories). R6 district.

PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.

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## 61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86<sup>th</sup> Street, LLC, owner; TSI Bay Ridge 86<sup>th</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR §32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86<sup>th</sup> Street, north side of 86<sup>th</sup> Street and east of 4<sup>th</sup> Avenue, Block 6035, Lot 64, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.

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## 155-08-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Scott Kurland, Susan Klappe, Judy Baron and Samuel Falack.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.

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## 158-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Kay Robyn Askenazi and Shay Ashkenazi, owners.

SUBJECT – Application June 6, 2008 – Special Permit (§73-622) for the enlargement of an existing single family

# MINUTES

residence. This application seeks to vary floor area, lot coverage and open space (§23-141); less than the minimum side yards (§23-461) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1814 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue R and Avenue S, Block 6832, Lot 11, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Emile Scharf, Wadih J. Dmaraon, Louis Goldberg and Ed Jaworski.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for decision, hearing closed.

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## 175-08-BZ

APPLICANT – Eric Palatnik, P.C., for Mama Spa Corporation, owner.

SUBJECT – Application July 3, 2008 – Special Permit (73-36) to allow a Physical Culture Establishment at the cellar, first and second floors of an existing five-story building. The proposal is contrary to ZR Section 32-10. C6-1 district.

PREMISES AFFECTED – 141 Allen Street, between Rivington Street and Delancy Street, Block 415, Lot 24, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.

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## 179-08-BZ

APPLICANT – Rizzo Group, for 600 Broadway Partners, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 22, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the fourth, fifth, and sixth floors in a six-story building. The proposal is contrary to ZR §42-10. M1-5 district.

PREMISES AFFECTED – 600 Broadway, southeast corner of Houston Street, Block 511, Lot 16, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Kenneth Barbina.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for decision, hearing closed.

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## 189-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Broadway Mercer Associates, owner; TSI Mercer Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment in the cellar, first and second floors in the six-story mixed-use building. The proposal is contrary to ZR Section 32-10. C6-2 district.

PREMISES AFFECTED – 232 Mercer Street, Easterly side of Mercer Street 220' north of Blecker Street. Block 532, Lot 15, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for decision, hearing closed.

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## 190-08-BZ

APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.

SUBJECT – Application July 14, 2008 – Variance (§72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§42-10). M1-5B district.

PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Kenneth Barbina.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for decision, hearing closed.

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## 203-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Avi Babayof, owner.

SUBJECT – Application August 1, 2008 – Special Permit

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# MINUTES

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(§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and less than the minimum rear yard (§23-47) in an R-2 zoning district.

*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*

PREMISES AFFECTED – 1245 East 23<sup>rd</sup> Street, located on the east side of East 23<sup>rd</sup> Street between Avenue L and Avenue M. Block 7641, Lot 26, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to October 28, 2008, at 1:30 P.M., for continued hearing.

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**208-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt and 2123 Avenue M, LLC, owner.

SUBJECT – Application August 11, 2008 – 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) and less than the minimum side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22<sup>nd</sup> Street, Block 7639, Lot 1 & 3 (tent 1), Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to October 7, 2008, at 1:30 P.M., for continued hearing.

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**214-08-BZ**

APPLICANT – Harold Weinberg, for Yossi Cohen, owner.  
SUBJECT – Application August 19, 2008 – Special Permit (§73-622) for the enlargement of an existing family residence. This application seeks to vary floor area, lot coverage and open space (§23-141); less than the minimum side yard (§23-461) and less than minimum required rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1855 East 24<sup>th</sup> Street, east side 305' north of Avenue S between Avenue R and Avenue S, Block 6830, Lot 64, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg, P.E. and Frank Sellitto, R.A.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

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**SPECIAL HEARING  
WEDNESDAY MORNING, OCTOBER 8, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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## APPEALS CALENDAR

### 152-08-A/177-08-A

APPLICANT – Quinn McCabe LLP, for 23 High-Line LLC,  
c/o Alf Naman, owners.

SUBJECT – Application May 30, 2008 – Appeals seeking  
to vacate a Stop Work Order issued by the Department of  
Buildings for failure to obtain the authorization of the  
adjacent property owner. C6-3A, Special District WCH.  
PREMISES AFFECTED – 515 W 23<sup>rd</sup> Street, north side of  
West 23<sup>rd</sup> Street, between 10<sup>th</sup> and 11<sup>th</sup> Avenues, Block 695,  
Lot 27, Borough of Manhattan.

### COMMUNITY BOARD #4M

#### APPEARANCES –

For Applicant: Christopher McCabe.

**ACTION OF THE BOARD** – Application granted on  
condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION: 1

WHEREAS, the instant appeal heard under BSA Cal.  
No. 152-08-A comes before the Board in response to a stop  
work order dated April 30, 2008 by the Manhattan Borough  
Commissioner of the NYC Department of Buildings (“DOB”)  
(the “Stop Work Order”) addressed to 23 High Line LLC,  
with respect to New Building Application No. 104589562;  
and

WHEREAS, the April 30, 2008 Stop Work Order  
reads, in pertinent part:

“Failure to provide all required information to  
demonstrate compliance with all applicable laws  
for related application # 104589562. Stop all  
work. Provide required information”; and

WHEREAS, the instant appeal heard under BSA Cal.  
No. 177-08-A comes before the Board in response to a partial  
stop work rescind order dated June 5, 2008 by the Manhattan  
Borough Commissioner of DOB (the “Partial Lift Order”) also  
addressed to 23 High Line LLC with respect to New Building  
Application No. 104589562; and

WHEREAS, the Partial Lift Order reads, in pertinent  
part:

“Partial lift only to place ground floor slab and  
backfill foundation walls”; and

WHEREAS a public hearing was held on this  
application on September 24, 2008 after due notice by  
publication in *The City Record*, and then to decision on  
October 8, 2008; and

WHEREAS, the premises and surrounding area had site  
and neighborhood examinations by Chair Srinivasan, Vice-  
Chair Collins, Commissioner Montanez and Commissioner  
Ottley-Brown; and

#### PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by 23 High Line  
23, LLC (the “appellant”); the appellant was represented by  
counsel in this proceeding; and

WHEREAS, DOB has been represented by counsel  
throughout this Appeal; and

WHEREAS, 519 West 23<sup>rd</sup> LLC/High Line Park, LLC  
and 519 West 23<sup>rd</sup> Street Condominium (collectively, the  
“adjacent owner”) have been represented by counsel  
throughout this Appeal; and

WHEREAS, the parties provided testimony  
concerning the appropriateness of the issuance of a stop  
work order by DOB halting all construction of a building to  
be located at 515 West 23<sup>rd</sup> Street, Manhattan; and

#### PROCEDURAL HISTORY

WHEREAS, the instant appeals concern the  
construction of a 14-story residential condominium building  
at 515 West 23<sup>rd</sup> Street, New York, New York (the  
“Building”); and

WHEREAS, on October 19, 2006, DOB issued New  
Building Permit No. 104589562 (the “NB Permit”) for the  
construction of the Building at the subject site; and

WHEREAS, on July 9, 2007, DOB issued Permit No.  
104589562 for the foundation of the Building; and

WHEREAS, on October 1, 2007, DOB issued Permit  
No. 104890646 (the “shoring permit”) for certain earth  
retention and shoring work (the “shoring work”) in  
connection with the installation of the foundations at the  
subject site; and

WHEREAS, the drawings filed in connection with the  
shoring permit indicate that shoring work was to be  
performed on the property immediately to the west of the  
Building at 519 West 23<sup>rd</sup> Street (the “adjacent property”);  
and

WHEREAS, on April 24, 2008, DOB received a  
written complaint stating that the appellant performed  
underpinning to the foundation of the building located at  
519 West 23<sup>rd</sup> Street (the “adjacent building”) without the  
permission of the owner; and

WHEREAS, on April 30, 2008, a DOB inspector  
visited the subject site and asked for evidence of consent to  
the shoring work on the adjacent property; and

WHEREAS, the appellant failed to provide  
documentation certifying owner authorization of the work  
conducted on the adjacent property; issuance of the Stop  
Work Order (“SWO”) ensued; and

WHEREAS, on May 30, 2008, the appellant filed the

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1 Headings are utilized only in the interests of clarity and  
organization.



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# MINUTES

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instant appeal to the issuance of the SWO at the BSA, denominated 152-08-A; and

WHEREAS, after a site inspection in which a DOB inspector found that that the Building's foundation walls were completed but that the foundation walls were only partially backfilled, the SWO was partially rescinded on June 5, 2008 to allow the appellant to install the first floor slab and backfill the site (the "partial lift order"); and

WHEREAS, on July 7, 2008, the appellant filed the instant appeal seeking to vacate the partial lift order to the BSA, denominated 177-08-A; and

WHEREAS, on September 10, 2008 and September 12, 2008, DOB issued letters of intent to revoke approval of the shoring permit and the NB Permit based on the lack of owner authorization for the shoring work in violation of Section 27-140 of the Code; and

## ISSUES PRESENTED

WHEREAS, the appellant challenges the issuance of a stop work order based on the alleged violation of Sections 27-140 and 27-151 of the Code; and

WHEREAS, both appeals present the same set of facts and issues of law concerning the validity of a shoring permit and an NB Permit where shoring was performed on a neighboring property without the consent of the owner and is now complete; and

WHEREAS, the appellant was issued a shoring permit on October 7, 2007 to perform sheeting and shoring on the perimeter of its property; the plans submitted in conjunction with the shoring permit application indicate that concrete piers were to be installed on the adjacent property underneath the neighboring building structure; and

WHEREAS, the shoring permit was issued without evidence of consent by the adjacent owner to the performance of shoring work on its property; after a complaint by the adjacent owner that such work had been performed without its consent, DOB issued a stop work order halting all work to be performed under the shoring permit as well as under the NB permit; and

WHEREAS, DOB contends that the issuance of the stop work order, pursuant to a violation of Section 27-147 of the Code, was appropriate because: (i) the appellant was not authorized to perform the shoring work by the adjacent owner, as required by Section 27-140 of the Code; (ii) the two permits cannot be deemed valid without the adjacent owner's consent to the shoring work; (iii) the work performed under the shoring permit was integral to the work to be performed under the NB Permit and the two permits together authorized a single project; (iv) there is a continuing trespass because work to be performed under the NB Permit would rely on the unauthorized encroachment; (v) DOB has no authority to lift the stop work order without consent of the adjacent owner; and (vi) DOB has no authority to impose an alternative penalty; and

WHEREAS, the appellant makes the following primary arguments in support of its position that the Board should rescind the stop work order and the partial lift order, that: (i) all further work is to be performed on the owner's

property and requires no consent of the adjacent owner; (ii) the work permitted under the shoring permit was independent of the work to be performed under the NB Permit; (iii) the shoring work is complete and poses no safety hazard; and (iv) the shoring work was performed properly according to the approved plans and DOB does not recommend its removal; and

WHEREAS, the appellant additionally argues that DOB has acted arbitrarily in halting the work to be performed under the NB permit because: (a) the failure to lift the SWO would cause irreparable harm which is disproportionate to the harm caused by the performance of its shoring work; (b) DOB has deferred its authority to the adjacent owner and imposed a condition that makes it impossible to complete its construction; (c) DOB could have imposed a different penalty; and (d) DOB has acted inconsistently in its enforcement; and

WHEREAS, these arguments are addressed below; and

WHEREAS, DOB contends that issuance of the SWO was required because approval of the shoring permit was invalid without the consent of the adjacent owner; and

WHEREAS, Section 27-140 of the Code requires that applications for building permits be authorized by an owner, and Section 27-151 of the Code states that applications made by a person other than the owner must be accompanied by a signed statement of the owner declaring that the applicant is authorized by the owner to make the application; and

WHEREAS, Section 27-147 of the Code requires that construction be performed pursuant to the issuance of valid permits by DOB; and

WHEREAS, DOB asserts that Section 27-140 of the Code requires an authorization from the owner of property before any work is performed on its property; and

WHEREAS, DOB further asserts that the shoring permit and the NB Permit cannot be deemed valid without the adjacent owner's consent to the shoring work and the issuance of a SWO is therefore appropriate in the absence of such consent; and

WHEREAS, in support of this proposition, DOB submitted a memorandum dated May 8, 1984 addressed to Borough Superintendents from the [former] DOB Commissioner concerning owner's authorization, which states that if a lessee files an application and a fee owner subsequently informs DOB that he or she had not authorized the filing, "the processing of the application shall immediately cease," and if an approval or permit had been issued, "such approval or permit shall be revoked . . . regardless of the status of the application or the work" (the "Departmental Memo"); and

WHEREAS, the appellant contends that the Departmental Memo is inapplicable to the instant case because it concerns only the performance of work by a lessee without the consent of the owner of the leasehold property and does not refer to underpinning, shoring or to any other work performed on an adjacent property; and

WHEREAS, in further support, DOB cites to decisions

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# MINUTES

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of the Board in BSA Cal. No. 480-83-A and BSA Cal. No. 1046-86-A, and the decision of the Appellate Division in *Bun & Burger of Rockefeller Plaza, Inc. v. New York, Dep't of Bldgs.*, 111 A.D. 2d 140 (NY, 1<sup>st</sup> Dep't 1985) which dealt with the revocation of permits that were not authorized by owners; and

WHEREAS, the Board notes that the cases cited by DOB each concern the issue of whether work could be performed pursuant to a permit application that was not explicitly authorized by an owner and, therefore, are pertinent to the issue of authorization for work performed under the shoring permit; and

WHEREAS, DOB has established that there was no explicit authorization by the adjacent owner for the performance of shoring work on the adjacent property; and

WHEREAS, at hearing, the Board questioned whether consent to the shoring could be implied by written communications between the parties discussing the prospective shoring which were submitted into the record; and

WHEREAS, a submission made on behalf of the adjacent owner makes it clear that consent can occur only by an express agreement of the adjoining property owner to the work to be performed (see *McLennon v. Serv. 31 Corp.*, 9 Misc. 3<sup>rd</sup> 1109(A), 2005 N.Y. Slip Op. 51459(U) (Kings Cty. (2005)); and

WHEREAS, the Board finds that, as no such agreement was reached between the appellant and the adjacent owner, there was no consent to the shoring work and the imposition of a SWO for the performance of work under the shoring permit is therefore appropriate; and

WHEREAS, the appellant argues that the imposition of a SWO for work performed pursuant to the shoring permit should have no bearing on the performance of work under the NB Permit because: (i) the work to be performed under the NB Permit is on its own property; (ii) the shoring permit and the NB Permit are independent of each other; (iii) the shoring work is complete; and (iv) the shoring work poses no hazard to the public; and

WHEREAS, the appellant states that the imposition of the SWO on work to be performed under the NB permit is inappropriate because the permitted work is to be performed only on its own property and the consent of the adjacent owner is not required for its performance; and

WHEREAS, the appellant further argues that its failure to secure consent to shoring work on the adjacent property cannot be the basis for the stopping of work to be performed pursuant to the NB Permit either under the Code, or under any other provision of law, because the two permits are independent of each other and authorize different work; and

WHEREAS, as discussed above, DOB issued the applicant separate permits for the work to be performed in connection with shoring work and the construction of the Building; and

WHEREAS, the appellant states that the shoring permit and the NB Permit are different permits sought pursuant to separate applications and that each addresses

separate construction work; and

WHEREAS, the appellant contends that because the violation related only to work performed under the separate and distinct shoring permit, the issuance of a SWO preventing construction of the work to be performed under the project's NB Permit is therefore improper; and

WHEREAS, DOB and the adjacent owner argue that DOB was correct in issuing a SWO respecting the NB Permit because the Building is structurally dependent on the shoring supports, therefore, there is a continuing trespass unauthorized by the adjacent owner; and

WHEREAS, the appellant, however, further contends that because shoring work had been completed, the appellant is no longer trespassing on the adjacent property and, further that that there is no continuing trespass because the work to be performed under the NB Permit is located entirely within its property; and

WHEREAS, in a written submission, DOB concedes that the shoring work consisted of soil retention work, rather than underpinning, but contends that the shoring work was nonetheless a necessary precondition to the installation of the foundations; and

WHEREAS, at hearing, the appellant's engineer testified that the foundation of the Building does not rely upon the shoring work performed on the adjacent property because the lateral forces exerted by the soils under the Building are supported entirely by the Building's foundation and not by the shoring work, and therefore, that there is no connection between the work performed under the shoring permit and the construction of the Building; and

WHEREAS, at hearing, the engineer who had designed the foundations for a building on the adjacent property testified that the shoring work at the site of the adjacent building was performed merely to retain the soils under the adjacent building, and did not include underpinning because the adjacent building was supported by a caisson system which rendered underpinning unnecessary; and

WHEREAS, this testimony is uncontroverted by DOB or by the adjacent owner; and

WHEREAS, DOB contends that the future work under the NB Permit is to be performed in reliance upon on the shoring work, therefore, that the two permits and the work to be performed under them should be considered as a single job; and

WHEREAS, DOB cites no authority for the proposition that they must be considered unitarily; and

WHEREAS, the appellant notes that, even if the Building's foundation and shoring work were "intricately connected," as DOB contends, the work under the foundation permit was completed on April 28, 2008, before the issuance of the SWO and, again, is separate and independent of the work to be performed under the NB Permit; and

WHEREAS, the adjacent owner argues that the shoring permit and the NB Permit must be taken together as one undertaking in the context of an SWO or a permit

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# MINUTES

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revocation, citing *GRA V, LLC vs. Srinivasan* (862 N.Y.S.2d 358 (1<sup>st</sup> Dep't 2008)) as authority for the position; and

WHEREAS, the Board notes that in *GRA*, a vested rights case, the Court found that a foundation permit was void ab initio because the proposed building could not comply with the zoning in effect at the time of the permit's issuance; and

WHEREAS, because the foundation permit contemplated a non-complying building and could not have been validly granted in the first place, the *GRA* court properly held that the permit was erroneously issued and no vested rights could be acquired; and

WHEREAS, the Board further notes that the *GRA* case has no applicability to the instant appeal, in which there is no assertion that the work to be performed under the NB Permit would result in a non-complying building; and

WHEREAS, *GRA* further does not address the question of whether a permit for work on an adjacent property should be treated as a part of an entirely separate permit for a new building being constructed on an entirely different site; and

WHEREAS, the Board finds that the work performed pursuant to the shoring permit consisted of soil retention activities which have been completed and which were not necessary for the support of the new building; and

WHEREAS, the work to be performed under the NB Permit therefore does not rely on the work that was performed under the shoring permit, thus, the Board finds that the respective permits are entirely separate from each other; and

WHEREAS, because the NB permit is independent of the shoring permit, DOB therefore lacked authority to impose a SWO respecting work to be performed under the NB Permit for a violation pertaining to its shoring work; and

WHEREAS, On April 30, 2008, based on a violation of Section 27-140 of the Code, DOB issued the SWO requiring the stoppage of all work in connection with the Building, including work to be performed under the NB Permit; and

WHEREAS, the appellant contends that under Section 26-118 of the Code, a stop work order may only be issued "when it is found that building work is being executed" in violation of the provisions of any law, rule or regulation enforceable by the DOB; and

WHEREAS, the work which was performed in violation of law was the shoring work performed without the consent of the adjacent owner to the work; and

WHEREAS, the appellant represents that the shoring work had been completed and entombed behind the foundation for the Project five months prior to the issuance of the SWO and therefore, at the time the SWO was issued, no work on the Building was being executed which violated the law; and

WHEREAS, the appellant argues that the issuance of the stop work order was improper because DOB has no power to impose a stop work order where work has been

completed; and

WHEREAS, the appellant contends, accordingly, that DOB was not authorized by Section 26-118 of the Code to issue the SWO; and

WHEREAS, at hearing, DOB sated that the imposition of the SWO was consistent with its responsibility to "preserve the status quo while the neighbors work it out" and in a subsequent submission stated that work pursuant to the NB Permit must be stopped until owner authorization of the shoring work is obtained because the Building relies on the shoring work; and

WHEREAS, appellant argues that maintaining the status quo is not among the statutory grounds authorizing the issuance of a stop work order; and

WHEREAS, the appellant also contends that at the time the SWO was imposed, all shoring work had been completed and, as stated above, no work to be performed under the NB Permit relies on the shoring work; and

WHEREAS, the appellant represents that inspections by DOB and by engineers on behalf of the adjacent owner concluded that the shoring work had been completed properly, and that removal of such work at that time was not recommended; and

WHEREAS, the appellant contends that the removal of the shoring would destabilize the adjacent building and, at hearing, stated that DOB had agreed that the removal of the shoring work would cause safety risks; and

WHEREAS, the appellant further contends that the decision by DOB to stop all work on the Building therefore constitutes an abuse of discretion because it did not make the public, the building, or the adjacent building safer; and

WHEREAS the appellant moreover contends that unless the SWO is lifted, the proposed building cannot be constructed, while the lifting of the SWO would have no effect on the adjacent property or on public safety, and that the imposition of a SWO under these circumstances is so "disproportionate to the offense as to be shocking to one's sense of fairness," (citing *Featherstone v. Franco* (95 N.Y. 2d 550, 555 (2000))); and

WHEREAS, the appellant has also argued that a failure to lift the SWO would cause it irreparable harm which is disproportionate to any harm caused to the public from allowing construction under the NB Permit to continue; and

WHEREAS, DOB contends that the consideration of any harm caused the appellant by the issuance of the SWO is self-created and is therefore outside the Board's consideration; and

WHEREAS, DOB has conditioned a lift of the SWO on the securing of the adjoining owner's consent to the shoring work; and

WHEREAS, DOB contends that the City Charter mandates that permits be issued to developers who have complied with the provisions of the law, rules and regulations that apply to the issuance of the permits and, further, that it lacks the power or authority to vary the terms and conditions that the developer must satisfy to be issued a

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# MINUTES

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permit; and

WHEREAS, the appellant contends that by interpreting the Charter thusly, DOB is empowering the adjacent owner with the authority to determine whether the SWO is rescinded and the appellant is permitted to construct the Building; and

WHEREAS, the appellant represents that its efforts to secure consent for the shoring work from the adjoining owner have been unavailing, stating that in May 2008 it sought the consent of the adjacent owner and offered to enter into an agreement to resolve issues between the parties and that the adjoining owner, through counsel, continued to refuse consent; and

WHEREAS, there is no evidence in the record that the adjoining owner has reconsidered this refusal; and

WHEREAS, the appellant further contends that because the adjacent owner has consistently refused to consent, DOB has effectively left it without a possible cure to its violation, and

WHEREAS, at hearing, DOB stated that stop work orders are issued and permits are revoked where underpinning or shoring is installed on an adjacent property without the consent of the owner of the adjacent premises, subsequent to the filing of a complaint by that owner concerning the performance of unauthorized work; and

WHEREAS, DOB contends that it lacks the power or authority to vary the terms and conditions that the developer must satisfy to be issued a permit, therefore the agency was mandated to issue the SWO in the absence of consent by the adjacent owner; and

WHEREAS, the appellant argues that the language of Section 26-118 of the Code, providing that “a notice or order to stop work may be issued . . . at any time when it is found that building work is being executed in violation of the provisions of any law, rule, or regulation enforceable by the department, for example, is permissive, rather than mandatory; and

WHEREAS, the appellant further argues that several provisions of the Code provide discretion to DOB in the penalties that may be imposed for a violation of the Code, and that an SWO is only one of “an arsenal” of potential penalties; and

WHEREAS, the appellant points to Section 26-116 of the Code providing that where there is a violation of any law, rule or regulation, or the failure to comply with any order issued by the Commissioner, the Commissioner may, “in his or her discretion, request the corporation counsel to institute legal proceedings to restrain, correct or abate such violation, or to compel compliance with such order” and additional evidence of the discretion vested with DOB in the shaping of an appropriate penalty for a violation of the Code; and

WHEREAS, the appellant further points to Section 26-125 of the Code which provides that violations of the Code can be punishable by a fine as well as through a civil action; and

WHEREAS, the appellant argues that the cited

provisions demonstrate that DOB has recourse to other alternative penalties more appropriate to the severity of its violation and has been arbitrary and capricious in refusing to impose them instead; and

WHEREAS, the appellant contends that this arbitrariness is demonstrated by DOB’s imposition of a fine, rather requiring post facto consent, in a similar case discussed below in which it was alleged that a developer had performed underpinning on an adjacent property without the consent of the owner; and

WHEREAS, the appellant further contends that DOB’s inconsistent enforcement of violations of Section 27-140 of the Code by other developers further evidences the arbitrariness of DOB’s choice of a penalty; and

WHEREAS, the appellant represents that a residential condominium building currently under construction at 3585 Greystone in the Bronx allegedly performed underpinning under the adjacent property at 3532 Riverdale without the required consent; and

WHEREAS, the appellant further represents that, subsequent to a complaint by the owner of 3532 Riverdale, DOB confirmed that unauthorized underpinning by the developer of 3585 Greystone had caused a crack in 3532 Riverdale’s retaining wall and issued a violation under Section 27-1031 of the Code, for which it levied a fine in the amount of \$2,500.00 and required repair of the damaged wall; and

WHEREAS, the appellant also states that DOB took no enforcement action against the adjacent owner after learning that it had installed underpinning on the appellant’s property without obtaining its consent; and

WHEREAS, Section 666(6)(a) of the City Charter grants the Board the power to hear and decide appeals from and review DOB decisions; and Section 666(7) gives the Board the power to vary or modify a rule or regulation or the provision of any law when there are practical difficulties or unnecessary hardship caused by carrying out the strict letter of the law; and

WHEREAS, the adjacent owner contends that the Board cannot exercise the power to modify the law in the instant appeal because the hardship or difficulty suffered by the appellant was caused by the appellant’s own failure to act in conformance with the law citing *Parkview Associates v. The City of New York* (71 N.Y.2d 274, cert. den., 488 U.S. 801 (1988)) and *Tharp v. Zng. Bd. of Apps.* (138 A.D.2d 906 (1988)), as authority; and

WHEREAS, the Board finds that *Tharp* is irrelevant to the Board’s determination in the instant case, because its decision is not based on the hardship alleged by the appellant; and

WHEREAS, the Board finds that the imposition of a SWO halting work approved under the NB Permit is not appropriate, given that the NB Permit is separate from the shoring permit, that the work to be performed under the NB Permit is not structurally dependent on the work performed and completed under the shoring permit, and that the work to be performed under the NB permit is located entirely on

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# MINUTES

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the owner's property and its performance does not require the consent of the adjacent owner; and

*Therefore it is resolved* that the instant appeals are granted to the extent of rescinding the Stop Work Order and the Partial Lift Order as such orders pertain to construction to be performed under the NB Permit.

Adopted by the Board of Standards and Appeals, October 8, 2008.

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## **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: Janine Gaylar, Department of Buildings; Kevin L. Smith, Arthur Lighthall, Joseph Sherry and Simon Rothkrug.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10:00 A.M., for continued hearing.

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## **140-07-A**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application May 25, 2007 – Appeal 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, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

### **COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Simon H. Rothkrug, Joseph Sherry and Kevin Smith.

For Opposition: Janine Gaylard, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10:00 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 93, Nos. 41-43

November 6, 2008

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|                 |   |
|-----------------|---|
| OFFICE -        | 40 Rector Street, 9th Floor, New York, N.Y. 10006   |
| HEARINGS HELD - | 40 Rector Street, 6th Floor, New York, N.Y. 10006   |
| BSA WEBPAGE @   | <a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a> |

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## CONTENTS

DOCKET ..... 708/709

CALENDAR of November 25, 2008

Morning .....710

Afternoon .....711

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, October 28, 2008**

Morning Calendar .....712

**Affecting Calendar Numbers:**

|                           |  |
|---------------------------|--|
| 198-66-BZ                 | 300 East 74 <sup>th</sup> Street, Manhattan    |
| 705-68-BZ                 | 88-14/22 182 <sup>nd</sup> Street, Queens      |
| 182-85-BZ                 | 206-08 20 <sup>th</sup> Street, Brooklyn       |
| 183-85-BZ                 | 206-08 20 <sup>th</sup> Street, Brooklyn       |
| 360-01-BZ                 | 2228 Gerritsen Avenue, Brooklyn                |
| 257-04-BZ                 | 252/260 Atlantic Avenue, Brooklyn              |
| 719-56-BZ                 | 2525 Victory Boulevard, Staten Island          |
| 94-58-BZ                  | 22-55/25-75 Brooklyn Queens Expressway, Queens |
| 681-68-BZ                 | 137-42 Guy Brewer Boulevard, Queens            |
| 739-76-BZ                 | 12-95 26 <sup>th</sup> Avenue, Queens          |
| 389-85-BZ                 | 2090 Bronxdale Avenue, Bronx                   |
| 115-94-BZ                 | 2470/2480 Bedford Avenue, Brooklyn             |
| 24-96-BZ                  | 213 Madison Street, Manhattan                  |
| 117-97-BZ                 | 1112 Forest Avenue, Staten Island              |
| 197-00-BZ                 | 420 Lexington Street, Manhattan                |
| 217-03-BZ                 | 142 Pennsylvania Avenue, Brooklyn              |
| 266-07-A                  | 1610 Avenue S, Brooklyn                        |
| 191-08-BZY                | 1610 Avenue S, Brooklyn                        |
| 136-08-A                  | 846 70 <sup>th</sup> Street, Brooklyn          |
| 306-05-BZY                | 206A Beach 3 <sup>rd</sup> Street, Queens      |
| 141-07-A                  | 129-48 Hookcreek Boulevard, Queens             |
| 251-07-A thru<br>254-04-A | 63/65 Houston Street, Staten Island            |
| 33-08-A                   | 67 Brighton 1 <sup>st</sup> Lane, Brooklyn     |
| 149-08-A                  | 808 Columbus Avenue, Manhattan                 |
| 202-08-BZY                | 131 Second Place, Brooklyn                     |
| 212-08-A                  | 131 Second Place, Brooklyn                     |
| 217-08-BZY                | 126 First Place, Brooklyn                      |

---

# CONTENT

---

Afternoon Calendar .....726

**Affecting Calendar Numbers:**

|                         |   |
|-------------------------|---|
| 39-06-BZ                | 245 Varet Street, Brooklyn  |
| 243-07-BZ &<br>244-07-A | 120 John Street, Staten Island<br>120 John Street, Staten Island    |
| 257-07-BZ               | 3 East 101 <sup>st</sup> Street, Manhattan                          |
| 268-07-BZ               | 1644 48 <sup>th</sup> Street, Manhattan                             |
| 35-08-BZ                | 1856 East 24 <sup>th</sup> Street, Brooklyn                         |
| 59-08-BZ                | 591 Forest Avenue, Staten Island                                    |
| 79-08-BZ                | 117-23 132 <sup>nd</sup> Street, Queens                             |
| 84-08-BZ                | 67-24 Main Street, Queens   |
| 179-08-BZ               | 600 Broadway, Manhattan   |
| 208-08-BZ               | 2117-2123 Avenue M, Brooklyn  |
| 119-07-BZ               | 443 39 <sup>th</sup> Street, Brooklyn                               |
| 171-07-BZ               | 167 Norfolk Street, Brooklyn  |
| 203-07-BZ               | 137-35 Elder Avenue, a/k/a 43-49 Main Street, Queens                |
| 42-08-BZ                | 182 Girard Street, Brooklyn   |
| 51-08-BZ                | 511 Avenue R, Brooklyn  |
| 76-08-BZ                | 621 Beach 9 <sup>th</sup> Street, Queens                            |
| 93-08-BZ                | 112-12, 112-18, 112-24 Astoria Boulevard, Queens                    |
| 134-08-BZ               | 34 Lawrence Avenue, Brooklyn  |
| 135-08-BZ               | 71-52 172 <sup>nd</sup> Street, Queens                              |
| 157-08-BZ               | 365 Bay Street, Staten Island                                       |
| 159-08-BZ               | 68-70 Spring Street, Manhattan                                      |
| 170-08-BZ               | 411-431 East 69 <sup>th</sup> Street, Manhattan                     |
| 178-08-BZ               | 153 Norfolk Street, Brooklyn  |
| 195-08-BZ               | 1350 East 27 <sup>th</sup> Street, Brooklyn                         |
| 196-08-BZ               | 792 Tenth Avenue, a/k/a 455 West 53 <sup>rd</sup> Street, Manhattan |
| 203-08-BZ               | 1245 East 23 <sup>rd</sup> Street, Brooklyn                         |



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# DOCKET

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New Case Filed Up to October 28, 2008

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**250-08-BZ**

1925 East 5<sup>th</sup> Street, East side of East 5<sup>th</sup> Street between Avenue R and Avenue S, Block 6681, Lot(s) 490, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home.

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**251-08-BZ**

2153 Ocean Parkway, East side of Ocean Parkway between Avenue and U and Avenue V, Block 7133, Lot(s) 50, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home.

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**252-08-A**

11 Clinton Walk, West side Clinton Walk at the intersection of 12<sup>th</sup> Avenue and Beach 214<sup>th</sup> Street, Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning District.

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**253-08-BZ**

2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court., Block 7455, Lot(s) 31, Borough of **Brooklyn, Community Board: 15**. Variance to allow legalization of prior enlargement and allow a new enlargement of a single family residence.

-----

**254-08-BZ**

1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue., Block 6734, Lot(s) 12, Borough of **Brooklyn, Community Board: 14**. Variance to legalize the use and enlargement of a Yeshiva, contrary to use regulations.

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**255-08-BZ**

1994-1996 Madison Avenue, Western side of Madison Avenue between East 127th and East 128th Streets., Block 1752, Lot(s) 16,116, Borough of **Manhattan, Community Board: 11**. Variance to allow a six-story mixed use building, contrary to use regulations.

-----

**256-08-BZ**

2000-2002 Madison Avenue, Western side of Madison Avenue between East 127th and East 128th Streets., Block 1752, Lot(s) 18, 19, Borough of **Manhattan, Community Board: 11**. Variance to allow a six-story mixed use building, contrary to use regulations.

**257-08-BZ**

120 East 56th Street, Between Park Avenue and Lexington Avenue., Block 1310, Lot(s) 65, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment.

-----

**258-08-BZ**

343-349 West 42nd Street, Located on 42nd Street, mid-block, between 8th Avenue and 9th Avenue., Block 1033, Lot(s) 9, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow legalization of a physical culture establishment

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**259-08-BZ**

242-02 61st Avenue, Douglaston Parkway at 61st Avenue., Block 8286, Lot(s) 185, Borough of **Queens, Community Board: 11**. Variance to allow the enlargement of an existing supermarket, contrary to use regulations.

-----

**260-08-BZ**

148 Oxford Street, Located on Oxford Street between Shore Boulevard and Oriental Boulevard., Block 8757, Lot(s) 3, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home.

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**261-08-BZY**

140-75 Ash Avenue, Between Kissena Boulevard and Bowne Streets., Block 5182, Lot(s) 34, Borough of **Queens, Community Board: 7**. Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

-----

**262-08-A**

140-75 Ash Avenue, Between Kissena Boulevard and Bowne Streets, Block 5182, Lot(s) 34, Borough of **Queens, Community Board: 7**. An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District .

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**263-08-BZY**

29-23 40th Road, Through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east., Block 402, Lot(s) 12 & 35, Borough of **Queens, Community Board: 1**. Extension of

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# DOCKET

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time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

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**264-08-A**

29-23 40th Road, Through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east., Block 402, Lot(s) 12 & 35, Borough of **Queens, Community Board: 1**. Ana appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.

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**265-08-BZ**

70 Wyckoff Avenue, South east corner of Wyckoff Avenue and Suydam Street., Block 3221, Lot(s) 31, Borough of **Brooklyn, Community Board: 4**. Variance to allow legalization of existing residential use in former industrial building, contrary to use regulations.

-----

**266-08-BZ**

2007 New York Avenue, East side of New York Avenue between Avenue K & Avenue L., Block 7633, Lot(s) 25, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) for the enlargement of a single family home.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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NOVEMBER 25, 2008, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 25, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**395-60-BZ**

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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**239-97-BZ**

APPLICANT – Kenneth H. Koons, for B.W. Partners Incorporated, owner.

SUBJECT – Application September 3, 2008 – Extension of Term for a UG16 automotive service station and UG8 parking lot, in an R-6 zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1499 Bruckner Boulevard, north west corner of Wheeler Avenue, Block 3712, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**APPEALS CALENDAR**

**103-08-BZY**

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to compete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**120-08-A**

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.

SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.

PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**164-08-A**

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Michelle & James Fox, owners.

SUBJECT – Application June 17, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling in the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 26-1/2 State Road, north side Rockaway Point Boulevard, west of Beach 178<sup>th</sup> Street, Block 16350, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**174-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lydia & Cosmo Lenaro, owners.

SUBJECT – Application July 1, 2008 – Proposed reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 617 Bayside Drive, partially in the southeast corner of the intersection of mapped Bayside Drive and Beach 202<sup>nd</sup> Street, Block 16350, Lot p/o 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**192-08-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Margaret Campione, owner.

SUBJECT – Application July 15, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to GCL 35 and not fronting a mapped street contrary to GCL 36. R4 Zoning District.

PREMISES AFFECTED – 772 Bayside, west side of Bayside 90' north of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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## **239-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Maureen Strada, lessee.

SUBJECT – Application September 25, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to GCL36 and the upgrade of an existing non-conforming private disposal system partially in the bed of a service road contrary to DOB policy. R4 Zoning District.

PREMISES AFFECTED – 23 Hudson Walk, east side, 90' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

### **COMMUNITY BOARD #14Q**

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**NOVEMBER 25, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, November 25, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **20-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner.

SUBJECT – Application January 30, 2008– Special Permit (§75-53) to permit a 2,900 square foot vertical enlargement to an existing warehouse (UG 17); M1-5 District/Special Tribeca Mixed Use District.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.

### **COMMUNITY BOARD #1M**

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### **40-08-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue Northwest corner of east 224th Street Block 4871, Lot 1, Borough of Bronx.

### **COMMUNITY BOARD #1BX**

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### **163-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.

SUBJECT – Application June 13, 2008 – Variance (§72-21) to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR sections 24-11 (floor area, FAR and lot coverage), 24-34 (front yard), 24-35 (side yards), and 25-30 (minimum parking requirements. R2 district.

PREMISES AFFECTED –2022 Avenue M, southwest corner of the intersection of Avenue M and East 21<sup>st</sup> Street, Block 7656, Lot 31, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

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### **216-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (23-141) and side yard (23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

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### **236-08-BZ**

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (23-141) and the permitted perimeter wall height (23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3<sup>rd</sup> Street, west side of East 3<sup>rd</sup> Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 28, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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## **SPECIAL ORDER CALENDAR**

### **198-66-BZ**

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application July 25, 2008 – Extension of Time to Complete Construction of an existing plaza for a residential high rise building, in a C1-9 zoning district, which expired on June 19, 2008 and an Extension of Time to obtain a Certificate of Occupancy which expires on June 19, 2009.

PREMISES AFFECTED – 300 East 74<sup>th</sup> Street, between First and Second Avenues, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction of a modification to an existing plaza of a residential building, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 7, 2008 after due notice by publication in *The City Record*, and then to decision on October 28, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Second Avenue and 74<sup>th</sup> Street, within a C1-9 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1966 when, 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, on April 19, 2005, under the subject calendar number, the Board granted an amendment to permit modifications to the size, configuration and design of the existing plaza for the 36-story building; and

WHEREAS, most recently, on June 19, 2007, the Board extended the time to complete construction of the modification of the existing plaza, and extended the time to obtain a certificate of occupancy; and

WHEREAS, a condition of the grant was that work be completed by June 19, 2008, and a certificate of occupancy be obtained by June 19, 2009; and

WHEREAS, the applicant represents that construction was delayed due to work related to a 2007 inspection of the building's façade, pursuant to Local Law 9, which required the installation of scaffolding around the subject premises and prevented any work on the plaza from occurring; and

WHEREAS, the applicant further represents that a leak was discovered in the parking garage below the plaza in November 2007, which requires that the membrane for the garage roof be replaced prior to commencing any work on the plaza; and

WHEREAS, the applicant states that additional time is therefore necessary to complete the project; and

WHEREAS, thus, the applicant now requests extensions of time to complete construction and to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that the replacement of the membrane for the garage roof will be completed by January 2009 and the construction of the modification to the plaza will be completed by June 2009; and

WHEREAS, at hearing, the Board requested that the applicant establish that it is ready to commence work on the garage roof and plaza; and

WHEREAS, in response, the applicant submitted a contract dated September 17, 2008 for performance of the garage roof work, and plans for the garage roof work and plaza design; and

WHEREAS, at hearing, a neighbor provided testimony that the plaza was not being secured and maintained free of debris; and

WHEREAS, the Board directed the applicant to install temporary fencing at the entrance of the plaza to secure the premises; and

WHEREAS, the applicant agreed to install such fencing; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 3, 1966, so that as amended this portion of the resolution shall read: "to grant a nine-month extension of time to complete construction, to expire on July 28, 2009, and a six-month extension of time to obtain a certificate of occupancy, to expire on January 28, 2010; *on condition*:

THAT construction shall be substantially complete by

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# MINUTES

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July 28, 2009;

THAT a certificate of occupancy shall be obtained by January 28, 2010;

THAT temporary fencing shall be installed on the perimeter of the plaza to secure the premises until construction is completed;

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. 103595012)

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## 705-68-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Lanide Realty Corporation, owner; City Auto Corporation, lessee.

SUBJECT – Application March 27, 2008 – Extension of Term/waiver for a (UG8) parking lot in an R4-1 zoning district which expired on April 27, 2007.

PREMISES AFFECTED – 88-14/22 182<sup>nd</sup> Street, 128’ south of the intersection of Hillside Avenue and 182<sup>nd</sup> Street, Block 9917, Lots 7, 11, 143, Borough of Queens.

### COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance permitting open parking and storage of motor vehicles (Use Group 8), which expired on April 27, 2007; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side

of 182<sup>nd</sup> Street, between Hillside Avenue and 89<sup>th</sup> Avenue; and

WHEREAS, the site is located within an R4-1 zoning district and is occupied by a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 17, 1961 when, under BSA Cal. No. 7-56-BZ1, the Board granted a variance permitting the operation of a parking lot in a residential district for a term of five years; and

WHEREAS, on January 7, 1969, under the subject calendar number, the Board extended the term of the grant and permitted enlargement of the subject parking lot; and

WHEREAS, the grant was also extended and amended at various other times; most recently on July 21, 1998 extending the term for ten years, to expire on April 27, 2007; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant represents that a waiver of the Rules of Practice and Procedure is necessary due to a change in the ownership of Lots 7 and 11; and

WHEREAS, the applicant states that Lots 7 and 11 contain 40 parking spaces, and Lot 143 contains 41 parking spaces; and

WHEREAS, the applicant represents that there have been no changes in the use of the site or the site plan, other than the installation of fencing between Lot 143 and Lots 7 and 11; and

WHEREAS, at hearing, the Board directed the applicant to confirm that auto sales do not occur on Lots 7 and 11; and

WHEREAS, in response, the applicant submitted a letter indicating that the manager of Lots 7 and 11 confirmed that no automobiles are sold on the subject lots; 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, dated January 17, 1961, 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 April 27, 2017; *on condition:*

THAT the term of this grant shall expire on April 27, 2017;

THAT no automobiles shall be sold on any portion of the site;

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

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1 The original application under BSA Cal. No. 7-56-BZ was withdrawn on October 17, 1956.

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# MINUTES

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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.”

(Alt. No. 1032/68)

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## **182-85-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 19, 2007 – Extension of Term/Waiver of a previously granted Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment (Fox Glass), in an R6B zoning district, which expired on September 9, 2006. PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

### **COMMUNITY BOARD #7BK**

APPEARANCES –

For Applicant: Mark McCarthy.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted variance permitting a one-story building within an R6B zoning district to be used for the storage of commercial vehicles (Use Group 16), which expired on September 9, 2006; and

WHEREAS, a public hearing was held on this application on September 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008, and then to decision on October 28, 2008; and

WHEREAS, Community Board 7, Brooklyn, has recommended approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, the site is located on the north side of 20th Street, between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 9, 1986 when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story building for the storage of commercial vehicles (Use Group 16) for a contractor's establishment; and

WHEREAS, on July 15, 1997, the grant was extended by ten years, to expire September 9, 2006; and

WHEREAS, the applicant represents that there have been no changes to the site; and

WHEREAS, the applicant now requests 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 certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on September 9, 1986, 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 9, 2006, to expire on September 9, 2016, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received July 10, 2008” - (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 9, 2016;

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.” (DOB App. No. 947/84)

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## **183-85-BZ**

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 9, 2007 – Extension of Term/waiver of a previously granted Variance (§72-21) for the operation of a (UG16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, in an R6B zoning district, which expired on November 18, 2006.

PREMISES AFFECTED – 206-08 20<sup>th</sup> Street, between 4<sup>th</sup> and 5<sup>th</sup> Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

### **COMMUNITY BOARD #7BK**

APPEARANCES –

For Applicant: Mark McCarthy.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

# MINUTES

Commissioner Montanez.....5  
Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted variance permitting an open storage yard (Use Group 16) with accessory office space within an R6B zoning district, which expired on November 18, 2006; and

WHEREAS, a public hearing was held on this application on September 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008, and then to decision on October 28, 2008; and

WHEREAS, Community Board 7, Brooklyn, has recommended approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, the site is located on the south side of 20th Street, between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 18, 1986, when, under the subject calendar number, the Board granted a variance to permit the use of an open yard for storage of building materials (Use Group 16) with accessory office space; and

WHEREAS, on July 15, 1997, the grant was amended to extend the hours of operation and the term was extended by ten years, to expire November 18, 2006; and

WHEREAS, the applicant represents that there have been no changes to the site; and

WHEREAS, the applicant now requests 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 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 November 18, 1986, 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 November 18, 2006, to expire on November 18, 2016, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received July 10, 2008”- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 18, 2016;

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.”

(DOB App. No. 658/84)

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## 360-01-BZ

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.

SUBJECT – Application July 1, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.

PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station (Use Group 16), which expired on December 17, 2004; and

WHEREAS, a public hearing was held on this application on July 29, 2008, after due notice by publication in *The City Record*, with a continued hearing on August 19, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the site is located on the southwest corner of the intersection at Avenue U and Gerritsen Avenue, in a C2-2 (R4) zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board permitted a lot area enlargement of the gasoline service station; a condition of the grant was that a new certificate of occupancy be obtained by December 17, 2004; and

WHEREAS, the applicant represents that the owner’s failure to obtain the certificate of occupancy within the stipulated time was due to construction delays beyond its control; and



# MINUTES

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the Board notes that, based on observations from a site visit, conditions on the site varied from previously approved plans; and

WHEREAS, the applicant provided revised drawings showing the existing conditions and represents that any deviations from previous plans were permitted by DOB; and

WHEREAS, the Board notes that, in order to obtain the certificate of occupancy, the applicant will be required to conform to the approved plans; and

WHEREAS, at hearing, the Board directed the applicant to conform the site conditions to the BSA-approved drawings; and

WHEREAS, the applicant submitted a revised site plan conforming to the BSA-approved drawings; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to obtain a certificate of occupancy until April 28, 2009 is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 17, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to April 28, 2009; *on condition*:

THAT a certificate of occupancy shall be obtained by April 28, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## 257-04-BZ

APPLICANT – Cozen O'Connor Attorneys, for Boerum Place, LLC, owner.

SUBJECT – Application May 19, 2008 – Original bulk variance was granted on 8/23/05. SOC Amendment filed on 5/19/08 pursuant to ZR §72-01 & §72-22 to modify the street wall with dormers and to extend the elevator bulkhead to allow ADA access to the roof. No changes proposed to floor area or any waiver previously granted by the Board. R6, R6A, C2-3 & C2-4 districts.

PREMISES AFFECTED – 252/260 Atlantic Avenue, a/k/a 83-89 Boerum Place, a/k/a 239/247 Pacific Street, east side of Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted the construction of a non-complying seven-story mixed-use, residential/commercial building; and

WHEREAS, a public hearing was held on this application on August 19, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, on August 23, 2005, the Board granted a variance, pursuant to ZR §72-21, permitting the construction of a seven-story mixed-use (Use Group 2 and Use Group 6) building on a site partially within a C2-4 (R6A) zoning district and partially within a C2-3 (R6) zoning district within the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict; and

WHEREAS, the applicant now seeks to create dormers on the Pacific Street frontage and to raise the height of the elevator bulkhead; and

WHEREAS, the applicant represents that the proposed modifications do not create new zoning non-compliances or increase the waivers originally granted; and

WHEREAS, the applicant further represents that the additional dormers are consistent with the allowable building form, and that raising the elevator bulkhead will allow wheelchair access to the roof area; and

WHEREAS, the applicant initially represented that, subsequent to a DOB audit, the previously approved plans triggered two additional waivers to the Zoning Resolution that were not originally contemplated in the 2005 approval, specifically: (i) waivers to ZR § 101-721, regarding the streetwall height within the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict along Boerum Place, and (ii) the clarification of the accessory roof top pool; and

WHEREAS, the Board raised concerns as to whether the applicant could properly justify the need for such waivers in the context of the findings made under ZR § 72-21, specifically with respect to the (e) finding; and

WHEREAS, in response, the applicant modified the proposal to remove the roof top pool and lower the street wall along Boerum Place to meet the Special District regulations; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment to the site plan is appropriate, with certain conditions set forth below.

# MINUTES

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on August 23, 2005, so that as amended this portion of the resolution shall read: "to permit the noted modification to the plans to reflect the proposed dormers on the Pacific Street frontage and to raise the height of the elevator bulkhead; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received October 15, 2008"-(1) sheet and "September 16, 2008"-(12) sheets; and *on further 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) and/or configuration(s) not related to the relief granted."

(DOB Application No. 302336292)

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## 719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Cindy Bachan.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

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## 94-58-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Nor-East S/S Incorporated, lessee.

SUBJECT – Application June 19, 2008 – Extension of Term/waiver for the continued operation of a gasoline service station (Mobil), in an R-4 zoning district, which expired on September 30, 2003.

PREMISES AFFECTED – 22-55/25-75 Brooklyn Queens Expressway, northeast corner of 30<sup>th</sup> Avenue, Block 1046, Lot 1, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

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## 681-68-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Sharon Cohen, owner.

SUBJECT – Application June 4, 2008 – Amendment to a previously granted Variance (§72-21) for the change of use on the first floor of an existing one story building from Offices (UG6) and Air-Freight Storage (UG16) to Retail Stores (UG6), in an R3-1 zoning district, with accessory storage in the cellar and accessory parking for patrons to remain.

PREMISES AFFECTED –137-42 Guy Brewer Boulevard, northwest corner of 140<sup>th</sup> Avenue and Guy Brewer Boulevard, Block 12309, Lot 17, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Sandy Anagnostou and Ella Smith

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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## 739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application September 16, 2008 – Extension of Term & Extension Time to obtain a Certificate of Occupancy for a (UG15) Amusement Arcade (Peter Pan Games), in a C4-1 zoning district which will expire on April 10, 2009.

PREMISES AFFECTED – 12-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to

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# MINUTES

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November 18, 2008, at 10 A.M., for decision, hearing closed.

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## **389-85-BZ**

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application June 13, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an Amendment to legalize the conversion of the service bays to a convenience store.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

## **COMMUNITY BOARD #11BX**

APPEARANCES –

For Applicant: Cindy Bachan.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for continued hearing.

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## **115-94-BZ**

APPLICANT – Martyn & Don Weston, for Irma Poretsky, owner.

SUBJECT – Application June 16, 2008 – (§11-411) Extension of Term/Waiver for an Automotive Repair Shop located in an R6 zoning district which expired on July 30, 2006.

PREMISES AFFECTED – 2470-2480 Bedford Avenue, 60 feet north of Clarendon Road, Block 5167, Lot 40, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Don Weston.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

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## **24-96-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§ 11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and

drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

## **COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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## **117-97-BZ**

APPLICANT – Vito J. Fossella, P.E. (LPEC), for Gosehine Garcia, owner.

SUBJECT – Application August 28, 2008 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a legal non-conforming (UG6) eating and drinking establishment (Basille's) in an R3-2 zoning district which expired on September 15, 2008.

PREMISES AFFECTED – 1112 Forest Avenue, south side of Forest Avenue, 25' west of the intersection of Forest Avenue and Greenleaf Place, Block 352, Lot 47, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

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## **197-00-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for SLG Graybar Sublease LLC, owner; Equinox 44<sup>th</sup> Street, Incorporated, lessee.

SUBJECT – Application August 8, 2008 – Application to amend a special permit previously granted by the Board of Standards and Appeals to permit, in a C5-3 (MiD) zoning district, a 1,010 sq. ft. extension of an existing physical culture establishment ("Equinox Fitness") within an existing commercial building.

PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208'4" north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

# MINUTES

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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## 217-03-BZ

**APPLICANT** – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

**SUBJECT** – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

**PREMISES AFFECTED** – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

**APPEARANCES** – None.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 136-08-A

**APPLICANT** – John Beckmann.

**OWNER:** Pauline & Gus Englezos.

**SUBJECT** – Application May 2, 2008 – An appeal seeking to revoke a permit that allows off- street parking in the front yard of an attached dwelling contrary to §25-621. R4-1 Zoning District.

**PREMISES AFFECTED** – 846 70<sup>th</sup> Street, between 8<sup>th</sup> Avenue and Fort Hamilton Parkway, Block 5896, Lot 25, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

**APPEARANCES** –

For Applicant: John Beckmann.

**ACTION OF THE BOARD** – Appeal denied.

**THE VOTE TO GRANT** –

Affirmative: Commissioner Hinkson and Commissioner Montanez .....

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....

**THE RESOLUTION:** 1

WHEREAS, the instant appeal comes before the Board in response to a determination of the Brooklyn Borough Commissioner, dated April 3, 2008, to uphold the approval of an Alteration Type 3 permit (310077092) for the installation of a new curb cut, made in conjunction with an Alteration Type 2 permit issued for renovation of the subject premises; and

WHEREAS, the Final Determination reads, in pertinent part:

“This is in response to your letter dated March 25,

2008 and its attachments regarding allowable off-street parking in a side lot ribbon in R4-1 zoning district.

“Off-street parking is a permitted obstruction within front yards where no more than two parking spaces are required, provided such yards are located within a permitted side lot ribbon.

“[T]he side lot ribbon is that contiguous area that extends along the entire length of a side lot line from the street line to an intersecting rear lot line.

“[O]ff-street parking in a residential building located in R4-1, where no more than two parking spaces are required, is permitted within any portion of the side lot ribbon, regardless of the location of this portion whether in the front, side or rear yard.

“[T]he Zoning Resolution as written does not put any distinction between detached, semi-detached and attached residential buildings in regard to off-street parking as long as located in the locations described as per ZR 25-621(a)(1).

“The approval of the parking location as filed under application #310077092 complies with the zoning requirements. Any appeal of this decision shall be filed with the Board of Standards and Appeals.”

WHEREAS, a public hearing was held on this appeal on September 24, 2008, after due notice by publication in the *City Record*, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

## PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by the owner of 852 70<sup>th</sup> Street (the “appellant”), a neighbor to the subject premises; and

WHEREAS, the appellant and the Department of Buildings (“DOB”) have been represented by counsel throughout this proceeding; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this appeal; and

WHEREAS, Councilmember Vincent J. Gentile provided written and oral testimony in support of this appeal; and

WHEREAS, State Senator Martin J. Golden also provided testimony in support of this appeal; and

WHEREAS, representatives of the United Neighborhood Association of Fort Hamilton Parkway and the Bay Ridge Conservancy also provided written and oral testimony in support of this appeal; and

WHEREAS, the owner of 846 70<sup>th</sup> Street (the “owner”) testified at hearing in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the installation of a ten foot curb cut for parking in the front yard of an attached home; and

WHEREAS, on January 9, 2008, DOB issued an Alteration Type 3 Permit No. 310077092 for the installation

1 Headings are utilized only in the interests of clarity and organization.

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# MINUTES

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of a ten foot curb cut, made in conjunction with an Alteration Type 2 permit issued for renovation of the subject premises; and

WHEREAS, on March 25, 2008, Community Board 10, Brooklyn, wrote the Brooklyn Borough Commissioner requesting reconsideration of DOB's approval; and

WHEREAS, on April 3, 2008, the Brooklyn Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on May 2, 2008, the appellant filed the instant appeal at the BSA; and

## THE SITE

WHEREAS, the subject site consists of a two-story attached home on the south side of 70<sup>th</sup> Street, between 8<sup>th</sup> Avenue and Fort Hamilton Parkway; and

WHEREAS, the subject site is located in an R4-1 zoning district; and

WHEREAS, the owner proposes to install a new ten foot curb cut for parking in the portion of the front yard adjoining the neighboring property; and

WHEREAS, the subject site is part of a continuous grouping of 19 uniform attached rowhouses located on the 800 block of 70<sup>th</sup> Street; and

## PROVISIONS OF THE ZONING RESOLUTION RELEVANT TO THIS APPEAL

WHEREAS, in pertinent part, the following provisions of the Zoning Resolution are cited herein:

Z.R. § 25-621 ("Location of Parking Spaces in Certain Districts") sets forth the locations where off-street parking is permitted in certain residential zoning districts; and

Z.R. § 25-621(a)(1) applies to R2X, R3, R4, and R5 zoning districts, and provides, "[i]n the districts indicated, except R4B or R5B Districts, accessory off-street parking spaces shall be permitted only in the side lot ribbon, within a building or in any open area on the zoning lot which is not between the street line and street wall or prolongation thereof of the building. Access to the accessory spaces through a front setback area or required front yard shall be only through the side lot ribbon;"

Z.R. § 25-621(a)(3) applies to R4B, R5B, R6B, R7B, and R8B zoning districts, and provides that, "[i]n the districts indicated, accessory off-street parking spaces shall be located only within a building, or in any opens area on the zoning lot which is not between the street line and the street wall of the building or its prolongation. Access to such parking spaces shall be provided only through the side lot ribbon or through the rear yard; and

Z.R. § 12-10 ("Definitions"), defines a 'side lot ribbon' as "that portion of the zoning lot that is contiguous to, and extends along the entire length of, a side lot line from the street line to an intersecting rear lot line, side lot line or other street line;" and Z.R. § 23-44(a)(1) ("Permitted Obstructions in Required Yards or Rear Yard Equivalents")

provides that "[p]arking spaces, off-street, open, within a front yard are accessory to a residential building" in R2X, R3, R4 and R5 Districts . . . , provided such spaces are located in a permitted side lot ribbon;

"However, no such parking spaces shall be permitted in any front yard within a R4B or R5B District, and no such required spaces shall be permitted in any front yard within any R1, R2, R3, R4A or R4-1 District within a lower density growth management area;" and

Z.R. § 12-01 ("Rules Applying to Text of Resolution") provides:

"(b) In case of any difference of meaning or implication between the text of this Resolution and any caption, illustration, summary table or illustrative table, the text shall control.

"(c) The word 'shall' is always mandatory and not discretionary. The word 'may' is permissive.

"(h) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction 'and,' 'or,' or 'either...or,' the conjunction shall be interpreted as follows:

- (1) 'and' indicates that all the connected items, conditions, provisions or events shall apply;
- (2) 'or' indicates that the connected items, conditions, provisions or events may apply singly or in any combination; and
- (3) 'either...or' indicates that the connected items, conditions, provisions or events shall apply singly but not in any combination;" and

## ISSUES PRESENTED

WHEREAS, the appellant makes the following primary arguments in support of its position that DOB should revoke the permit for the subject site: (i) the Zoning Resolution expressly prohibits parking in the front yard of an attached home; and in the alternative, (ii) the text of the Zoning Resolution is ambiguous and therefore the Board must look to legislative intent, which is contrary to DOB's interpretation that parking is permitted in the front yard of an attached home; and

WHEREAS, these two arguments are addressed below; and

### *Challenged Parking is Expressly Prohibited by the Zoning Resolution*

WHEREAS, the appellant argues that Z.R. §§ 25-621(a) and 12-10 expressly prohibit parking in the front yard of attached homes; and

WHEREAS, Z.R. § 25-621(a) provides that "off-street parking spaces shall be permitted only in the side lot ribbon, within a building or in any open area on the zoning lot which is not between the street line and street wall or prolongation thereof of the building;" and

WHEREAS, the appellant contends that Z.R. § 25-621(a) expressly prohibits parking in any portion of the front

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# MINUTES

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yard of an attached home because the challenged parking is within an open area between the street line and the “prolongation thereof of the building;” and

WHEREAS, the appellant elaborates that Z.R. § 25-621(a) expressly prohibits parking in any portion of the front yard of an attached home because the phrase “prolongation thereof of the building” refers to a building that extends the length of a zoning lot, such as an attached home; and

WHEREAS, the appellant also contends that Z.R. § 25-621(a) prohibits front yard parking for attached houses because the restriction on parking between “the street line and street wall or prolongation thereof of the building” restricts parking in the side lot ribbon of the front yard as well; and

WHEREAS, DOB argues, and the Board agrees, that Z.R. § 25-621(a) does not distinguish between detached, semi-detached, and attached houses in regard to front yard parking, provided that such parking is within a side lot ribbon or within a building; and

WHEREAS, further DOB argues, and the Board agrees, that the text of Z.R. § 25-621(a) imposes no limitation on where parking may be located in a side lot ribbon and because the word “or” separates the areas where off-street parking is permitted, it is clear that each area specified in the statute represents a separate location where parking is allowed; thus, parking is allowed anywhere in the side lot ribbon; and

WHEREAS, the Board also notes that, at hearing, DOB submitted a memorandum by the Department of City Planning (the “DCP Memo”) stating that Z.R. § 25-621(a) permits parking within the portion of the side lot ribbon that traverses a front yard, despite the overlap of the “side lot ribbon” and the open area “between the street line and street wall or prolongation thereof of the building;” and

WHEREAS, the appellant further contends that parking is not permitted within the side lot ribbon of an attached home because, pursuant to Z.R. § 12-10, side lot ribbons do not exist on lots with attached homes; and

WHEREAS, Z.R. § 12-10 defines a side lot ribbon as “that portion of the zoning lot that is contiguous to, and extends along the entire length of, a side lot line from the street line to an intersecting rear lot line, side lot line or other street line;” and

WHEREAS, the appellant contends that side lot ribbons do not exist on lots with attached houses because the definition of ‘side lot ribbon’ in Z.R. § 12-10 contemplates a side yard that is completely open to the sky from the street line to an intersecting rear lot line, and which serves as a through space to an accessory parking space in the rear of the lot; and

WHEREAS, DOB argues, and the Board agrees, that the text of Z.R. § 12-10 does not state that a side lot ribbon must be open to the sky, and does not indicate that a side lot ribbon can only exist on a lot with a side yard; and

WHEREAS, DOB states, and the Board agrees, that the definition of “side lot ribbon” in Z.R. § 12-10 allows parking “along the entire length of a side lot line,” even if there is an attached home on the lot; and

WHEREAS, the Board notes that the DCP Memo states that Z.R. § 12-10 does not require that a side lot ribbon be

continuously developed as a driveway extending from the street line to the rear lot line, or that the area be continuously open to the sky; and

WHEREAS, the Board notes that, in contrast to its definition of a “side lot ribbon,” Z.R. § 12-10 defines a “yard” as “that portion of a zoning lot extending open and unobstructed from the lowest level to the sky along the entire length of a lot line”; and

WHEREAS, the Board therefore concludes that the appellant is apparently urging the Board to interpret the definition of a “side lot ribbon” as coextensive with that of a “side yard,” despite the fact that Z.R. § 12-10 specifically requires a side yard to be “unobstructed from the lowest level to the sky,” while the definition of a side lot ribbon lacks such language; and

WHEREAS, the Board cannot expand the definition of a side lot ribbon to require it to be unobstructed, because a statute cannot be extended by construction beyond its express terms or reasonable implications to its language (see Statutes § 94 (N.Y. Cons. L. 2008)); and

WHEREAS, therefore, a finding that a side lot ribbon must be open to the sky cannot be imputed, absent specific language in the Zoning Resolution providing so; and

WHEREAS, the appellant argues that the text of Z.R. § 25-621(a) restricting parking between “the street line and street wall or prolongation thereof of the building” also restricts parking in the side lot ribbon of the front yard; and

WHEREAS, Z.R. § 25-621(a) provides that off-street parking is permitted in “the side lot ribbon, within a building *or* in any open area on the zoning lot not between the street line and street wall” (emphasis added); and

WHEREAS, the appellant claims that pursuant to Z.R. § 12-01(h)(2), the “or” in Z.R. § 25-621(a) requires the three types of areas where parking is permitted to be read in combination; and

WHEREAS, therefore, the appellant argues that parking is not permitted within a side lot ribbon if it’s in an open area between the street line and street wall;

WHEREAS, the Board however notes that the provision describes three discrete types of areas where parking is permitted, because the word “or” indicates that the connected items “may apply singly or in any combination,” pursuant to Z.R. § 12-01(h); and

WHEREAS, the Board further notes that under the Rules for Construction of Language in the Zoning Resolution, the word “shall” is always mandatory, while the word “may” is permissive; (see Z.R. § 12-01(c)) and that, unless the context clearly indicates the contrary, where a regulation involves two or more items connected by the word “and,” it indicates that all the connected items shall apply, but if the items are connected by the word “or,” the connected items “may apply singly or in any combination” (see Z.R. § 12-01(h)); and

WHEREAS, the Board observes that the use of the word “or” rather than “and” in the cited portion of Z.R. § 25-621(a) indicates that the application of the connected items is permissive and not mandatory and therefore that parking is permitted in a side lot ribbon and does not need to be read in

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# MINUTES

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combination with or be restricted by an open area which is not between the street line and the street wall; and

WHEREAS, the Board concludes Z.R. § 25-621(a) restricts parking between the “street line and street wall or prolongation thereof of the building” within the area of the front yard that is not within the side lot ribbon; and

WHEREAS, the Board notes that the Zoning Resolution Rules of Construction codified in ZR § 12-10 support a finding that the language of Z.R. § 25-621(a) is clear and unambiguous; and

WHEREAS, the appellant has failed to offer a convincing rationale to read Z.R. § 25-621(a) in a way that is contrary to the plain meaning of the text; and

WHEREAS, further, under New York law, where statutory language is clear and unambiguous, it must be construed according to the plain meaning of the words used,” *Patrolmen’s Benevolent Assn. v. City of New York*, 41 N.Y. 2d 205 (1976); and

WHEREAS, the Board therefore rejects the appellant’s argument that the text of Z.R. § 25-621(a) restricting parking between “the street line and street wall or prolongation thereof of the building” should be interpreted to also restrict parking in the side lot ribbon of the front yard; and

WHEREAS, DOB additionally contends that parking within the front yard of an attached home is permitted because it is a permitted obstruction in an R4-1 zoning district pursuant to Z.R. § 23-44(a), provided that the parking is located within the side lot ribbon; and

WHEREAS, the DCP Memo further provides that parking in a side lot ribbon of the front yard is specifically allowed as a permitted obstruction under Z.R. § 23-44(a); and

WHEREAS, the appellant argues that, because Z.R. § 23-44(a) requires that the front yard parking space be located within a side lot ribbon, and side lot ribbons do not exist on lots with attached homes, Z.R. § 23-44(a) is therefore inapplicable to the subject lot; and

WHEREAS, the Board notes that, as discussed above, a side lot ribbon is an existing portion of a zoning lot even when the lot is occupied by an attached home and has no side yard; and

WHEREAS, DOB contends, and the Board agrees, that the subject parking space is located within a side lot ribbon, and is therefore authorized as a permitted obstruction under Z.R. § 23-44(a); and

WHEREAS, the Board notes that it is a fundamental rule of statutory construction that all parts of a statute are to be read together and construed as a whole; and

WHEREAS, the Board finds that the plain language of Z.R. §§ 25-621(a), 12-10, and 23-44(a), when read together, clearly permit parking within the side lot ribbon of an attached home within an R4-1 zoning district; and

WHEREAS, the Board therefore rejects the appellant’s argument that Z.R. §§ 25-621(a) expressly prohibits parking within the side lot ribbon of an attached home in an R4-1 zoning district; and

*Challenged Parking is Prohibited by the Intent of the Zoning Resolution*

WHEREAS, in the alternative, the appellant contends that the Board should look beyond the plain meaning of the New York City Zoning Resolution to find that the challenged parking is prohibited based on: (1) the prohibition on parking in the front yard of attached homes in R4B and R5B zoning districts; and (2) the inferred intent underlying Z.R. §§ 25-621(a) and 12-10; and

WHEREAS, the appellant contends that the intent of the Zoning Resolution to prohibit parking in the front yard of an attached home in an R4-1 zoning district can be inferred from the language of Z.R. § 25-621(a), which prohibits parking in the front yards of attached homes in R4B and R5B zoning districts; and

WHEREAS, the appellant contends that because the subject R4-1 zoning district is characterized by attached rowhouses, which are also common to R4B and R5B zoning districts, that the restriction on parking in R4B and R5B zoning districts in Z.R. § 25-621 should likewise be extended to prohibit parking in the front yards of attached homes in R4-1 zoning districts; and

WHEREAS, the Board notes that § 25-621 specifically prohibits parking in the front yards of attached homes in R4B and R5B zoning districts, while the provision is silent concerning parking in the subject R4-1 zoning district; and

WHEREAS, the Board further notes that if all attached homes were meant to be exempted from provisions permitting accessory off-street parking in front yards, as the appellant contends, the restriction on front yard parking listed in Z.R. §§ 25-621(a) and 23-44(a) for R4B and R5B zoning districts would be redundant and unnecessary; and

WHEREAS, however, there is no reason to presume that these provisions are superfluous; thus, the Board finds that the exemption on front yard parking in Z.R. §§ 25-621(a) and 23-44 applies only to R4B and R5B districts and cannot be applied to prohibit parking in front yards of R4-1 districts; and

WHEREAS, the Board notes again that the plain meaning of the Zoning Resolution with respect to the application of Z.R. § 25-621(a) to the subject zoning district is unambiguous; and

WHEREAS, under New York law, the Board is not permitted to look beyond the plain meaning of the text to ascertain the intent of the Zoning Resolution, but is limited to the “four corners” of the statute (see *Statutes § 94 (N.Y. Cons. L. 2008)*); and

WHEREAS, the Board is also aware that it must presume that the framers of the Zoning Resolution deliberately drafted the relevant zoning text with a specific purpose; and

WHEREAS, the DCP Memo states that the purpose of the Lower Density Contextual Zoning text amendments was to prohibit front yard parking in R4B and R5B districts, specifically; and

WHEREAS, the appellant has submitted no evidence contradicting the clear statement of intent submitted by the Department of City Planning, the agency which frames the Zoning Resolution, to support an inference that Z.R. § 25-621(a) was intended to prohibit parking in the front yards of attached homes in R4-1 zoning districts; and

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# MINUTES

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WHEREAS, for the reasons stated, the Board finds that the restrictions on parking in R4B and R5B districts provide no evidence of an intent on the part of the framers to impose restrictions on parking in an R4-1 district which are not found within the plain language of ZR § 25-621; and

WHEREAS, the appellant contends that the intent of the Zoning Resolution to prohibit front yard parking in R4-1 districts is also demonstrated by a 1989 Department of City Planning report entitled “Lower Density Contextual Zoning Study” (“DCP Report”) and by the agency’s 1990 Zoning Handbook and the 2006 Zoning Handbook; and

WHEREAS, in support of its position, the appellant points to illustrations of side lot ribbons in the DCP Report, the 1990 Zoning Handbook, and the 2006 Zoning Handbook, each of which depict the side lot ribbon as an open area located within a side yard that serves as a through space to an accessory parking space located to the rear of a property; and

WHEREAS, the Board notes that, under New York law, where the legislative language is clear, as in the instant appeal, there is no occasion for examination into extrinsic evidence to discover legislative intent (See Statutes § 120 (N.Y. Cons. L. 2008, see also *Raritan Dev. Corp. v. Silva*, 91 N.Y.2d (1997) (when a provision in the Zoning Resolution is unambiguous, reliance on external statutes or sources is erroneous)); and

WHEREAS, DOB argues, and the Board agrees, that the legislative language in Z.R. §§ 25-621(a) and 12-10 is unambiguous, and therefore, the illustrations of side lot ribbons in the DCP Report, the 1990 Zoning Handbook, and the 2006 Zoning Handbook, cannot serve as support for an alternative interpretation of the statute; and

WHEREAS, the Board further notes that the illustrations cited by the appellant are not dispositive of every condition where parking may occur, and observes that a 1990 DCP study entitled “Lower Density Contextual Zoning” (“DCP Study”) contains an illustration indicating that front yard parking is contemplated within the side lot ribbon of an attached home; and

WHEREAS, the appellant also contends that the DCP Report demonstrates that the framers of Z.R. § 12-10 did not intend for a side lot ribbon to exist on a lot with an attached home, because the stated objective for creating the side lot ribbon was to prevent continuous curb cuts and to encourage unpaved open space in the front yard; and

WHEREAS, the Board observes that the appellant’s argument is contradicted by the “Parking Location” section of the DCP Report, which states that the side lot ribbon “would pass through the front yard, a side yard *or a building*...and the rear yard” (emphasis added), which establishes, again, that a side lot ribbon traverses a front yard and can run uninterrupted through an attached home, such as in the instant appeal; and

WHEREAS, the DCP Memo further indicates that the purpose for creating the side lot ribbon was to regulate the width and placement of driveways on narrow lots, to preserve the ability to plant front yards and to ensure sufficient on-street parking between curb cuts on adjacent lots, and not to prevent parking in front yards; and

WHEREAS, in addition, the Board notes that, consistent

with the DCP Report, the DCP Memo points out that Z.R. § 23-141 allows a floor area bonus if a detached garage is provided in the portion of the rear yard within the side lot ribbon, and

WHEREAS, the appellant also contends that the provisions in the DCP Report concerning parking in R4B districts demonstrate that the framers of Z.R. § 25-621(a) intended to include R4-1 zoning districts among those districts in which front yard parking is prohibited for attached houses; and

WHEREAS, the appellant points to a provision in the DCP Report, under the heading “R4B,” which states, “[f]or subdivisions creating detached or semi-detached houses, R4-1 curb cut location regulations would apply. Parking would have to be within a building, or in a side or rear yard. For attached houses, regardless of subdivisions, parking must be grouped, and within a building or yard other than a front yard;” and

WHEREAS, the appellant argues that the language restricting parking in the front yard of “attached houses, regardless of subdivisions,” is evidence of an intent to restrict parking in the front yard of attached houses in R4-1 districts; and

WHEREAS, the Board notes that there is no indication that the cited DCP Report was meant to apply beyond R4B zoning districts, and

WHEREAS, accordingly, the Board therefore finds that the cited documents provide no support for the proposition that the underlying intent of Z.R. §§ 25-621(a) and 12-10 was to preclude parking in the side lot ribbon of an attached home within the R4-1 district; and

WHEREAS, the appellant has therefore provided no evidence supporting a finding that parking in the side lot ribbon of an attached home in an R4-1 zoning district is expressly or impliedly prohibited by the Zoning Resolution; and

WHEREAS, the Board finds therefore that the subject premises complies with all legal requirements for the issuance of an alteration permit for the installation of a curb cut in an R4-1 zoning district, and that there is therefore no basis for the revocation of the permit; and

Therefore it is Resolved, that the instant appeal is denied.

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## **306-05-BZY**

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (§11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED – 206A Beach 3<sup>rd</sup> Street, Block 15604, Lot 34, Borough of Queens.

## **COMMUNITY BOARD #14Q**

APPEARANCES –



# MINUTES

For Applicant: Gregory Chillino.  
For Administration: Kelly Kamen, Department of Buildings.  
THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0  
**ACTION OF THE BOARD** – Laid over to  
November 25, 2008, at 10 A.M., for decision, hearing  
closed.

## 141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.  
SUBJECT – Application May 29, 2007 – Proposed  
construction of a two story one family residential building in  
the bed of mapped street (Hook Creek Boulevard) contrary  
to General City Law Section 35. R2 Zoning.  
PREMISES AFFECTED – 129-48 Hookcreek Boulevard,  
situated on the West side of Hookcreek Boulevard, Block  
12891, Lot 10, Borough of Queens.  
**COMMUNITY BOARD #13Q**  
APPEARANCES –  
For Applicant: Hakime Altine.  
**ACTION OF THE BOARD** – Laid over to  
November 25, 2008, at 10 A.M., for continued hearing.

## 251-07-A thru 254-07-A

APPLICANT – Eric Palatnik, P.C., for Willow/Houston,  
LLC, owner.  
SUBJECT – Application November 2, 2007 – 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.  
PREMISES AFFECTED – 63/65 Houston Street and  
104/106 Willowbrook Road, Block 1478, Lots 542, 543,  
150 & 151, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**  
APPEARANCES –  
For Applicant: Eric Palatnik.  
For Opposition: James E. Scott and Stacey Murphy.  
**ACTION OF THE BOARD** – Laid over to  
November 18, 2008, at 10 A.M., for continued hearing.

## 266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S, LLC,  
owner.  
SUBJECT – Application November 21, 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 district  
regulations. R4-1 Zoning District.  
PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot  
3, Borough of Brooklyn.  
**COMMUNITY BOARD # 15BK**

APPEARANCES –  
For Applicant: Jay Goldstein.  
THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0  
**ACTION OF THE BOARD** – Laid over to  
November 18, 2008, at 10 A.M., for decision, hearing  
closed.

## 33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr.,  
owner.  
SUBJECT – Application February 20, 2008 – Proposed  
construction of a six story multi-family home not fronting a  
legally mapped street contrary to General City Law Section  
36. R6/Ocean Parkway Zoning District.  
PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> Lane, a/k/a 209-  
213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane,  
63.19°W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80,  
Borough of Brooklyn.  
**COMMUNITY BOARD #13BK**  
APPEARANCES –  
For Applicant: Abrquill Pakerson.  
For Administration: Anthony Scaduto, Fire Department.  
**ACTION OF THE BOARD** – Laid over to  
November 25, 2008, at 10 A.M., for continued hearing.

## 191-08-BZY

APPLICANT – Stuart A. Klein, for 1610 Avenue S, LLC,  
owner.  
SUBJECT – Application July 14, 2008 – Extension of time  
to complete construction (§11-331) of a minor development  
commenced prior to the amendment of the zoning district  
regulations. R4-1 Zoning District.  
PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot  
3, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**  
APPEARANCES –  
For Applicant: Jay Goldstein.  
THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
November 18, 2008, at 10 A.M., for decision, hearing  
closed.

## 149-08-A

APPLICANT – Jack Lester, for Neighbors, et al, owner.  
SUBJECT – Application May 29, 2008 – Appeal seeking to  
revoke permits and approvals for a 30 story mixed use

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# MINUTES

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building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 808 Columbus Avenue, 97<sup>th</sup> and 100<sup>th</sup> Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 10 A.M., for postponed hearing.

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**202-08-BZY**

APPLICANT – Greenberg Traurig by Deirdre Carson, for Oliver Development, LLC, owner.

SUBJECT – Application August 1, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to a text amendment on July 23, 2008. R6 Zoning district.

PREMISES AFFECTED – 131 Second Place, northwest corner of Second Place and Smith Street, Block 459, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: James W. Devor, Evans Akselrap, John Hatheway, Rita Miller, James Biber, Lucy DeCarlo and Traila Famara.

For Administration: Amanda Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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**212-08-A**

APPLICANT – Greenberg Traurig by Deirdre Carson for Oliver Development, LLC, owner.

SUBJECT – Application August 1, 2008 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior zoning district regulations. R6 zoning district.

PREMISES AFFECTED – 131 Second Place, northwest corner of Second Place and Smith Street, block 459, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: James W. Devor, Evans Akselrap, John Hatheway, Rita Miller, James Biber, Lucy DeCarlo and Traila Famara.

For Administration: Amanda Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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**217-08-BZY**

APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Steven Reich, owner.

SUBJECT – Application October 28, 2008 – Extension of time to complete construction (§11-332) of an enlargement to an existing development commenced prior to the text amendment on July 23, 2008. R6 zoning district.

PREMISES AFFECTED – 126 First Place, southside of First Place, 300’ east of the intersection of Court Street and First Place, Block 459, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Frank Chaney.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, OCTOBER 28, 2008  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**39-06-BZ**

**CEQR #06-BSA-061K**

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: Yosef S. Gottdiener.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, decision of the Brooklyn Borough Commissioner, dated February 21, 2006, acting on Department of Buildings Application No. 301269106, reads:

“Proposed conversion of Manufacturing (UG 17) Building to Two Family and Manufacturing (UG 2 & 17) is contrary to ZR 42-00”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the legalization of two dwelling units (UG 2) in an existing three-story manufacturing building; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in the *City Record*, after which the hearing was closed and a decision was set for September 18, 2007; and

WHEREAS, on September 18, 2007 the Board deferred the decision to October 30, 2007; the decision was subsequently deferred to January 8, 2008, February 26, 2008, April 15, 2008, June 24, 2008 and August 26, 2008, at the request of the applicant; and

WHEREAS, the matter went to decision on October 28, 2008; and

WHEREAS, the building and surrounding area had site

and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 1, Brooklyn, recommended approval of this application; and

WHEREAS, representatives of the East Williamsburg Valley Industrial Development Corporation and a nearby manufacturing business (collectively, the “Opposition”) provided written and oral testimony concerning the potential impact of the legalization on the retention of manufacturing jobs within the North Brooklyn Industrial Business Zone; and

WHEREAS, the site is located on the north side of Varet Street between White and Bogart Streets, within an M1-2 zoning district; and

WHEREAS, the site has 50 feet of frontage on Varet Street and is 90 feet deep; and

WHEREAS, the site is currently occupied by a three-story manufacturing building built in 1931, with a total floor area of 10,188 sq. ft. (3,396 sq. ft. on each floor) and an FAR of 2.26, with conforming manufacturing use on the ground floor and two non-conforming dwelling units on the second and third floors; and

WHEREAS, as noted, the applicant proposes to legalize the existing dwelling units on the second and third floors, with manufacturing use to remain on the ground floor; and

WHEREAS, the second and third floors have been occupied by dwelling units for the last 17 years; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the building is obsolete for manufacturing use; and (2) the narrow street does not permit access by large trucks; and

WHEREAS, the applicant represents that the building is obsolete for modern manufacturing due to its small floor plate, and lack of an elevator and loading dock; and

WHEREAS, as to the building’s floor plate, the applicant represents that a floor plate of 3,396 sq. ft. cannot accommodate modern manufacturing use; and

WHEREAS, an analysis submitted by the applicant showed that most sites occupied by manufacturing uses in the surrounding neighborhood had significantly larger floor plates; and

WHEREAS, as to the lack of an elevator, the applicant represents that no manufacturer will occupy a property which relies only on a narrow staircase for moving materials between floors; and

WHEREAS, an analysis submitted by the applicant indicates that among the six buildings similar to this building in use and size, this is the only one that is further disadvantaged by having no elevator for the transfer between floors; and

WHEREAS, the applicant also states that the lack of a loading dock and the narrowness of Varet Street constrain the building from accommodating the deliveries required of modern manufacturers; and

WHEREAS, the applicant represents that Varet Street’s width of approximately 60 feet is too narrow to permit access

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# MINUTES

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by the tractor-trailer trucks which are now used by modern manufacturers; and

WHEREAS, the Board finds that the roadway's width, in and of itself, would not create a hardship, but that the combination of the small floor plate, and lack of elevator and loading berths, creates unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a feasibility study analyzing three alternatives: (1) the existing building used in conformance with M1-2 zoning district regulations; (2) a new as-of-right manufacturing building with an FAR of 2.0; and (3) the proposed mixed-use building with residential use on the second and third floors and manufacturing use on the ground floor; and

WHEREAS, the applicant's financial analyses showed that neither the existing building, nor the as-of-right building proposal, provide a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that use in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed residential use of the second and third floors 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, although zoned M1-2, the applicant represents that the actual land uses in the area are compatible with residential use; and

WHEREAS, the applicant represents that the Varet Street block where the site is located is characterized generally by a mix of commercial, manufacturing and residential uses; and

WHEREAS, based on the land use survey submitted to the Board, the applicant further represents that the proposed building would fit into the mixed-use character of the neighborhood; and

WHEREAS, based on its site examinations, the Board notes that there is some nearby residential use, but that the neighborhood character appears to be predominately industrial and commercial; and

WHEREAS, however, the Board finds that the legalization of two residential units which have been occupied for 17 years would not be expected to change the essential character or affect the surrounding uses of the neighborhood; and

WHEREAS, the Opposition submitted oral and written testimony concerning the possible effects the proposal may have on conforming uses in the nearby Industrial Business Zone and on a specific manufacturing use in the vicinity of the building; and

WHEREAS, in response to a request by the Board, the applicant notes that the subject site is outside the boundaries of the Industrial Business Zone in a designated Mixed Use

Area which includes many legal residential multi-family and mixed use buildings; and

WHEREAS, the applicant also notes that the subject residential use has been in existence at the site for 17 years and will not be expanded; and

WHEREAS, the applicant further notes that the impact of the legalization on the nearby manufacturer would be minimal as it has direct access to a major artery and would therefore be unlikely to use Varet Street for truck transport; and

WHEREAS, based upon the above, the Board finds that the proposed legalization of two residential units 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 notes that the waiver to legalize two existing units will have little or no affect on the surrounding community; 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 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. 06BSA061K, dated March 2, 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: (i) a March 2006 Environmental Assessment Statement (EAS); (ii) a September 2006 Phase I Environmental Site Assessment report; (iii) a November 2007 Phase II Investigation Workplan; and (iv) an August 2008 benzene analysis; and

WHEREAS, these submissions specifically examined the proposed action for potential air quality, noise and hazardous materials impacts; and

WHEREAS, regarding air quality impacts of the

# MINUTES

proposed project; in its letter of October 23, 2008, DEP stated that the agency had determined that pollutants from the first floor manufacturing use are not anticipated to result in significant air quality impacts on the second and third floor residential uses; and

WHEREAS, DEP has further determined that that the project would not result in significant stationary or mobile source noise impacts or hazardous materials impacts, as confirmed by its letter of October 23, 2008; 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 legalization of two dwelling units in an existing three-story manufacturing 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 March 8, 2006"- four (4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 10,188 sq. ft. (3,396 sq. ft. on each floor) and an FAR of 2.26, 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 construction will proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## 243-07-BZ/244-07-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary

floor area and open space (§23-141); less than the minimum front yards (§23-45) and less than the required amount of parking (§23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 4, 2008, acting on Department of Buildings Application No. 510007760, reads in pertinent part:

1. 'The proposed construction is located within the bed of a mapped street contrary to section 35 of the General City Law;
2. Proposed one-family, detached residential building (Use Group 1) in residential zoning district R3-2 has a floor area that exceeds maximum permitted per section 23-141;
3. Proposed open space is deficient in area contrary to section 23-141 ZR;
4. Front yards are less than minimum required contrary to section 23-45 ZR;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district within a Lower Density Growth Management Area (LDGMA), the proposed construction of a two-story and cellar single-family home that exceeds the allowable floor area and which does not provide the required front yards or open space, contrary to ZR §§ 23-141, and 23-45, and

WHEREAS, a companion application was filed under BSA Cal. No. 244-07-A to permit construction in the bed of a mapped street; and

WHEREAS, in the interest of convenience, a public hearing was held on both applications on June 3, 2008, after due notice by publication in *The City Record*, with continued hearings on July 15, 2008, August 26, 2008, September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommended disapproval of an earlier iteration of this application; and

WHEREAS, Council Member Michael E. McMahon provided written testimony in opposition to the application; and

WHEREAS, a number of local residents testified in

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# MINUTES

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opposition to the application citing concerns with parking and over-development; and

WHEREAS, the site is located on a triangular property at the northwest corner of the intersection of John Street and Douglas Street, in an R3-2 zoning district; and

WHEREAS, the site has 58 feet of frontage on John Street, 47 feet of frontage on Douglas Street and a border of 74.65 feet contiguous with property owned by the State Island Railroad; and

WHEREAS, the site has a total lot area of approximately 1,363 sq. ft. and is vacant; and

WHEREAS, the applicant provided a title company certification establishing that the site existed as a separate zoning lot from the adjoining lot as of December 15, 1961; and

WHEREAS, the applicant initially proposed to construct a three-story single-family home with a floor area of 1,360 sq. ft. (approximately 818 sq. ft. is the maximum permitted); a floor area ratio of 1.0 (an FAR of 0.6 is the maximum permitted); and one off-street parking space (two spaces are required); and

WHEREAS, the applicant revised the proposal during the hearing process; the now two-story and cellar home is proposed to have a floor area of 1,060 sq. ft, an FAR of 0.78, and two at-grade parking spaces to the rear; and

WHEREAS, additionally, the applicant proposes a single front yard of 5'-0" (two front yards with minimum widths of 15'-0" and 10'-0" are required); and open space of 61 percent (65 percent is the minimum required), and

WHEREAS, the site has a lot area of approximately 1,363 sq. ft. and a minimum lot area of 3,800 sq. ft. is required by the R3-2 zoning and the LDGMA requirements; and

WHEREAS, the applicant has provided documentation establishing that it is a preexisting undersized lot and is therefore exempt from the minimum lot area requirements pursuant to ZR § 23-33; and

WHEREAS, the Board notes that Z.R. § 23-33 would eliminate a lot area requirement for a single-family dwelling, but not the floor area, open space and front yard objections; and

WHEREAS, the applicant states that the floor area, lot coverage and front yard relief are 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 undersized narrow triangular shape of the subject site; and

WHEREAS, the applicant represents that without the requested floor area, open space and front yard waivers no habitable building could be built on the site; and

WHEREAS, the applicant states that the two streets and the Staten Island Rapid Transit right of way bounding the subject site create a nearly perfect right triangle; and

WHEREAS, the applicant provided a site plan indicating that compliance with the applicable bulk regulations

would result in a home measuring 17.5 feet by 21.5 feet by 27.5 feet with a maximum floor plate of 188 sq. ft.; and

WHEREAS, the applicant represents that a home with such dimensions and with a triangular-shaped floor plate would be uninhabitable; and

WHEREAS, the applicant is required by the LDGMA regulations to provide two off-street parking spaces; and

WHEREAS, the Board notes that open parking in the front yard is not permitted in the LDGMA; and

WHEREAS, the applicant submitted plans which reflect the constraints associated with providing two off-street parking spaces on such a narrow, small and irregularly-shaped site with a modestly sized home, particularly since there is no option to provide parking in the front yard; 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 floor area, open space, and front yard regulations; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the Board notes that because the subject site is a pre-existing lot, the owner has a right to build on the site; 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 further represents that the height and bulk of the proposed home is compatible with nearby residential development; and

WHEREAS, the applicant initially proposed to construct a three-story home with a floor area of 1,360 sq. ft. (FAR of 1.0) and one off-street parking space; and

WHEREAS, at hearing the Board raised several issues concerning: (1) the need for a floor area waiver; (2) the configuration of the home and its relationship in scale to the surrounding neighborhood; and (3) the need to waive a parking space; and

WHEREAS, the applicant represented that the 818 sq. ft. home permitted under the zoning is significantly smaller than the size of homes in the neighborhood and was therefore not feasible; and

WHEREAS, the applicant submitted property sales data tabulating each home sale during a recent 24-month period within the zip code area of the subject site;

WHEREAS, the Board notes that this data indicates that the proposed home is considerably smaller than 63 of the 66 homes sold; and

WHEREAS, the sales data demonstrates that 34 homes have floor areas ranging from 1,200 sq. ft. to 2,500 sq. ft., and that 29 of the homes have square footages in excess of 2,501 sq. ft.; and

WHEREAS, the sales data show that only three homes were sold with square footages of less than 1,200 sq. ft., but that none of the 66 homes has a floor area equal to or less than

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# MINUTES

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the complying floor area for the subject site of 818 sq. ft.; and

WHEREAS, the applicant initially proposed a three-story home with a perimeter wall height of 25'-0", a total building height of 30'-0", and a parking space in the first floor, which raised the height of the home; and

WHEREAS, the Board notes that while the proposed perimeter wall height and total height is permitted by the zoning district, the immediate area is characterized by two-story with attic homes; and

WHEREAS, applicant subsequently modified the proposal to provide two parking spaces in the open area of the lot along the site lot line, thereby eliminating the need for a parking waiver; and

WHEREAS, the modification also lowered the building to a two-story with cellar home with a perimeter wall height of 20'-2" and a total building height of 24'-0", which is more compatible with the homes in the surrounding area; and

WHEREAS, the Board notes that the total building height of 24'-0" is significantly lower than the 35'-0" building height permitted as-of-right; and

WHEREAS, the applicant notes that the site is formed by the intersection of two streets and is bordered by railroad tracks to its rear, and represents that the impact of the proposed variance is therefore limited by its distance from neighboring homes, as well as by the modest size of the proposed home; and

WHEREAS, the applicant further represents that the impact of the front yard waiver is partly offset by the provision of a 10-foot sidewalk and by the planting of street trees along both John Street and Douglas Street; and

WHEREAS, the Board notes that the applicant now complies with the parking requirements of the Lower Density Growth Management District; and

WHEREAS, Council Member McMahon raised concerns that the building of a home within the bed of a mapped street could preclude future transportation improvements; and

WHEREAS, correspondence from the Department of Transportation states that the applicant's property is not included in the agency's ten-year capital plan and, therefore, no transportation improvements requiring the street are contemplated; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant has established that the subject site was owned separately and independently of the adjoining lot as of December 15, 1961; 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, the applicant initially proposed to construct a three-story home with a floor area of 1,360 sq. ft.; a floor area ratio of 1.0, and one off-street parking space; and

WHEREAS, during the hearing process, the Board

asked the applicant to explore alternative development scenarios that would reduce the height, the requested floor area and which would provide the required parking; and

WHEREAS, in response, the applicant revised the proposal; the proposed home will now have two stories and a cellar, a floor area of 1,060 sq. ft., a floor area ratio of 0.78, and two at-grade parking spaces to the rear; 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; 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 the required findings under ZR § 72-21 to permit, within an R3-2 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story with cellar single-family home that exceeds the permitted floor area and does not provide the required open space or front yards, contrary to ZR §§ 23-141, and 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 September 9, 2008"– (7) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,060 sq. ft. of floor area; an FAR of 0.78, open space of 61 percent; one front yard of 5'-0", a wall height of 20'-2", and a total building height of 24'-0", and two parking spaces, as per the BSA-approved plans;

THAT the use of the cellar shall be limited to storage and mechanical space;

THAT the above condition shall be included 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 significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2008.

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**257-07-BZ**

**CEQR #08-BSA-033M**

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

# MINUTES

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101<sup>st</sup> Street, 11 East 101<sup>st</sup> Street, 65 and 4-20 East 102<sup>nd</sup> Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

## COMMUNITY BOARD #11M

### APPEARANCES –

For Applicant: Gordon Davis.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decisions of the Manhattan Borough Commissioner dated October 19, 2007, acting on Department of Buildings Application Nos. 104631141 and 1046311501 reads in pertinent part:

1. Proposed height and setback and sky exposure plane for community facility portion of building is contrary to section ZR 24-522
2. Proposed community facility tower coverage is contrary to section ZR 24-54
3. Proposed lot coverage is contrary to section ZR 24-11;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R9 zoning district, partially within the Special Park Improvement District2 (the “Special District”), the proposed construction of an eleven-story Center for Science and Medicine building (hereinafter, the “CSM Building”), with mechanical facilities located in the base of an adjacent residential building on the same zoning lot, for Mount Sinai Hospital and Mount Sinai School of Medicine of New York University (collectively, “Mount Sinai”) to be occupied by community facility use, that does not comply with zoning parameters for community facility lot coverage, height and setback, sky exposure plane, and community facility tower coverage, contrary to ZR §§ 24-

11, 24-522, and 24-54; and

WHEREAS, the application is brought on behalf of Mount Sinai Hospital and Mount Sinai School of Medicine of New York University, a non-profit hospital and a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on May 6, 2008, after due notice by publication in the *City Record*, with a continued hearing on July 15, 2008, after which the hearing was closed and a decision was set for August 19, 2008; and

WHEREAS, the Board reopened the hearing on August 19, 2008 and deferred the decision to September 9, 2008; and

WHEREAS, on September 9, 2008 the Board deferred the decision to September 23, 2008; the decision was subsequently deferred to October 7, 2008 and October 28, 2008, at the request of the applicant; and

WHEREAS, the matter went to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Manhattan, recommends disapproval of this application, citing concerns that: (1) the applicant has failed to establish the necessary variance findings; (2) an adjacent residential tower proposed by Mount Sinai is not compatible with neighborhood character; and (3) Mount Sinai has created its own hardship by selling a portion of its Zoning Lot to be used for purposes unrelated to Hospital use; and

WHEREAS, Community Board 8, Manhattan, also recommends disapproval of this application; and

WHEREAS, City Council Member Melissa Mark-Viverito provided testimony in opposition to the application; and

WHEREAS, civic organizations, including the East Harlem Preservation, Defenders of the Historic Upper East Side, Carnegie Hill Neighbors, and Friends of the Upper East Side Historic Districts, and certain area residents and other individuals, provided written and oral testimony in opposition to the application; and

WHEREAS, additionally, CIVITAS, represented by counsel (hereinafter, the “Opposition”), also appeared at hearing, and made submissions into the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, as well as other items, and are addressed below; and

WHEREAS, representatives of the East Harlem Chamber of Commerce, 1199 ACLU Health Care Workers Union, Carver Houses Tenants Association, Positive Workforce, and the Terence Cardinal Cooke Health Care Center, and certain area residents provided testimony in support of the application; and

WHEREAS, the subject site consists of tax lots 3, 5, and 59, which together comprise a single zoning lot (the “Zoning Lot”); and

1 Department of Buildings Application No.104631141, relating to proposed construction of the CSM Building at 1470 Madison Avenue and Application No. 104631150, relating to construction of a residential building 4 East 102<sup>nd</sup> Street (the “Residential Building”) enumerate identical objections because they apply to the same Zoning Lot.

2 The Board notes that the proposed building is located on a portion of the Zoning Lot that is wholly outside the Special Park Improvement District.



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# MINUTES

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WHEREAS, Lot 3 (3 East 101<sup>st</sup> Street) is occupied by Mount Sinai's Nurses' Residence (the "Nurses' Residence"), which will not be altered; Lot 5 (11 East 101<sup>st</sup> Street/1470 Madison Avenue) and Lot 59 (4-20 East 102<sup>nd</sup>) are occupied by other Hospital buildings, which are proposed to be demolished; and

WHEREAS, the applicant notes that, without changing the boundaries of the Zoning Lot, Mount Sinai proposes to reconfigure the boundaries of the existing tax lots to create new tax lots which will correspond to the proposed site plan; and

WHEREAS, the Zoning Lot occupies the eastern portion of Block 1607, and is bounded by East 102<sup>nd</sup> Street, East 101<sup>st</sup> Street, and Madison Avenue; the western portion of the Zoning Lot (to a depth of 50 feet) is within the Special District and no construction is proposed within it; and

WHEREAS, the Zoning Lot has a total lot area of 64,586 sq. ft., with a length of 320 feet along East 101<sup>st</sup> Street and East 102<sup>nd</sup> Street and a depth of 201 feet along Madison Avenue; and

WHEREAS, the Zoning Lot is located at the northern end of Mount Sinai's Upper Manhattan campus, which runs from East 98<sup>th</sup> Street to the north side of East 102<sup>nd</sup> Street, between Fifth Avenue and Madison Avenue; and

WHEREAS, the Zoning Lot is currently occupied by the following four Hospital buildings: (1) the Basic Sciences Building, a three-story, windowless building built in 1912 as a bus garage; (2) the Primary Care Center, a two-story building designed for temporary use; (3) 19 East 101<sup>st</sup> Street, a small one-story building occupied by a security office and staff and student health care services, which will be relocated on the larger Hospital campus; and (4) the Nurses' Residence, a twelve-story building used primarily as staff housing which will remain in use and occupancy during and after the proposed development of the CSM Building; and

WHEREAS, the proposed CSM Building will be located at the east side of the Zoning Lot, primarily on Lots 5 and 59, with frontage on Madison Avenue, East 101<sup>st</sup> Street, and East 102<sup>nd</sup> Street; a portion of the mechanicals for the CSM Building will be located in the lower levels (within a portion of floors one, two, six, and seven, within all of floors three through five and the first-floor mezzanine) and on the roof of an adjacent residential building which will front on East 102<sup>nd</sup> Street (the "Residential Building"), built primarily on Lot 59; and

WHEREAS, the Residential Building will include a total of 56,000 sq. ft. of community facility mechanical space; and

WHEREAS, the Residential Building also includes a 200-car below-grade accessory parking garage; and

WHEREAS, the applicant represents that the Residential Building requires no waivers other than those associated with the community facility use and complies with the R9 building envelope and floor area parameters; and

WHEREAS, the Residential Building is to be reviewed

and approved by DOB; and

WHEREAS, the CSM Building will have a total floor area of 269,200 sq. ft., with 11 stories, and a height of approximately 187 feet along Madison Avenue, without setbacks; and

WHEREAS, the first through fourth floors are proposed to be occupied by approximately 50,000 sq. ft. of clinical facilities, 8,000 sq. ft. of research imaging space, 16,000 sq. ft. of meeting and educational space, and 20,000 sq. ft. of core laboratory and laboratory support space, as well as building support space and public lobbies; the fifth through tenth floors will be occupied by 169,000 sq. ft. of research laboratories and related functions and a 5,500 sq. ft. conference/lounge area; mechanical space will be located on the 11<sup>th</sup> floor and two below-grade levels will be occupied by 35,000 sq. ft. of research imaging space and 25,000 sq. ft. of laboratory support space, which do not contribute to the building's total floor area; and

WHEREAS, the main entrance and public lobby will be located on Madison Avenue; and

WHEREAS, the proposed building and subject Zoning Lot would have the following parameters: (1) community facility lot coverage of 45,675 sq. ft. (43,981 sq. ft. is the maximum permitted); (2) street wall height and total building height (including mechanicals) of approximately 187 feet from the curb level of East 101<sup>st</sup> Street and Madison Avenue and approximately 181 feet from the curb level of 102<sup>nd</sup> Street (85'-0" is the maximum height permitted), without a setback (a setback of 15'-0" is required on Madison Avenue; setbacks of 20'-0" are required on East 101<sup>st</sup> Street and on East 102<sup>nd</sup> Street); and (3) community facility tower coverage of 45,625 sq. ft. (25,834 sq. ft. is the maximum permitted); and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant represents that the waivers are sought to enable Mount Sinai to construct a facility that meets its programmatic needs; and

WHEREAS, as to these programmatic needs, the applicant represents that Mount Sinai is both a non-profit medical facility and a non-profit educational institution, with a mission to develop a state-of-the art medical, science and research facility with floor plates that facilitate interdisciplinary translational research (research in which results are quickly transferred from laboratory to clinic) and laboratories which are closely proximate to Mount Sinai's related clinical research and clinical care facilities; and

WHEREAS, the applicant further represents that retaining the functioning Nurses' Residence on the Zoning Lot is another programmatic need; and

WHEREAS, the applicant states that its research grant funding has doubled in the last six years and, since Mount Sinai has added no research space during that period, all

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# MINUTES

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available research facilities on the Campus are being used to capacity and there is no room to expand within Mount Sinai's existing buildings; and

WHEREAS, the applicant represents that Mount Sinai cannot fulfill its research mission, remain competitive, and attract and retain highly-skilled physicians, researchers, and medical students without providing modern research laboratories; and

WHEREAS, the applicant further represents that the majority of highly-ranked academic medical centers in the United States have new research facilities or are planning new research facilities; and

WHEREAS, the applicant further represents that the research space of the CSM Building has been designed to be modern and competitive with other such facilities and to promote the desired research environment by creating opportunities for collaborations among different scientific disciplines; and

WHEREAS, to achieve this multi-disciplinary collaborative model with efficiency and adaptability, the laboratory floors require large uniform floor plates; and

WHEREAS, the applicant cites spatial analyses reflecting that effective laboratory floor plates for institutions with similar missions to Mount Sinai's range from 28,000 sq. ft. to 36,000 sq. ft.; and

WHEREAS, the studies reflect that a certain sized floor plate is dictated by the optimum number of principal investigators ("P.I.'s") per floor, their space requirements and the additional space necessary for ancillary offices, equipment rooms and conference rooms required by multi-disciplinary teams of scientists; and

WHEREAS, the studies cited by the applicant also reflect that 1,500 net sq. ft. is the minimum area required for each lead scientist or P.I., and that 12 is the optimum number of P.I.'s to station on each floor; and

WHEREAS, the applicant represents that the proposed 28,000 sq. ft. floor plate model (not including mechanical space) is therefore the minimum required for the number of P.I.'s needed to conduct the Medical School's translational research programs; and

WHEREAS, the applicant represents that the waivers to height and setback, sky exposure plane, community facility tower coverage, and community facility lot coverage are necessary to achieve the desired floor plates for the CSM Building while also accommodating the Nurses' Residence and the required extensive mechanical system adjacent to the CSM Building at the base of the Residential Building; and

WHEREAS, representatives of Mount Sinai stated that the lower levels of the CSM Building are required for sensitive imaging equipment because there is the least likelihood of vibration or disturbance closest to the foundation and below grade; and

WHEREAS, because it serves Mount Sinai's programmatic needs to protect these uses and to locate them on below-grade levels of the CSM Building, the mechanical system which would otherwise be located below-grade must be located elsewhere; and

WHEREAS, representatives of Mount Sinai state that isolating the mechanical system from the CSM Building also serves other key programmatic and zoning objectives: (1) it diminishes the likelihood of vibrations which could disrupt sensitive equipment, experiments or samples; and (2) it limits the degree of non-compliance with height, setback, and sky exposure plane requirements that would otherwise be caused by the placement of 56,000 sq. ft. of mechanicals on the roof of the proposed CSM Building; and

WHEREAS, the applicant states that the height and setback waivers are also necessary to accommodate fifteen-foot floor-to-floor heights of the CSM Building necessary to provide sufficient space between floors for the extensive ductwork, plumbing and conduit required by the facility's mechanical and HVAC systems; and

WHEREAS, further, the applicant states that, after surveying the vicinity for potential sites, it determined that the proposed site was the most viable option to satisfy the programmatic needs, in part, because it is occupied by inefficient outmoded underperforming buildings, yet is strategically located within Mount Sinai's Campus; and

WHEREAS, by locating the CSM Building on the Zoning Lot, the applicant represents that Mount Sinai can maximize efficiency in the coordination of laboratory research, clinical research, and clinical care, by expediting the translation of scientific discoveries into clinical applications and then integrating the lessons learned from treatment outcomes into further laboratory research; and

WHEREAS, the central location of the CSM Building facilitates connectivity to Mount Sinai and doctors' offices on the main campus and to the clinics in the Center for Advanced Medicine for patients, visitors, faculty, staff, students, and support services; and

WHEREAS, the applicant represents that Mount Sinai identified the site for the CSM Building after a comprehensive review of available sites in the neighborhood surrounding Mount Sinai's campus, concentrating on sites owned by Mount Sinai between Fifth Avenue and Park Avenue from East 97<sup>th</sup> Street to East 102<sup>nd</sup> Street; and

WHEREAS, the applicant rejected other available sites due to their insufficient size, configuration, and location within lower density zoning districts, which would limit the permitted floor area and the size of the floor plates; and

WHEREAS, the applicant states that in addition to small size, certain sites within the campus were rejected because they have occupied residential units on them; and

WHEREAS, Mount Sinai identified the Zoning Lot as the most operationally feasible location for the CSM Building, because: (1) the existing buildings on the site, other than the Nurses' Residence, are old or built only for temporary use; (2) the existing uses within those buildings can be relocated elsewhere on the campus or within the CSM Building; and (3) the floor area permitted under the subject R9 zoning district regulations can accommodate the proposed building; and

WHEREAS, although the Zoning Lot was found to constitute the optimum site for the proposed project from an

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# MINUTES

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operational and a zoning standpoint, Mount Sinai represents that it is unable to accommodate its programmatic needs within a building or a site plan that complies with all relevant R9 zoning district regulations; and

WHEREAS, in its initial submission, the applicant considered an as-of-right alternative for the CSM Building, but determined that it would produce smaller floor plates on the first through fifth floors, and would set back in steps on floors six through 12, creating even smaller floor plates on the higher floors, and was therefore unable to accommodate the aforementioned programmatic needs; and

WHEREAS, the applicant represents that the resultant floor plates would range from 13,062 sq. ft. to 18,962 sq. ft. on the sixth through 12<sup>th</sup> floors of a complying building and that the second through fifth floors could support floor plates with areas of between 24,982 sq. ft. to 26,916 sq. ft.; and

WHEREAS, in an effort to accommodate the maximum-sized floor plate required for the laboratory space, those uses would be situated on the lower floors in the complying scenario, but such a design would be contrary to Mount Sinai's programmatic need to offer clinic space to patients on the more accessible lower floors; and

WHEREAS, during the course of the hearing, the Board directed the applicant to explore other as-of-right scenarios; and

WHEREAS, in response, the applicant provided an analysis of four alternative site plans: (1) a "No Residential Tower" option retaining the Nurses' Residence, (2) a "Community Facility Tower" option with an L-shaped CSM Building comprised of eight laboratory floors at the base and a residential tower above; (3) a "Tiered CSM Building" with adjacent residential tower (as in the initial submission); and (4) a stacked CSM Building and residential tower oriented parallel to the avenues with demolition of the Nurses' Residence; and

WHEREAS, the applicant explained that none of the four alternative scenarios provided floor plates with the same functionality as the proposed building, specifically: (1) the No Residential Tower scenario permits a larger floor plate, but its L-shape creates circulation inefficiencies, impairs patient accessibility, and does not achieve the translational research program goals facilitated by the rectangular design; (2) the Community Facility Tower scenario allows for only one sufficiently-sized laboratory floor and creates circulation inefficiencies; (3) the Tiered CSM Building results in insufficiently-sized non-uniform floor plates; and (4) the stacked CSM Building option eliminates the Nurses' Residence and is therefore contrary to Mount Sinai's programmatic need to retain that building; and

WHEREAS, the applicant concludes that the lot coverage, height, encroachment into the required setback and sky exposure plane are required to meet the programmatic and design imperatives of the CSM Building; and

WHEREAS, in analyzing the Applicant's waiver

requests, the Board notes at the outset that Mount Sinai, as a non-profit educational institution, may use its programmatic needs as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986) (hereinafter, "Cornell")); and

WHEREAS, the Board notes that Mount Sinai includes the Mount Sinai School of Medicine of New York University, a New York State chartered educational institution providing a significant educational program, which will operate the CSM Building; and

WHEREAS, the Board also notes that the CSM Building has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in *Cornell*; and

WHEREAS, accordingly, the Board finds it appropriate to give Mount Sinai's programmatic needs deference; and

WHEREAS, the Board observes this deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its initial submission; and

WHEREAS, here, the waivers will facilitate construction of a building that will meet the specific needs of Mount Sinai; and

WHEREAS, specifically, as set forth above, the applicant represents that the CSM Building will provide Mount Sinai with six laboratory floors, which meet the minimum required floor area for modern translational research programs, and five floors for other Hospital uses, including a portion of the extensive mechanical system required by such use; and

WHEREAS, in sum, the Board concludes that the need for the waivers to accommodate Mount Sinai's programmatic needs has been fully explained and documented by the applicant; and

WHEREAS, further, while the site, at approximately 64,000 sq. ft., is large, the retention of the Nurses' Residence and its location constrains any new development on the site; and

WHEREAS, the requirement to maintain distance between buildings as required by ZR § 23-70, additionally constrains the available footprint or lot coverage area, as well as necessitates the location of the CSM Building along Madison Avenue to maximize the length and depth its floor plates; and

WHEREAS, the Opposition argues that the applicant has failed to make the (a) finding because: (1) the site is not unique; (2) Mount Sinai is not entitled to deference as to its programmatic needs under the Court of Appeals decision in *Cornell* to satisfy the (a) finding; and (3) the retention of the

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# MINUTES

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Nurses' Residence, which occupies nine percent of the Zoning Lot, is not a valid constraint; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant cannot satisfy the (a) finding under ZR § 72-21 because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity about its program to establish that the requested variances are necessary to satisfy its programmatic needs, consistent with the Cornell decision; and

WHEREAS, the Board notes that the applicant made detailed submissions outlining the requirements for the laboratory space and that spatial analysis consultants testified at hearing as to these minimum parameters; and

WHEREAS, the Opposition argues that Mount Sinai is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because: (i) the proposed use is neither a hospital, nor a school; (ii) it is seeking a bulk variance, rather than a use variance; and (iii) the development of the Residential Building on the Zoning Lot militates against the public benefits presented by the proposed project; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the applicant states that Mount Sinai includes the Mount Sinai School of Medicine (the "Medical School") with an enrollment of 487 medical students, 152 Ph.D. students, 410 post-doctoral fellows; and

WHEREAS, the applicant further states that the employees at the CSM Building will include approximately 100 Medical School faculty, 100 graduate students, and 150 post-doctoral fellows; and

WHEREAS, the applicant represents that the outcomes of research conducted at the CSM Building will be "translated" into Mount Sinai's clinical care and medical education in furtherance of its mission, and that research facilities such as that proposed are customarily found on the campuses of medical schools; and

WHEREAS, New York Courts broadly construe educational uses to be those uses which are found on the campuses of educational institutions and are reasonably associated with an education purpose (see *N.Y. Botanic Gdn. v. Bd. of Stds. and Apps.*, 91 N.Y.2d 413 (1998) (radio tower on university campus qualified as an accessory educational use) and *Lawrence Sch. Corp. v. Lewis*, 174 A.D. 2d 42 (2d Dep't 1992) (proposed swimming pool on campus of day school was reasonably associated with its educational purpose)); and

WHEREAS, the Opposition also argues that the proposed project is entitled to no special deference because

the applicant is seeking a bulk variance, rather than a use variance; however, as it has cited no legal support for the proposition that an application for a bulk variance for an educational use would be subject to a different standard of review by a zoning board than an application for a use variance by the self-same educational institution, or for its contention that an educational use would not be entitled to deference merely because it occupies the same zoning lot as a residential use, the Board therefore does not address either argument; and

WHEREAS, the Opposition further contends that the CSM Building is not entitled to the deference accorded an educational institution because it is in fact part of a single mixed-use development, and that there is no nexus between a residential building being developed on the Zoning Lot and the programmatic needs of Mount Sinai; and

WHEREAS, first, the Board notes that the required waivers all relate exclusively to the proposed Hospital community facility use; and

WHEREAS, the Board is reviewing the Zoning Lot in its entirety but notes that it is the inclusion of the mechanicals for the CSM Building (community facility use) in the base of the Residential Building that triggers the requested community facility lot coverage and community facility tower coverage waivers; and

WHEREAS, the Board further notes that it is not rendering a decision on the zoning compliance of the Residential Building, which will be reviewed by DOB; and

WHEREAS, the Board further notes that the DOB objections enumerated above apply only to the proposed community facility use and that no objections associated with residential use have been identified or are addressed by this decision; and

WHEREAS, additionally, the Board finds the characterization of the two buildings as either two distinct buildings or one merged building to be irrelevant, since its analysis comprised the entire Zoning Lot; and

WHEREAS, furthermore, in addition to its programmatic needs, the applicant states that the retention of the Nurses' Residence on the Zoning Lot constitutes a "unique physical condition" inherent in the Zoning Lot which constrains its development; and

WHEREAS, the applicant further states that the configuration of the CSM Building is shaped by the constraints caused by its need to preserve the Nurses' Residence as well as by the Medical School's program for the proposed building and; and

WHEREAS, the Board notes that drawings submitted by the applicant illustrating alternative as-of-right scenarios for the development of the CSM Building clearly demonstrate the impossibility of preserving the Nurses' Residence and also developing a research facility with floor plates of the desired configuration and square footage in any other portion of the Zoning Lot; and

WHEREAS, the Opposition has argued that retention of the Nurses' Residence is not a valid constraint; and

WHEREAS, the Board notes that that it has

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# MINUTES

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recognized that that the need to retain an existing building can validly constrain the ability of a major health care facility to develop the floor plates necessary to meet its programmatic needs (see BSA Cal. No. 71-03-BZ; applicant, Joan and Sanford I. Weill Medical College of Cornell University (“Cornell Medical”)) and that, although the site is approximately 64,000 sq. ft. in size, the retention of the Nurses’ Residence and its location constrains any new development on the site; and

WHEREAS, the applicant states, moreover, that the retention of the Nurses’ Residence on the Zoning Lot is not the only physical constraint, but also that the need to provide sufficient light and air and the required distance between buildings limits the available footprint and lot coverage area, as well as necessitates the siting of the CSM Building along Madison Avenue to maximize its floor plate even in an as-of-right scenario; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see *Guggenheim Neighbors v. Bd. of Estimate*, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see *Albany Prep. Charter Sch. v. City of Albany*, 31 A.D.3<sup>rd</sup> 870 (3<sup>rd</sup> Dep’t 2006); *Trustees of Union Col. v. Schenectady City Cnl.*, 91 N.Y.2d 161 (1997)); and

WHEREAS, in sum, the Board has reviewed the submissions made by the Opposition, as well as the applicant’s responses, and finds that the Opposition has failed to rebut the applicant’s substantiated programmatic need for the CSM Building; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations due to the programmatic needs of Mount Sinai and its unique physical conditions; and

#### ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the “(b) finding”), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since Mount Sinai is a non-profit institution and each of the required waivers are associated with its community facility use and are sought 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 Opposition argues that the Residential

Building and the CSM Building should be treated as one mixed-use building because the two buildings will occupy the same Zoning Lot pursuant to a merger of Tax Lots 3, 5, and 59 and because the computations of bulk requirements for floor area, open space, community facility tower coverage and lot coverage are based on the area of the entire Zoning Lot; and

WHEREAS, consequently, the Opposition argues that preparation of a feasibility study is required, notwithstanding Mount Sinai’s non-profit status, since a portion of the Zoning Lot will be occupied by a privately-owned residential building; and

WHEREAS, in support of its position that a financial feasibility study is required, the Opposition cites to Board decisions in BSA Cal. No. 194-03-BZ and BSA Cal. No. 72-05-BZ in which the Board evaluated the financial feasibility of projects proposed by not-for-profit organizations, and to two pending applications in which the Board directed applicants to prepare and submit feasibility studies; and

WHEREAS, in the cases cited by the Opposition, and in a number of other cases, not-for-profit applicants were required to perform financial feasibility studies because they sought variances to permit uses on their property which were unrelated to their overall purpose or mission (see BSA Cal. No. 74-07-BZ, applicant Congregation Shearith Israel; BSA Cal. No. 315-02-BZ, applicant Touro College; BSA Cal. No. 179-03-BZ, applicant Torah Studies, Inc.; BSA Cal. No. 349-05-BZ, applicant Church of the Resurrection); and

WHEREAS, the Board is guided by New York State law which requires a not-for-profit organization seeking a variance for a revenue-generating use which is not based on its programmatic needs to make the variance findings before a Board may permit the use (see *Little Joseph Realty v. Babylon*, 41 N.Y.2d 738 (1977); *Foster v. Saylor*, 85 A.D.2d 876 (4<sup>th</sup> Dep’t 1981); and *Roman Cath. Dioc. of Rockville Ctr v. Vill. Of Old Westbury*, 170 Misc.2d 314 (1996); and

WHEREAS, with respect to the instant application, however, the variances are sought exclusively for the development of a state-of-the-art translational research facility in furtherance of the programmatic needs and mission of Mount Sinai, and no variance request is before the Board concerning the private residential portions of the Residential Building (see *Cornell Medical*, BSA Cal. No. 71-03-BZ); and

WHEREAS, because Mount Sinai is not seeking a variance to permit a use which is unrelated to its program, it is therefore exempt from the requirement of ZR § 72-21 (b) to establish that the property for which the variance is sought could not otherwise achieve a reasonable financial return; and

#### ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of community facility lot coverage, height, setbacks, sky exposure plane and community facility tower coverage will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the

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# MINUTES

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public welfare; and

WHEREAS, the applicant represents that the larger floor plates resulting from the requested variance are compatible with other large institutional and residential buildings on and surrounding Mount Sinai's campus, that the height of the CSM building is similar to that of the Guggenheim Pavilion immediately to its south, and that its Madison Avenue façade and massing is consistent with that of buildings located on adjacent blocks on Madison Avenue and Fifth Avenue; and

WHEREAS, the applicant provided drawings showing streetscapes of East 101<sup>st</sup> Street and East 102<sup>nd</sup> Street, from Fifth Avenue east to Lexington Avenue, and Madison Avenue, from East 98<sup>th</sup> Street north to R. Lonnie Williams Place (104<sup>th</sup> Street), which indicate that there is a neighborhood context for the height and bulk of the proposed CSM Building; and

WHEREAS, according to shadow studies performed by the applicant, the CSM Building would not substantially reduce the amount of sunlight on the three surrounding streets; although for brief periods during morning hours there could be less light on East 101<sup>st</sup> Street, as well as on East 102<sup>nd</sup> Street during afternoon hours, and on Madison Avenue during late afternoon and evening hours; and

WHEREAS, the applicant further represents that the CSM Building would not impact development or use of other property, in that the Zoning Lot comprises most of the block and the two remaining parcels are already fully built out for residential use; and

WHEREAS, further, any impacts on surrounding development would also be limited by the location of the subject site within Mount Sinai's campus which comprises a four block area from East 98<sup>th</sup> Street to East 102<sup>nd</sup> Street and from Madison Avenue to Fifth Avenue; and

WHEREAS, the Opposition argues that the variances "will directly result in development of [an] as-of-right 600-foot residential Tower" which is incompatible with the context of the surrounding neighborhood; and

WHEREAS, as noted above, approval of the proposed Residential Building is not before the Board; the scope of review pertinent to the (c) finding is limited to the impacts on the surrounding neighborhood of the variances sought to permit the CSM Building, which has not been discussed by the Opposition in its submissions; and

WHEREAS, since its initial submission, Mount Sinai has reduced the height of the CSM Building by ten feet, to approximately 187 feet above the average curb elevation by compacting mechanical space at the top floor of the CSM Building, and has reduced the height of the Residential Building as well, to 542 feet above the curb elevation; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR §

72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the development of a state-of-the art translational research facility with: (i) floor plates of at least 28,000 sq. ft; (ii) a rectangular floor plate configuration; (iii) floor-to-floor heights that can accommodate mechanical and HVAC systems; and (iv) proximity to Mount Sinai's campus; and by the need to retain the Nurses' Residence and the consequential difficulty in accommodating those needs within an as-of-right development; and

WHEREAS, the Opposition contends that Mount Sinai created its hardship by its sale or intent to sell properties located at 1200 Fifth Avenue and 1212 Fifth Avenue which could otherwise be used to house staff residing in the Nurses' Residence; and

WHEREAS, in a submission to the Board, the applicant states that demolition of the twelve-story Nurses' Residence would be costly and that relocation of the occupants to other sites within the campus is neither financially nor operationally feasible; and

WHEREAS, the Opposition also argues that the applicant has created its hardship by its decision to develop a residential tower on the Zoning Lot which will use approximately half of the Zoning Lot floor area; and

WHEREAS, a submission by the applicant states that Mount Sinai first determined the necessary size and layout of the CSM Building, taking into account the existing Nurses' Residence and the need for zoning variances, before identifying the possible location of a residential development; and

WHEREAS, the applicant further states that the configuration of the CSM Building is shaped entirely by Mount Sinai's program for the proposed building and by the constraints caused by its need to preserve the Nurses' Residence; and

WHEREAS, the Board notes that drawings submitted by the applicant illustrating alternative as-of-right scenarios for the development of the CSM Building clearly demonstrate the impossibility of preserving the Nurses' Residence and also developing a research facility with floor plates of the desired configuration and square footage in any other portion of the Zoning Lot; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by Mount Sinai or a predecessor in title; and  
ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant further represents that Mount Sinai, through its consultants, has designed research space that is modern and competitive with other such

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# MINUTES

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facilities and which minimizes the degree of waivers sought by meeting certain thresholds for maximum efficiency; and

WHEREAS, the applicant states that the requested the waivers of community facility lot coverage, height, setback, sky exposure plane and community facility tower coverage represent the minimum variance necessary to allow Mount Sinai to meet its programmatic needs; and

WHEREAS, the Opposition argues that the (e) finding cannot be met because an as-of-right CSM Building could be built on the subject Zoning Lot; and

WHEREAS, as discussed above, the applicant explored four different as-of-right scenarios for the proposed project, and none provided floor plates with the same functionality of the proposed building; and

WHEREAS, the Board further notes that, to meet the setback, lot coverage and other limitations of the zoning district, while providing the floor area required for the facility, the height of each of the as-of-right building scenarios significantly exceeded the height of the proposed CSM Building; and

WHEREAS, since its initial submission, the applicant has reduced the height of the CSM Building by ten feet, to 187'-4" above the average curb elevation, by compacting mechanical space at the top floor of the CSM Building, and has similarly reduced the height of the Residential Building to 542 feet from 564 feet; and

WHEREAS, the Board finds that the requested waivers of community facility lot coverage, height, setbacks, sky exposure plane, and community facility tower coverage represent the minimum necessary to allow Mount Sinai to meet its programmatic needs; and

WHEREAS, the Opposition argues that the waivers could be reduced if the proposed laboratory uses were situated on the lower floors of the CSM Building, rather than the clinical services proposed for those floors; and

WHEREAS, the applicant has stated that clinical services must be located on the lower floors to be more accessible to patients seeking medical care; the Board finds that the applicant has established that siting laboratory uses on the lower floors is not viable and, further, would not reduce the requested variances; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to Section 617.4(b) (6) (v) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA033M, dated August 2008; 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 Board notes that although the Residential Building is not before it, that potential impacts from all contemplated development on the Zoning Lot must nonetheless be evaluated by CEQR and therefore potentially significant adverse impacts created by the Residential Building are discussed below; and

WHEREAS, the New York City Department of Transportation ("DOT") reviewed the proposed project and identified a potential signal timing modification at Fifth Avenue and East 97<sup>th</sup> Street that could enhance traffic operations; and

WHEREAS, DOT has requested that the applicant provide it with six months of advance notice of the projected opening of the CSM Building so that the agency can timely evaluate the necessity of implementing the aforementioned signal timing modification when the project is completed; and

WHEREAS, the New York City Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a October 29, 2007 and revised August 2008 Environmental Assessment Statement; (2) a January 2007 Phase I Environmental Site Assessment which examine the proposed action for potential hazardous materials; and (3) a May 2008 Subsurface (Phase II) Investigation Report; and

WHEREAS, DEP also reviewed and approved a June 2008 Construction Health and Safety Plan ("CHASP") and a June 2008 Remedial Action Plan (RAP) addressing environmental remediation of the subject site, and requested that the RAP be revised to incorporate certain comments and recommendations; and

WHEREAS, the Board notes that EAS, Subsurface Investigation Report, CHASP and RAP have been available for public review since June 2008; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation required by an August 2008 revised RAP, pursuant to a Restrictive Declaration executed and submitted to be recorded against the subject property on October 27, 2008; and

WHEREAS, after approval of the executed Restrictive Declaration, DEP will remit a Notice to Proceed to the Department of Buildings ("DOB"); and

WHEREAS, after implementation of the RAP, one or more Remedial Closure Report(s) certified by a professional engineer must be submitted to DEP; subsequent to its approval, DEP will forward Notice(s) of Satisfaction to DOB; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential air quality impacts of the proposed action and initially determined that the PM 2.5 concentrations on the Residential Building from Mount

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# MINUTES

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Sinai's existing central steam plant ("Central Steam Plant") would be expected to exceed acceptable limits; and

WHEREAS, to reduce the potential for impacts from PM 2.5 emissions, the applicant has modified the project to (i) replace Central Steam Plant boilers that operate on high-emission No. 6 fuel oil with new dual-fuel low-emission boilers that operate with interruptible natural gas as a primary fuel source and No.2 fuel oil as a back-up fuel source, and which achieve a 15 percent increase in energy efficiency; (ii) increase the height of the Central Steam Plant exhaust stack by 30 feet; and (iii) restrict the location of the fresh air intakes for residential HVAC systems; and

WHEREAS, the applicant represents that the improvements to the Central Steam Plant are expected to be completed by 2011, the same year that the Residential Building is expected to be ready for occupancy; and

WHEREAS, a revised EAS concludes that the proposed improvement to the Central Steam Plant and the adoption of the proposed design measures would reduce the potential for impacts from PM 2.5 emissions to levels that would not be significant; and

WHEREAS, the Opposition contends, however, that the preparation of an environmental impact statement is required by SEQRA to determine whether the proposed mitigation measures are adequate, citing the Court of Appeals decision in *Merson v. McNally* (90 N.Y.2d 742 (1997)); and

WHEREAS, the applicant contends that the Opposition misapprehends the Court's holding in *Merson*, and that the case instead supports the proposition that a lead agency may issue a negative declaration for a Type 1 action in which the proposed project is modified during the hearing process to negate the potential for significant adverse impacts; and

WHEREAS, the Board notes that the applicant in *Merson* made changes to its proposed project in response to comments from the lead agency, interested agencies and the public during the review process, before the lead agency issued its negative declaration, which contained no conditions; and

WHEREAS, the Court held that such a process was permissible under SEQRA and could result in a negative declaration, even for a Type 1 action; the Court further held that mitigating measures which "clearly negate the continued potentiality of the adverse effects of the proposed action" will obviate the need for an EIS (*id.* at 754); and

WHEREAS, the Opposition further argues that the Board may not improperly condition the issuance of a negative declaration for a Type 1 action on meeting certain mitigation measures; and

WHEREAS, the Court in *Merson* set forth a two-step test for determining whether a negative declaration has been improperly conditioned: (i) if the project as initially proposed might result in significant adverse impacts; and (ii) if the proposed mitigating measures incorporated into the [EAS] were 'identified and required by the lead agency' as a condition precedent to the issuance of the negative declaration' (*id.* at 753); and;

WHEREAS, the Board notes that neither DEP, nor the Board itself, has identified and required mitigating measures as conditions precedent to the issuance of a negative declaration by the Board; instead, consistent with the standard set forth in *Merson*, the proposal was modified by the applicant to negate the potential air quality impacts identified by the environmental assessment, consequently allowing a determination of non-significance; and

WHEREAS, the Opposition also asserts that the EAS was deficient in its analysis of potential significant adverse impacts by failing to consider the potential frequency of backup oil use at the Central Steam Plant, or the impacts of air infiltration into occupied residential spaces when windows are closed; and

WHEREAS, a response by the applicant states that the EAS represents a conservative assessment of potential air quality impacts from the Central Steam Plant, as it was based on a review of 2006 -2007 fuel usage data, a period when fuel oil was used almost exclusively; and

WHEREAS, the applicant further states that the EAS considers all windows and fresh air intakes to be "receptors," whether they are open or closed, therefore resulting in higher estimated concentrations of PM 2.5 and other pollutants at receptor locations than would actually be experienced; and

WHEREAS, the maximum hourly incremental traffic from the proposed project was determined to be less than the mobile source screening threshold of 100 peak hour trips set forth in the CEQR Technical Manual, and therefore the project is not expected to create significant adverse impacts from mobile source emissions; and

WHEREAS, the carbon monoxide contributions arising from the project's parking garage were found to result in no significant adverse mobile source air quality impacts; and

WHEREAS, a stationary source screening analysis for the heating, ventilation and air conditioning (HVAC) system performed for the proposed Residential Building determined that the project would not result in any significant adverse stationary source air quality impacts; and

WHEREAS, the Opposition also contends that Mount Sinai's Annenberg building should have been considered for purposes of stationary source screening analysis; and

WHEREAS, the applicant states that, for the purposes of such screening analysis, the Annenberg building is not considered to be of similar or greater height as compared to the Residential Building, and was thus excluded from the screening analysis in accordance with the guidelines of the CEQR Technical Manual; and

WHEREAS, the Opposition also argues that construction of the proposed project would increase PM 2.5 concentrations and thereby create a significant adverse impact requiring an EIS review; and

WHEREAS, a response by the applicant states that the determination as to whether temporary air quality impacts during construction are considered significant depends on the duration and magnitude of the impacts and that the 34 to



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# MINUTES

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42 month projected construction period for the proposed project and the projected levels of PM 2.5 emissions from mobile sources are both well below the thresholds for quantitative analysis and potential significant adverse impacts established by the CEQR Technical Manual and DEP's interim guidance criteria, and

WHEREAS, the Board finds that the proposed action will not have a significant adverse impact on air quality; and

WHEREAS, a chemical spill analysis of the proposed laboratories determined that the maximum impacts would not exceed the short term exposure limits set by the federal Occupational Safety and Health Administration and the National Institute of Occupational Safety and health; therefore, that no significant adverse impacts due to fume hood emissions would be expected; and

WHEREAS, based on noise measurements performed on the four roadways bounding the block of the project site, the environmental assessment determined that a noise attenuation of 30 dBA would be required to achieve an interior noise level of 45 dBA or less in a closed window condition; and

WHEREAS, the applicant proposes to use windows with a minimum outdoor/indoor transmission class ("OITC") rating of 30 dBA for all facades of the CSM Building and the Residential Building and to include centralized air conditioning as the alternate means of ventilation; and

WHEREAS, as discussed above, the EAS states that the CSM Building would cast shadows of relatively brief duration on East 101<sup>st</sup> Street, East 102<sup>nd</sup> Street, and on Madison Avenue; and

WHEREAS, the environmental assessment found that the Residential Building would cast a shadow on Central Park during the morning hours between March and September which would not cover any single area of the park for a significant amount of time, and would cast brief shadows over the Mae Grant Playground and the playground at P.S. 171 during certain times of the year; and

WHEREAS, no 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 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 each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R9 zoning district, partially within the Special Park Improvement District, the proposed construction of an eleven-story Center for Science and Medicine building, to be occupied for community facility use by The Mount Sinai Hospital and Mount Sinai School of Medicine of New York

University, with mechanical facilities located in an adjacent building on the same Zoning Lot, that does not comply with zoning parameters for community facility lot coverage, height and setback, sky exposure plane, community facility tower coverage, contrary to ZR §§ 24-11, 24-522, and 24-54; *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 27, 2008"—Twenty-nine(29) sheets; and *on further condition*:

THAT the proposed building and subject Zoning Lot shall have the following parameters: (1) community facility lot coverage of 45,675 sq. ft.; (2) street wall height and total building height (including mechanicals) of approximately 187 feet from the curb level of East 101<sup>st</sup> Street and Madison Avenue and approximately 181 feet from the curb level of 102<sup>nd</sup> Street, without setbacks; and (3) community facility tower coverage of 45,625 sq. ft.; 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;

THAT mechanical space calculations shall be subject to DOB review and approval;

THAT all windows on the CSM Building and Residential Building facades shall have a minimum OITC (outdoor/indoor transmission class) rating of 30, as shown on the BSA-approved plans;

THAT ventilation air intakes at or above elevation 561'-0" shall be located only on the north façade of the Residential Building, facing north (away from the Central Steam Plant), as shown on the BSA-approved plans;

THAT the flume hood and vivarium exhaust fans for the CSM laboratories shall be located on the roof of the Residential Building, as shown on the BSA-approved plans;

THAT the issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT new interruptible dual-fuel boilers that use natural gas as a primary fuel source and No.2 fuel oil as a back-up fuel source, and which achieve an overall thermodynamic efficiency of at least 82 percent, as certified by an independent commissioning agent, shall be installed in the Central Steam Plant and that the stack height of the Central Steam Plant shall be increased to an elevation of 544 feet;

THAT issuance of a permanent certificate of occupancy shall be conditioned on a showing that either: (i) the aforementioned alterations have been made to the Central Steam Plant; or (ii) the boilers in the Central Steam Plant will operate only on interruptible natural gas until the aforementioned alterations are made to the Central Steam Plant; and

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT the Applicant shall provide six months of

# MINUTES

advance notice of the projected opening of the CSM Building to DOT;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2008.

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## 268-07-BZ

### CEQR #08-BSA-036K

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48<sup>th</sup> Street, south side of 48<sup>th</sup> Street, between 16<sup>th</sup> and 17<sup>th</sup> Avenues, Block 5448, Lot 27, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 9, 2008, acting on Department of Buildings Application No. 310051467, reads, in pertinent part:

1. Proposed side yard is contrary to ZR 24-35;
2. Proposed rear yard is contrary to ZR 24-36;
3. Proposed community facility parking is contrary to ZR 25-31;
4. Proposed required setback for tall residential buildings is contrary to ZR 24-551;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, a three-story and cellar building to be occupied by a synagogue (Use Group 6) and accessory Rabbi’s residence, which does not comply with rear and side yard, side setback, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 25-31, 24-551; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication

in *The City Record*, with continued hearings on September 16, 2008 and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application, subject to certain conditions; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, two adjacent property owners initially opposed the application but later withdrew their opposition to the proposed variance; and

WHEREAS, this application is being brought on behalf of Congregation Adath Jacob, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the south side of 48<sup>th</sup> Street between 16<sup>th</sup> Avenue and 17<sup>th</sup> Avenue within an R5 zoning district and has a lot area of approximately 4,007 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the proposal provides for the following uses: (1) a mikvah bath and multi-purpose room on the cellar level; (2) a synagogue on the first floor; and (3) an accessory Rabbi’s residence on the second floor and third floor; and

WHEREAS, the applicant initially proposed a synagogue building with the following parameters: approximately 8,272 sq. ft. of community facility floor area; an FAR of 2.06 (2.0 FAR is the maximum permitted); a lot coverage of 76 percent (50 percent is the maximum permitted); a rear yard of 2’-0” (a 30’-0” rear yard is required above the first floor or 23’-0”); a staircase encroachment into the side yard, and a balcony encroachment into the front yard; and

WHEREAS, the proposal was revised during the hearing process; the current proposal provides for a synagogue building with approximately 7,259 sq. ft. of floor area, an FAR of 1.81, a lot coverage of 61 percent, a rear setback above the first floor of 12’-0” and a complying rear yard above the second floor, and the elimination of the encroachments into the side yard and front yard; and

WHEREAS, additionally, the applicant proposes: two side yards, each with a width of 4’-0” (two side yards with minimum widths of 8’-0” each are required); a bulkhead encroachment into the side setback; and no accessory parking (12 accessory parking spaces are required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the congregation of approximately 110 families; and (2) to provide a residence for the Synagogue’s rabbi; and

WHEREAS, the applicant further states that its existing synagogue located nearby at 1569 47<sup>th</sup> Street consists of approximately 31,600 sq. ft. of floor area on a zoning lot containing 10,000 sq. ft. of lot area, which is far in excess of its needs; and

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# MINUTES

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WHEREAS, the applicant represents that the expense of maintaining its existing building has forced it rent out space to other users and it therefore seeks a synagogue building which can better accommodate the size of its congregation; 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, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see *Jewish Recon. Syn. v. Vill. of Roslyn*, 38 N.Y.2d 283 (1975)); and

WHEREAS, the subject site has a width of 40'-0"; and

WHEREAS, the applicant states that the variances to lot coverage, rear yard, side yard and side yard setback would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, at hearing, the Board asked the applicant to demonstrate the necessity for the side yard waivers; and

WHEREAS, the applicant submitted plans indicating the occupancy of the synagogue and demonstrating the inability to accommodate the congregation within a complying structure; 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 states that that the proposed use and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant represents that the scale and bulk of the Synagogue is consistent with the with the scale of the two-and-a-half-story homes that characterize the area; and

WHEREAS, the applicant submitted photographs of nearby homes which were compatible with the scale and bulk of the proposed Synagogue; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent buildings; and

WHEREAS, specifically, the Board suggested that the applicant provide a complying rear yard above the second floor by shifting the bulk of the building to its front; and

WHEREAS, in response, the applicant re-designed the building to provide a 12'-0" rear setback above the second floor and a complying rear yard above the second floor; and

WHEREAS, at hearing the Board also questioned the necessity for the proposed encroachments of a staircase into the side yard and of a balcony into the front yard; and

WHEREAS, the applicant submitted revised plans showing the relocation of the staircase to the rear of the structure and eliminating the balcony; and

WHEREAS, as to traffic and parking impacts, the applicant noted that the impacts 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, a submission by the applicant indicates that 95 percent of the congregation live within three-quarters of a mile from the subject site; and

WHEREAS, in response to concerns by the Board regarding egress, the applicant redesigned the building to include an exterior staircase at the rear of the second and third floors; and

WHEREAS, additionally, the applicant agreed to include the following changes to the proposal: (1) the addition of an interior garbage storage area; and (2) the addition of translucent privacy windows; 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, during the hearing process the applicant revised the proposal to provide a 12'-0" rear setback above the first floor and a complying rear yard above the second floor, thereby reducing the overall floor area by 755 sq. ft. and providing additional light and air to adjacent homes; and

WHEREAS, the applicant also eliminated proposed encroachments into the side yard and front yard; 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

# MINUTES

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 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA036K, dated March 18, 2008; 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, a three-story and cellar building to be occupied by a synagogue and accessory Rabbi's residence, which does not comply with rear and side yard, side setback, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 25-31, 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 September 22, 2008"—Eight (8) sheets; and *on further condition*:

THAT the building parameters shall be: floor area of 7,259 sq. ft. an FAR of 1.81; a lot coverage of 61 percent; a rear yard at the first floor of 2'-0", a rear setback above the first floor of 12'-0"; a complying rear yard above the second floor; two side yards of 4'-0"; an encroachment into the side setback; and no accessory parking;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (U.G. 6) and Rabbi's residence;

THAT no commercial catering shall take place onsite;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT landscaping shall comply with the regulations for

a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06;

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, October 28, 2008.

## 35-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 11, 2008, acting on Department of Buildings Application No. 310078206, 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(b) in that the proposed Open Space is less than the required 65%.
3. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed lot coverage exceeds the maximum 35%.
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0".
5. Plans are contrary to Z.R. 23-461(a) in that the existing total side yards are less than the

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# MINUTES

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required 13'-0".

- Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-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, 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 1, 2008, after due notice by publication in *The City Record*, with continued hearings on July 29, 2008, September 8, 2008 and October 7, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, members of the Madison-Marine-Homecrest Civic Association provided testimony in opposition to the proposal; and

WHEREAS, the subject site is located on the west side of East 24<sup>th</sup> Street, between Avenue R and Avenue S; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with floor area of approximately 1,869 sq. ft. (0.64 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from approximately 1,869 sq. ft. (0.64 FAR) to 3,206 sq. ft. (1.07 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides approximately 53 percent of open space (a minimum of 65 percent is required) and 47 percent of lot coverage (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 3'-0" (a minimum width of 5'-0" is required) and the non-complying total side yard width of 9'-10" (a total minimum width of 13'-0" is required); and

WHEREAS, the proposed enlargement provides a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the applicant initially sought an increase in the floor area from approximately 1,869 sq. ft. (0.64 FAR) to approximately 3,432 sq. ft. (1.15 FAR); and

WHEREAS, the Board requested the applicant to establish that the floor area of the proposed home is consistent with the character of the neighborhood; and

WHEREAS, in response, the applicant submitted property information and photographs for a sampling of 11 homes within a three block radius of the subject site with

floor areas comparable to that of the proposed home; one home was within 300 feet of the subject site and the rest were more distant; and

WHEREAS, because few homes with comparable floor area were identified relative to the size of the study area, and only one was near the subject site, the Board did not find this evidence compelling; and

WHEREAS, in response, the applicant revised its proposal to reduce the requested floor area to 3,206 sq. ft. (1.07 FAR); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 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 4, 2008" – (2) sheets, "September 3, 2008" – (4) sheets and "October 2, 2008" – (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,206 sq. ft. (1.07 FAR, including attic bonus); an open space of approximately 53 percent; lot coverage of 47 percent; two side yards with a combined total width of 9'-10", one side yard with a width of 3'-0" along the northern lot line and one side yard with a width of 6'-10" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height and compliance with the sky exposure plane;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has

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# MINUTES

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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 28, 2008.

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## 59-08-BZ

### CEQR #08-BSA-068R

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.

### COMMUNITY BOARD #1SI

#### APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 6, 2008, acting on Department of Buildings Application No. 510023680, reads in pertinent part:

“A-1 application is filed to change building use to physical culture establishment. The use is subject to review & approval by Board of Standards & Appeals. ZR 73-36, 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C2-1 (R3X) zoning district, the legalization of a physical culture establishment (PCE) in a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, with continued hearings on August 26, 2008 and September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the PCE enter into a contract with another business or property owner to utilize their parking facility; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing concerns with parking, site maintenance, and noise; and

WHEREAS, the subject site is located on the north side of Forest Avenue, between Pelton Avenue and Regan Avenue; and

WHEREAS, the site is occupied by a two-story commercial building with a floor area of 11,424 sq. ft.; and

WHEREAS, the PCE occupies the entire building and is operated as “Planet Fitness”; and

WHEREAS, the applicant represents that the PCE will provide facilities for group training, body building, weight reduction, and aerobics; 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, at hearing, neighborhood residents testified as to a lack of parking for PCE patrons; and

WHEREAS, the applicant represents that the parking requirements under the current Zoning Resolution are not applicable because the subject building was constructed without parking accommodations pursuant to the 1916 Zoning Resolution; and

WHEREAS, the applicant further represents that the permitted use for the building, according to its certificate of occupancy, is for office use and that pursuant to ZR § 36-21, the parking requirements for a PCE are the same as the parking requirements for office use; and

WHEREAS, a parking study submitted by the applicant indicates that an as-of-right commercial use could potentially generate parking demand similar or greater than that of a PCE; and

WHEREAS, the applicant submitted an affidavit from the manager of the PCE, stating that the managers and/or owners of five businesses with parking facilities near the subject building were approached regarding the possibility of renting parking spaces for PCE patrons and that none of these businesses were willing to rent any parking spaces; and

WHEREAS the applicant further states that there are no licensed public parking lots or garages in the project vicinity; and

WHEREAS, the applicant represents, however, that the number of parking spaces in the surrounding area is adequate to serve the patrons of the facility; and

WHEREAS, the applicant provided an analysis of available parking within a 400-foot radius of the subject building indicating that metered spaces permitting up to two hours’ parking are located along Forest Avenue and metered

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# MINUTES

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as well as unmetered parking spaces are available on most side streets; and

WHEREAS, the analysis further indicates that, during a peak period of operation, 19 of the 68 metered spaces (28 percent) and 33 of the 133 unmetered spaces (24 percent) within 400 feet of the subject building were available to serve an estimated 50 patrons; and

WHEREAS, the current hours of operation are: Monday through Thursday, 24 hours daily; Friday from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents complained about the noise generated by the PCE during evening hours; and

WHEREAS, the Board directed the applicant to reduce the hours of operation of the PCE to: Monday through Friday from 5:00 a.m. to 12:00 a.m.; and on Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents also complained about debris outside the building; and

WHEREAS, in response, the Board directed the applicant to store refuse inside the building until the day of pick-up; 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, the PCE will not interfere with any pending public improvement project; 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has operated at the site since approximately February 14, 2008; and

WHEREAS, accordingly, the Board will reduce the term of the special permit for the period of time between February 14, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA068R dated June 27, 2008; 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 in a C2-1 (R3X) zoning district, the legalization of a physical culture establishment in a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 27, 2008"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 14, 2018;

THAT there shall be no change in the ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation of the PCE shall be limited to: Monday through Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

THAT the PCE shall store its refuse within the building until the time of pick-up;

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 28, 2008.

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## 79-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Giuseppe Porretto, owner.

# MINUTES

SUBJECT – Application April 3, 2008 – Variance (§72-21) for the construction of a single family residence on a vacant lot. This application seeks to vary (§23-32) for undersized lot width and lot area; (§23-461) for less than the required side yards and (§21-15) for a proposed lot line building which is not allowed in an R3-2 zoning district.

PREMISES AFFECTED – 117-23 132<sup>nd</sup> Street, easterly side of 132<sup>nd</sup> Street, 220; southerly of Foch Boulevard, Block 11696, Lot 55, Borough of Queens.

## COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the Queens Deputy Borough Commissioner, on March 20, 2008, acting on Department of Buildings Application No. 402168845, denied reconsideration as follows:

1. proposed lot area and lot width for single family detached residence in R3-2 district is contrary to ZR 23-32;
2. proposed side yards for single family detached residence in R3-2 district is contrary to ZR 23-461;
3. proposed zero lot line building in R3-2 district is contrary to ZR 21-15;” 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 with attic single-family home that does not provide the required lot area, lot width, and side yards, and which is built to the lot line, contrary to ZR §§ 23-32, 23-461 and 21-15; and

WHEREAS, a public hearing was held on this application on August 19, 2008 after due notice by publication in *The City Record*, with a continued hearing on September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Queens, recommends disapproval of this application, citing concerns with the proposal’s impact on neighborhood character; and

WHEREAS, the site is located on the east side of 132<sup>nd</sup> Street, between 117<sup>th</sup> Road and Foch Boulevard, in an R3-2 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of approximately 100 feet, and a total lot area of approximately 2,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with attic single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,199 sq. ft. of floor area (0.6 FAR, permitted under the attic rule), lot coverage of 30 percent, a wall height of 20’-6”, a total height of 24’-0”, a front yard of 18’-0”, and a rear yard of 46’-9”, and will provide the required accessory parking; and

WHEREAS, however, the applicant proposes to provide a single side yard with a width of 3’-0” (two side yards with minimum widths of 5’-0” and 8’-0”, respectively are required); and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, a title report submitted by the applicant reflects that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the Board notes that ZR § 23-32 would eliminate a lot area and width requirement for a single-family dwelling, but not the side yard and lot line objections; 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 narrowness of the subject site; and

WHEREAS, the applicant represents that the requested side yard and lot line waiver are necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20’-0” cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the building would have an exterior width of only 7’-0” if side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the side yard and lot line waivers are necessary to create a home of a reasonable width; and

WHEREAS, the Board notes that a radius diagram indicates that the subject site is the only vacant lot within a 400-foot radius of the site and that other similarly sized lots are occupied with existing homes; and

WHEREAS, the applicant represents that 57 lots within a 400-foot radius of the subject site have widths of 20’-0”, and that none comply with the side yard requirements; 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



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# MINUTES

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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, the applicant submitted a streetscape showing that the height and bulk of the proposed home is consistent with that of the adjoining homes; and

WHEREAS, further, the applicant represents that there is a context in the surrounding area for homes on small lots lot that are built to the lot line with side yards with widths of less than 4'0"; and

WHEREAS, the applicant states that 44 of the 57 homes within a 400-foot radius of the subject site with lot widths of 20'-0" are built to a side lot line and have one side yard of 3'-0" or less; and

WHEREAS, the applicant further represents that the remaining 13 homes with widths of 20'-0" have combined side yard widths of less than four feet; and

WHEREAS, the applicant modified the proposal during the hearing process to shift floor area from the first floor to the second floor, thereby increasing the depth of the rear yard to 46'-9" from the 42'-0" initially proposed; 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, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Community Board contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variances to build a habitable home; and

WHEREAS, as noted above, the purchase of a zoning lot subject to the restriction sought to be varied is specifically not a self-created hardship under ZR § 72-21(d); 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 the R3-2 zoning district regulations for use, floor area, height, and parking; and

WHEREAS, the applicant modified the proposal during the hearing process to increase the depth of the rear yard to 46'-9"; 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, a two-story with attic single-family home that does not provide the required lot area, lot width, and side yards, and which is built to the lot line, contrary to ZR §§ 23-32, 23-461 and 21-15; *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 9, 2008"–(8) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,199 sq. ft. of floor area (0.6 FAR), lot coverage of 30 percent, a rear yard of 46'-9", and one side yard of 3'-0" on the southern lot line, 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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2008.

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**84-08-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; L & M Service Station, lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§§11-411, 11-412 & 73-01 (d)) to reinstate and amend the variance granted under Cal. No. 410-48-BZ for an automotive service station with accessory uses located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 67-24 Main Street, a/k/a 68-12 Main Street, West side Street 315.5' north of 68<sup>th</sup> Drive, Block 6486, Lot 38, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Cindy Bachan.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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# MINUTES

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Commissioner Montanez.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 7, 2008, acting on Department of Buildings Application No. 410061846, reads in pertinent part:

“Proposal to extend the term of the zoning variance which expired on June 10, 1968 is contrary to the latest resolution adopted by the Board of Standards and Appeals under Cal. No. 410-48-BZ and contrary to C.O. # 124955 which also expired on June 10, 1968 and must, therefore, be referred back to the BSA for reinstatement of the variance since the variance granted under Cal. No. 410-48-BZ has lapsed;” and

WHEREAS, in addition, the decision of the Queens Borough Commissioner, dated July 24, 2008, also acting on Department of Buildings Application No. 410061846, reads in pertinent part:

“Proposal to legalize the increase in floor area of the service building, legalize the 40’ and 42’ curb cuts on Main Street and the conversion of a storage area to an accessory convenience store is contrary to Section 33-26 Z.R. and contrary to the latest resolution and drawing adopted by the Board of Standards and Appeals under Cal. # 410-48-BZ and must be referred back to the board to become an amendment under Cal. # 84-08-BZ which is currently pending;” and

WHEREAS, this is an application for a special permit pursuant to ZR § 11-411, to reinstate a prior variance which allowed the operation of a gasoline service station with accessory uses (Use Group 16) in a C1-2 (R4) zoning district, and to permit, pursuant to ZR § 11-412, the legalization of modifications to the site contrary to ZR § 33-26; and

WHEREAS, a public hearing was held on this application on July 22, 2008 after due notice by publication in the *City Record*, with continued hearings on August 26, 2008, and September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the west side of Main Street, 315 feet north of 68<sup>th</sup> Drive, in a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 26, 1948 when, under BSA Cal. No. 410-48-BZ, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses; and

WHEREAS, on June 26, 1958, under BSA Cal. No. 410-48-BZ, the Board granted an extension of term for a gasoline service station with accessory uses for a term of ten years, expiring on June 10, 1968; and

WHEREAS, the term of the variance has not been extended since its expiration on June 10, 1968, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station has been continuous since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant and seeks a special permit pursuant to ZR § 73-01(d); and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant also seeks to amend the grant to legalize site conditions that do not conform with previously approved plans, to reflect: (i) a 927 sq. ft. increase in floor area of the service building, (ii) the enlargement of the two curb cuts located on Main Street, and (iii) the conversion of the previously approved storage area to an accessory convenience store; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, the Board questioned whether the proposed convenience store complies with Technical Policy and Procedure Notice (TPPN) # 10/99, which provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building, and (ii) the accessory convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the proposed convenience store is located on the same zoning lot as the gasoline service station, is contained completely within the enclosed building, and has a selling space of approximately 450 square feet, which is approximately four percent of the lot area; and

WHEREAS, thus, the proposed convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, at hearing, the Board questioned whether the service station identification sign could be relocated so as not to interfere with parking and circulation at the site; and

WHEREAS, in response, the applicant submitted photographs establishing that other potential locations would not be visible to motorists traveling north along Main Street; and

WHEREAS, at hearing, the Board also raised concerns about the condition of the fences and landscaping surrounding the site; and

WHEREAS, in response, the applicant agreed to make fencing repairs and submitted photographs establishing that the site had been cleaned and new shrubbery had been planted; and

WHEREAS, the board notes that the modifications to the site 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

# MINUTES

community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411, 11-412, and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 §§ 11-411 and 11-412, for a reinstatement of a prior Board approval, an extension of term, and a legalization of changes in the site plan of a gasoline service station (Use Group 16) with accessory automotive uses in a C1-2 (R4) zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received July 18, 2008" – (2) sheets and "August 11, 2008" – (1) sheet; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on October 28, 2018;

THAT the lot shall be kept free of graffiti, dirt and debris;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy be obtained by April 28, 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;

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 28, 2008.

## 179-08-BZ

### CEQR #09-BSA-004M

APPLICANT – Rizzo Group, for 600 Broadway Partners, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 22, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the fourth, fifth, and sixth floors in a six-story building. The proposal is contrary to ZR §42-10. M1-5 district.

PREMISES AFFECTED – 600 Broadway, southeast corner of Houston Street, Block 511, Lot 16, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 7, 2008, acting on Department of Buildings Application No. 110129904, reads in pertinent part:

“Section 42-14. The proposed physical culture establishment is not permitted as-of-right in the M1-5B district and is contrary to the ZR;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5B zoning district within the SoHo-Cast Iron Historic District, the establishment of a physical culture establishment (PCE) on the fourth, fifth, and sixth floors of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 9, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008 and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, and Commissioner Hinkson; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site occupies a through lot located on the east side of Broadway and the west side of Crosby Street between Houston Street and Prince Street; and

WHEREAS, the site is occupied by a six-story commercial building; and

WHEREAS, the PCE will occupy a total of approximately 23,843 sq. ft. of floor area on the fourth, fifth, and sixth floors; and

WHEREAS, the PCE will be operated by 24 Hour Fitness USA, Inc.; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the site is located within the SoHo-Cast Iron Historic District and the applicant represents that measures have been taken to preserve the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, issued February 28, 2008; and

WHEREAS, the PCE will operate 24 hours per day; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding

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# MINUTES

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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 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA004M, dated August 14, 2008; 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 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 M1-5B zoning district, the establishment of a physical culture establishment on the fourth, fifth, and sixth floors of a six-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 23, 2008"-(3) sheets and "Received August 21, 2008"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 28, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT 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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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 28, 2008.

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## 208-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt and 2123 Avenue M, LLC, owner.

SUBJECT – Application August 11, 2008 – 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) and less than the minimum side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22<sup>nd</sup> Street, Block 7639, Lot 1 & 3 (tent 1), 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 23, 2008, acting on Department of Buildings Application No. 310165335, reads in pertinent part:

"Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum

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# MINUTES

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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 23-461 in that the proposed side yard, straight line extension, is less than the 20'-0" minimum side yard permitted;" 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, and side yard, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on September 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008 and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection at Avenue M and East 22<sup>nd</sup> Street; and

WHEREAS, the subject site has a total lot area of 5,500 sq. ft., and is occupied by a single-family home with floor area of approximately 3,556 sq. ft. (0.65 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 approximately 3,556 sq. ft. (0.65 FAR), to approximately 5,524 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,750 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 54 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain an existing non-complying side yard with a width of 11'-0" (a minimum width of 20'-0" is required), and a complying side yard with a width of 5'-0"; and

WHEREAS, at hearing, the Board questioned the compliance of the proposed attic floor area with zoning requirements; and

WHEREAS, the applicant submitted revised plans showing compliance with the required sky exposure plane; 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, open space ratio, and side yard, 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 29, 2008"-(11) sheets and "October 14, 2008"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 5,524 sq. ft. (1.00 FAR), a minimum open space ratio of 54 percent, and side yards with minimum widths of 11'-0" and 5'-0", respectively, as illustrated on the BSA-approved plans;

THAT DOB shall review the proposed landscaping for compliance with ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 28, 2008.

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## 119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§42-10), rear yard (§43-26) and parking (§44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue,

# MINUTES

Block 705, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.

## 171-07-BZ

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED – 167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Yellin and Susan Klapper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for decision, hearing closed.

## 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: S. Grecke.

**ACTION OF THE BOARD** – Laid over to

December 16, 2008, at 1:30 P.M., for continued hearing.

## 42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

## 51-08-BZ

### CEQR #08-BSA-065K

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR §24-11 (lot coverage, FAR, & open space), §24-382 (required rear yard equivalent), §24-522 and §23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for deferred decision.

## 76-08-BZ

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.

SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR §24-36. R5 district.

PREMISES AFFECTED – 621 Beach 9<sup>th</sup> Street, south of Caffney Avenue, Block 1558, Lot 15, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for deferred decision.  
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**93-08-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.  
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**134-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.  
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**135-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 71-52 172<sup>nd</sup> Street, northwest corner of the intersection of 73<sup>rd</sup> Avenue and 172<sup>nd</sup> Street, Block 6959, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.  
-----

**157-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Waterfront

Owners, LLC, owners.

SUBJECT – Application June 5, 2008 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district. PREMISES AFFECTED – 365 Bay Street, east side of Bay Street between Grant Street and St. Julian Place, Block 488, Lot 71, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Joshua Rinesmith.

**ACTION OF THE BOARD** – Off-Calendar without date.  
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**159-08-BZ**

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.  
-----

**170-08-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.

SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.

PREMISES AFFECTED – 411-431 East 69<sup>th</sup> Street, block bounded by East 69<sup>th</sup> and East 70<sup>th</sup> Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Gary T. Tarnoff, Samuel Lindenbaum, Todd Schiemann, Lois Mate, Erik Talley.

For Opposition: Jeffrey Chester, Roberta Ashkin, William Spitz, Marcus Kline, George Robmari and Genno R. O.

**ACTION OF THE BOARD** – Laid over to

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# MINUTES

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December 9, 2008, at 1:30 P.M., for continued hearing.  
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**178-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.

SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik and Serge Tishaev.

For Opposition: Leslie Flug and Susan Klapper.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.  
-----

**195-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Aron Bistritzky, owner.

SUBJECT – Application July 16, 2008 – 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 required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1350 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue N and Avenue M, Block 7662, Lot 72, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Edith Lindbergh.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.  
-----

**196-08-BZ**

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.

SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.

PREMISES AFFECTED – 792 Tenth Avenue, a/k/a 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Joanna Stoica, James Heineman and Gary Spindler.

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.  
-----

**203-08-BZ**

APPLICANT – Sheldon Lobel, P.C. for Avi Babayof, owner.

SUBJECT – Application August 1, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and less than the minimum rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1245 East 23<sup>rd</sup> Street, located on the east side of East 23<sup>rd</sup> Street between Avenue L and Avenue M. Block 7641, Lot 26, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 25, 2008, at 1:30 P.M., for decision, hearing closed.  
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*Jeff Mulligan, Executive Director*

*Adjourned: 4:00 P.M.*



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 44-45

November 28, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

**CHRISTOPHER COLLINS**, *Vice-Chair*

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

**Roy Starrin**, *Deputy Director*

**Margaret P. Stix**, *Counsel*

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|                        |  |
|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

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### CONTENTS

|                                     |     |
|-------------------------------------|-----|
| DOCKET .....                        | 759 |
| <b>CALENDAR</b> of December 9, 2008 |     |
| Morning .....                       | 760 |
| Afternoon .....                     | 761 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, November 18, 2008**

Morning Calendar .....762

**Affecting Calendar Numbers:**

|               |  |
|---------------|--|
| 94-58-BZ      | 22-55/25-75 Brooklyn Queens Expressway, Queens                   |
| 141-58-BZ     | 201-203 East 202 <sup>nd</sup> Street, Bronx                     |
| 739-76-BZ     | 12-95 26 <sup>th</sup> Avenue, Queens                            |
| 115-94-BZ     | 2470-2480 Bedford Avenue, Brooklyn                               |
| 24-96-BZ      | 213 Madison Street, Manhattan                                    |
| 170-96-BZ     | 8501 Flatlands Avenue, Brooklyn                                  |
| 20-02-BZ      | 303 Park Avenue South, Manhattan                                 |
| 340-03-BZ     | 408 Greenwich Street. a/k/a 22-24 Hubert Street, Manhattan       |
| 736-45-BZ     | 3740 Broadway, Manhattan   |
| 117-97-BZ     | 1112 Forest Avenue, Staten Island                                |
| 863-48-BZ     | 259-16 Union Turnpike, Queens                                    |
| 297-99-BZ     | 45-05 Bell Boulevard, Queens                                     |
| 159-07-BZ     | 2402 86 <sup>th</sup> Street, Brooklyn                           |
| 168-07-A      | 1479 Rosedale Avenue, Bronx                                      |
| 266-07-A      | 1610 Avenue S, Brooklyn  |
| 191-08-BZY    | 1610 Avenue S, Brooklyn  |
| 229-06-A      | 607 Bayside Drive, Queens  |
| 140-07-A      | 607 Bayside Drive, Queens  |
| 39-07-A thru  |  |
| 40-07-A       | 3248, 3250, Wickham Avenue, Bronx                                |
| 251-07-A thru |  |
| 254-07-A      | 63/65 Houston Street and 104/106 Willowbrook Road, Staten Island |
| 34-08-A       | 144 North 8 <sup>th</sup> Street, Brooklyn                       |
| 70-08-A thru  |  |
| 72-08-A       | 215C, 215B, 215A, Van Name Avenue, Staten Island                 |
| 73-08-A thru  |  |
| 75-08-A       | 354 Van Name, Staten Island                                      |
| 168-08-A      | 63 Brighton 2 <sup>nd</sup> Place, Brooklyn                      |
| 60-08-A       | 101-20 39 <sup>th</sup> Avenue, Queens                           |
| 121-08-A thru |  |
| 132-08-A      | Gallant Loop, Staten Island                                      |
| 231-08-A      | 118 Beach 221 <sup>st</sup> Street, Queens                       |

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# CONTENT

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Afternoon Calendar .....773

**Affecting Calendar Numbers:**

|           |  |
|-----------|--|
| 51-07-BZ  | 70-44 to 58 Kissena Boulevard, Queens  |
| 171-07-BZ | 167 Norfolk Street, Brooklyn   |
| 76-08-BZ  | 621 Beach 9 <sup>th</sup> Street, Queens                                     |
| 158-08-BZ | 1814 East 27 <sup>th</sup> Street, Brooklyn                                  |
| 189-08-BZ | 232 Mercer Street, Manhattan   |
| 214-08-BZ | 1855 East 24 <sup>th</sup> Street, Brooklyn                                  |
| 11-07-BZ  | 41-06 Junction Boulevard, Queens   |
| 205-07-BZ | 53-20 72 <sup>nd</sup> Place, Queens   |
| 46-08-BZ  | 491 Bedford Avenue, Brooklyn   |
| 61-08-BZ  | 439 86 <sup>th</sup> Street, Brooklyn  |
| 155-08-BZ | 282 Beaumont Street, Brooklyn  |
| 159-08-BZ | 68-70 Spring Street, Manhattan   |
| 185-08-BZ | 170 Claremont Avenue, Manhattan  |
| 172-08-BZ | 40-20 47 <sup>th</sup> Avenue, aka 4702-4710 41 <sup>st</sup> Street, Queens |
| 188-08-BZ | 35 East 76 <sup>th</sup> Street, Manhattan                                   |
| 199-08-BZ | 400 East Fordham Road, Bronx   |
| 224-08-BZ | 47-10 Laurel Hill Boulevard, Queens  |
| 225-08-BZ | 1155 East 24 <sup>th</sup> Street, Brooklyn                                  |

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# DOCKET

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New Case Filed Up to November 18, 2008

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**267-08-A**

2 Devon Walk, East side of Devon Walk 24'+ south of paved Oceanside Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

-----

**268-08-BZ**

314 Seventh Avenue, Located at the southwest corner of the intersection formed by Eight Street and Seventh Avenue., Block 1006, Lot(s) 37, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-621) to extend an as-of-right eating and drinking establishment into an existing parking garage.

-----

**269-08-BZ**

90-10 Grand Central Parkway, North side of 23rd Avenue between p0th Street & 93rd Street., Block 1068, Lot(s) 1, Borough of **Queens, Community Board: 3**. Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower.

-----

**270-08-A**

221 Betts Avenue, Premises is situated on the west side of Betts Avenue, north of Gildersleeve Avenue., Block 3460, Lot(s) 58, Borough of **Bronx, Community Board: 9**. An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPP.

-----

**271-08-A**

221A Betts Avenue, Premises is situated on the west side of Betts Avenue, north of Gildersleeve Avenue., Block 3460, Lot(s) 59, Borough of **Bronx, Community Board: 9**. An appeal seeking to revoke Certificate of Occupancy No. 200983971 issued on February 4, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements listed in the Building Code and Department of Buildings TPPN #1/04.

-----

**272-08-A**

35 Brighton 2nd Place, Premises is located on the west side of Brighton 2nd Place approximately 120 feet north of Brighton 2nd Lane., Block 8662, Lot(s) 230, 232, 234, Borough of **Brooklyn, Community Board: 13**. Construction not fronting a mapped street, contrary to Section 36 of the General City Law.

-----

**273-08-A**

135 North 11th Street, Premises is situated on the north side of North 11th Street between Berry Street and Bedford Avenue., Block 2290, Lot(s) 10, Borough of **Brooklyn, Community Board: 1**. Appeal seeking a stop work order issued by the Department of Buildings.

-----

**274-08-BZ**

41-47 Grand Street, Southwest corner of Grand Street and West Broadway., Block 227, Lot(s) 19, 20, 22, Borough of **Manhattan, Community Board: 2**. Variance to allow a nine-story commercial building, contrary to use regulations.

-----

**275-08-BZ**

98 South 4th Street, South side of South 4th Street between Bedford Avenue and Berry Street., Block 2443, Lot(s) 13, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow legalization of a physical culture establishment.

-----

**276-08-BZ**

150 East 55th Street, Southside 155 feet east of Lexington Avenue., Block 1309, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to allow legalization of a physical culture establishment.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**DECEMBER 9, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 9, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----

## **SPECIAL ORDER CALENDAR**

### **26-02-BZII**

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application June 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C1-2/R3X zoning district, which expired on December 10, 2006.

PREMISES AFFECTED – 1680 Richmond Avenue, northwest corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

-----

## **APPEALS CALENDAR**

### **115-07-A & 116-07-A**

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application May 10, 2007 – Proposed construction of four one family homes located within the bed of a mapped street (Ramona Avenue ) contrary to Section 35 of the General City Law. R3-X SSRD Zoning District.

PREMISES AFFECTED – 310 & 335 Ramona Avenue, Ramona Avenue and Huguenot Avenue, Block 6836, Lot 63 (tent 55 & 59), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **56-08-A & 57-08-A**

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application March 14, 2008 – Proposed construction of four single family detached homes located within the bed of a mapped street contrary to General City Law Section 35. R3X- SSRD, SGMD Zoning Districts.

PREMISES AFFECTED – 322 & 328 Ramona Avenue, south side of Ramona Avenue 140' west of Huguenot Avenue, Block 6836, Lot 63 (tent 57), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **211-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Trish & Thomas Ecock, lessee.

SUBJECT – Application August 15, 2008 – Proposed reconstruction and enlargement of existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing legal non conforming private disposal system in the bed of the mapped street and Service road. R4 Zoning District.

PREMISES AFFECTED – 434 Oceanside Avenue, north side Avenue at the intersection of mapped Beach 211<sup>th</sup> Street, Block 16350, Lot p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**DECEMBER 9, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 9, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----

## **ZONING CALENDAR**

### **45-08-BZ**

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application February 29, 2008 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

-----

### **201-08-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§ 72-21) to allow a one story warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§ 22-00). R3X district.

PREMISES AFFECTED – 40-38 216<sup>th</sup> Street, between 215<sup>th</sup> Place and 216<sup>th</sup> Street, 200' south of 40<sup>th</sup> Avenue, Block 6290, Lot 70, Borough of Queens.

**COMMUNITY BOARD #11Q**

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# CALENDAR

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**223-08-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.

SUBJECT – Application August 29, 2008 – Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142' south of the intersection with Kreisler Street, Block 7596, Lot 250, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**234-08-BZ**

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. The proposal is contrary to ZR Section 32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17<sup>th</sup> Street, Block 7462, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

-----

**244-08-BZ**

APPLICANT – Rizzo Group, for BP/CGCenter II, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application October 1, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar level and first floor in a 59-story building. The proposal is contrary to ZR Section 32-10. C6-6 district.

PREMISES AFFECTED – 139-153 East 53<sup>rd</sup> Street; 140-16 East 54<sup>th</sup> Street; 601-635 Lexington Avenue; 884-892 3<sup>rd</sup> Avenue, north side of 53<sup>rd</sup> Street, between 3<sup>rd</sup> and Lexington Avenues, Block 1308, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, NOVEMBER 18, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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## SPECIAL ORDER CALENDAR

### 94-58-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Nor-East S/S Incorporated, lessee.

SUBJECT – Application June 19, 2008 – Extension of Term/waiver for the continued operation of a gasoline service station (Mobil), in an R-4 zoning district, which expired on September 30, 2003.

PREMISES AFFECTED – 22-55/25-75 Brooklyn Queens Expressway, northeast corner of 30<sup>th</sup> Avenue, Block 1046, Lot 1, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a gasoline service station with accessory uses, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on October 7, 2008 after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 18, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez; and

WHEREAS, Community Board 3, Queens, recommends approval of this application, subject to certain conditions; and

WHEREAS, the site is located on the east side of the Brooklyn-Queens Expressway, between 30<sup>th</sup> Avenue and 70<sup>th</sup> Street, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 30, 1958 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, the grant was extended on May 17, 1994 for a term of ten years from the expiration of the prior grant; and

WHEREAS, the term expired on September 30, 2003; the applicant states that the gasoline service station has operated continuously since the expiration of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks to amend the grant to legalize site conditions that fail to conform to the previously approved plans, to reflect: (i) the conversion of office space to an accessory convenience store; (ii) the installation of a car vacuum and air machine along the south wall of the service building; (iii) the enlargement of a curb cut located on the northern side of 70<sup>th</sup> Street and of two curb cuts located on the northern side of the Brooklyn-Queens Expressway; and (iv) the location of an above-ground waste oil tank in the southeast corner of the site; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building; and (ii) the accessory convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store located within the enclosed building has a retail selling space of less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, at hearing the Board asked the applicant to clarify whether the paving of the site encroached onto City property; and

WHEREAS, the applicant confirmed that the site encroached onto City property and agreed to repave the sidewalk to remedy the encroachment; and

WHEREAS, the applicant submitted photographs showing new sidewalk paving on 70<sup>th</sup> Street to demonstrate that the service station no longer encroaches onto City property; and

WHEREAS, as a condition of its approval, the Community Board requested that security lighting be provided at 70<sup>th</sup> Street; and

WHEREAS, the applicant submitted revised plans reflecting the installation of additional lighting along 70<sup>th</sup> Street; and

WHEREAS, the Community Board also requested that at least one full-service pumping station be provided to serve senior citizens and customers with disabilities; and

WHEREAS, the applicant states that the service station provides two full-service pumping stations that serve senior citizens and customers with disabilities; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment

# MINUTES

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 30, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 30, 2003, to expire on September 30, 2013, and to permit the noted site modifications; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received October 14, 2008”–(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on September 30, 2013;

THAT all signage shall comply with C1 zoning district regulations;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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. 410063443)

Adopted by the Board of Standards and Appeals November 18, 2008.

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## 141-58-BZ

APPLICANT – Kenneth H. Koons, for East 201 Street Realty Corporation, owner.

SUBJECT – Application August 14, 2008 – Extension of Term of a UG7 Funeral Home in an R8C-(Special Grand Concourse Preservation) zoning district which expired on July 15, 2008.

PREMISES AFFECTED – 201-203 East 202<sup>nd</sup> Street, northeast corner Grand Concourse, Block 3307, Lots 67 & 68, Borough of Bronx.

## COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Kenneth Koons.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance

permitting a funeral home (Use Group 7) in an R8 zoning district within the Special Grand Concourse Preservation District, which expired on July 15, 2008; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, and then to decision on November 18, 2008; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of the intersection at East 201<sup>st</sup> Street and Grand Concourse; and

WHEREAS, the site is located within an R8 zoning district within the Special Grand Concourse Preservation District, and is occupied by a funeral home; 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 operation of a funeral home in a residential district for a term of ten years; and

WHEREAS, the grant was extended and amended at various times; most recently on July 14, 1998, when the Board extended the term for ten years, to expire on July 15, 2008; and

WHEREAS, the applicant now 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; and

WHEREAS, the applicant represents that there have been no changes in the use of the site or the site plan; and

WHEREAS, the applicant initially requested that the Board grant an extension without a term of years because the funeral home use at the subject site is now specifically listed as a conforming use pursuant to ZR § 122-10; and

WHEREAS, the Board notes that ‘Table A’ of ZR § 122-10 lists only the funeral home use on Lot 68 as a conforming use; the funeral home use on Lot 67 is not indicated as a conforming use; and

WHEREAS, approval by the Board is still required to maintain the funeral home use on Lot 67; and

WHEREAS, pursuant to ZR § 11-411, the Board is authorized to grant an extension only up to a term of ten years; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate for ten years 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 22, 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 prior grant, to *expire on July 15, 2018; on condition*:

THAT the term of this grant shall expire on July 15, 2018;

THAT the above condition shall appear on the



# MINUTES

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. No. 210051815)

Adopted by the Board of Standards and Appeals, November 18, 2008.

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## 739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application September 16, 2008 – Extension of Term & Extension Time to obtain a Certificate of Occupancy for a (UG15) Amusement Arcade (Peter Pan Games), in a C4-1 zoning district which will expire on April 10, 2009.

PREMISES AFFECTED – 12-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening, an extension of the term of a special permit which expires on April 10, 2009, and an extension of the time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, and then to decision on November 18, 2008; and

WHEREAS, Community Board 7, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the northwest corner of the intersection at 26<sup>th</sup> Avenue and Bell Boulevard, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1977 when, under the subject calendar number the Board granted an application permitting the conversion of a retail store in a shopping center to an amusement arcade for a term of one year; and

WHEREAS, on May 6, 1997, under the subject calendar

number, the Board permitted the relocation of the arcade from 212-65 26<sup>th</sup> Avenue to 212-95 26<sup>th</sup> Avenue; and

WHEREAS, the grant was extended and amended at various other times; most recently on April 1, 2008 when the Board granted a one-year extension to the term of the special permit, to expire on April 10, 2009; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional year, and to extend the time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that an application for a certificate of occupancy is pending at the Department of Buildings; and

WHEREAS, based upon the submitted evidence, the Board finds that the instant application is appropriate to grant, with 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 February 8, 1977, as later amended, so that, as amended, this portion of the resolution shall read: “to grant a one-year extension of the term of the special permit, to expire on April 10, 2010, and a six-month extension of time to obtain a certificate of occupancy, to expire on May 18, 2009; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, to expire on April 10, 2010;

THAT a certificate of occupancy shall be obtained by May 18, 2009;

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 the operation of the arcade at the subject premises shall comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, November 18, 2008.

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## 115-94-BZ

APPLICANT – Martyn & Don Weston, for Irma Poretzky, owner.

SUBJECT – Application June 16, 2008 – (§11-411) Extension of Term/Waiver for an Automotive Repair Shop

# MINUTES

located in an R6 zoning district which expired on July 30, 2006.

PREMISES AFFECTED – 2470-2480 Bedford Avenue, 60 feet north of Clarendon Road, Block 5167, Lot 40, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term, which expired on July 30, 2006; and

WHEREAS, a public hearing was held on this application on September 9, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 18, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the proposal; and

WHEREAS, the site is located on the west side of Bedford Avenue, between Clarendon Road and Cortelyou Road; and

WHEREAS, the site is within an R6 zoning district and is occupied by two motor vehicle repair facilities (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 1924, when, under BSA Cal. No. 562-24-BZ, the Board granted a variance permitting the construction and maintenance of a public garage for more than five motor vehicles; and

WHEREAS, on March 16, 1946, under BSA Cal. No. 562-24-BZ, the Board amended the grant to approve a change in use from a public parking garage to automobile display, sales, and service; and

WHEREAS, on July 30, 1996, under BSA Cal. No. 115-94-BZ, the Board approved an application under ZR § 11-412 permitting a change in use from automobile sales and service (Use Group 16C) to automotive sales with repair (Use Group 16) for a term of ten years; and

WHEREAS, the applicant now seeks to extend the term of the special permit, which expired on July 30, 2006; and

WHEREAS, the Board notes that any extension of term would date back to the period of the prior expiration; and

WHEREAS, the Board notes that, based on observations from its site visits, conditions on the site varied from previously approved plans, in that: (i) cars were parked on the

sidewalk; (ii) signage was non-complying; and (iii) the hours of operation were not being complied with; and

WHEREAS, at hearing, the Board directed the applicant to conform the site conditions to the BSA-approved drawings; and

WHEREAS, in response the applicant submitted photographs establishing that cars have been removed from the sidewalk and the signage has been brought into compliance with C1 signage requirements; and

WHEREAS, additionally, the applicant represents that the hours of operation are now compliant with the terms of the 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, as adopted July 30, 1996, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on July 30, 2016, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received July 21, 2008, 2008”- (1) sheet and “October 3, 2008”-(1) sheet; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the term shall expire on July 30, 2016;

THAT the site be maintained free of debris and graffiti;

THAT the hours of operation shall be: Monday through Saturday, 9:00 a.m. to 6:00 p.m.;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all signage shall comply with C1 zoning 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. 310130195)

Adopted by the Board of Standards and Appeals, November 18, 2008.

## 24-96-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§ 11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and

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# MINUTES

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drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of a variance permitting a commercial use in a residential zoning district, and an amendment to legalize a change in use from a retail store (Use Group 6) to an eating and drinking establishment (Use Group 6); and

WHEREAS, a public hearing was held on this application on May 6, 2008, after due notice by publication in the *City Record*, with continued hearings on June 24, 2008, July 29, 2008, and September 23, 2008, and then to decision on November 18, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Ottley-Brown, and Commissioner Montanez; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the north side of Madison Street between Rutgers Street and Jefferson Street, within an R7-2 zoning district; and

WHEREAS, the site is currently occupied by an eating and drinking establishment (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 1955 when, under BSA Cal. No. 664-54-BZ, the Board granted a variance to permit the construction and maintenance of a commercial building (retail store) for a term of fifteen years; and

WHEREAS, on October 7, 1997, under the subject calendar number, the Board granted an application to re-establish the variance, which lapsed in 1970, and to extend the term for ten years, to expire on October 7, 2007; and

WHEREAS, the applicant now seeks an amendment to legalize the change in use from a retail store (Use Group 6) to an eating and drinking establishment (Use Group 6) and to extend the term for a period of ten years; and

WHEREAS, in 2004, the use of the subject premises was changed from a retail store to an eating and drinking establishment; and

WHEREAS, the Board notes that there is a discrepancy between the existing conditions, which provide for a building built to a depth of 89'-2" and a rear yard of 11'-0" and the previously approved plans, which provide for a building that is

86'-0" in depth and a rear yard of 14'-2"; and

WHEREAS, the applicant represents that the previously approved plans are erroneous and the dimensions of the building are unchanged; and

WHEREAS, at hearing, the Board requested the applicant establish that the building had not been modified to accommodate the change in use; and

WHEREAS, in response, the applicant submitted the plans approved by the Department of Buildings for the change in use, which demonstrate that the dimensions of the building were not altered to accommodate the change in use; and

WHEREAS, the Board therefore notes that the dimensions for the rear yard and building length on the previously approved plans are incorrect, and the correct rear yard and building length dimensions are 11'-0" and 89'-2", respectively; and

WHEREAS, at hearing, the Board requested the applicant to ensure that the signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant removed all non-complying signage; and

WHEREAS, the Board finds that the change of use from a retail store (Use Group 6) to an eating and drinking establishment (Use Group 6) will not adversely affect the character of the neighborhood.

*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, to permit the legalization of an eating and drinking establishment (Use Group 6) at the premises, and grants an extension of term for a period of ten (10) years, to expire on October 7, 2017; *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 23, 2008"-(5) sheets; and *on further condition*:

THAT this grant shall be for a term of ten (10) years, to expire on October 7, 2017;

THAT a rear yard no less than 11'-0" in depth shall be provided in accordance with the BSA-approved plans, which yard will be maintained free and clear of debris and any other encroachments;

THAT the premises shall be maintained clean and free of graffiti;

THAT all signage shall comply with C1 zoning district regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by May 18, 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;

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# MINUTES

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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.

(DOB Application. No. 104815817)

Adopted by the Board of Standards and Appeals, November 18, 2008.

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## **170-96-BZ**

APPLICANT – Martyn & Don Weston, Architects, for 8501 Flatlands Avenue, owner.

SUBJECT – Application July 30, 2008 – Extension of Term/Amendment/Waiver (§72-01 & §72-22) to reopen the term of 10 years for an automobile repair facility located in an R5 zoning district.

PREMISES AFFECTED – 8501 Flatlands Avenue, northeast corner of East 85<sup>th</sup> Street, Block 8006, Lots 6 and 7, Borough of Brooklyn.

### **COMMUNITY BOARD #18BK**

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term for a previously granted variance permitting an automobile repair facility (Use Group 16) and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on October 7, 2008 after due notice by publication in *The City Record*, and then to decision on November 18, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of the intersection at Flatlands Avenue and East 85<sup>th</sup> Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over Block 8006, Lot 7 since October 13, 1948 when, under BSA Cal. No. 300-48-BZ, the Board granted a variance to permit a gasoline service station, automobile repair shop, lubricatorium, and auto laundry on the subject site; and

WHEREAS, on July 6, 1983, under BSA Cal. No. 111-83-BZ, the Board permitted the enlargement of the gasoline

service station through the addition of Lot 6 to the subject site pursuant to ZR § 11-412; and

WHEREAS, most recently, on April 21, 1998, under BSA Cal. No. 170-96-BZ, the Board granted a variance permitting a change of use to an automotive repair facility (Use Group 16) and an enlargement to the existing building; and

WHEREAS, the applicant now seeks to extend the term of the variance, which expired on April 21, 2008; and

WHEREAS, the applicant also seeks an amendment modifying the approved plans to reflect the addition of office space in a mezzanine; and

WHEREAS, the applicant represents that the modification adds no floor area for auto repair uses, and complies with the previously-approved building envelope; and

WHEREAS, based upon its review of the record, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 21, 1998, 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 April 21, 2018, and to permit the noted site modifications; *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 30, 2008”–(4) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the term shall expire on April 21, 2018;

THAT the site be maintained free of debris and graffiti;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all signage shall comply with C1 zoning 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. 310159173)

Adopted by the Board of Standards and Appeals November 18, 2008.

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## **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

# MINUTES

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 23<sup>rd</sup> 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening of a previously granted special permit for a physical culture establishment (PCE), an extension of term, and an amendment to modify the hours of operation of the PCE; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, and then to decision on November 18, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, the PCE is located in a mixed-use commercial/residential building on the northeast corner of Park Avenue South and East 23<sup>rd</sup> Street within a C6-4A zoning district; and

WHEREAS, the site is located in portions of the cellar, first floor, and second floor of the five-story building; and

WHEREAS, the PCE has a total floor area of 24,496 sq. ft.; 3,250 sq. ft. of floor area on the cellar level, 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 Board has exercised jurisdiction over the subject site since March 18, 1997 when, under BSA Cal. No. 160-95-BZ, the Board permitted 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 approved the expansion of the PCE onto the second floor and an increase in the total floor area from 15,368 sq. ft. to 24,496 sq. ft.; and

WHEREAS, on August 21, 2007, the special permit was extended for a term of one year, which expired on August 21, 2008; and

WHEREAS, the Board notes that numerous residential occupants testified at the August 21, 2007 hearing, raising concerns with excessive noise and vibrations caused by the operation of the PCE; and

WHEREAS, the applicant represents that these concerns

have been satisfactorily addressed; and

WHEREAS, the Board notes that the applicant provided proof that the residential tenants were notified of the public hearing concerning the instant application, and that none testified in opposition; and

WHEREAS, the applicant now seeks to extend the term of the special permit; and

WHEREAS, in addition, the applicant seeks to increase the hours of operation of the PCE; and

WHEREAS, the current hours of operation are: Monday through Friday, from 6:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 11:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on June 18, 2002, so that as amended this portion of the resolution shall read: “to extend the term for five years from August 21, 2008, to expire on August 21, 2013, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall expire on August 21, 2013;

THAT the hours of operation for the PCE shall be Monday through Friday, from 5:30 a.m. to 11:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.;

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 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 18, 2008.

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## 340-03-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, by Howard S. Weiss, Esq., for 408-410 Greenwich Street LLC. SUBJECT – Application February 20, 2008 – Reopening for an Amendment to allow in a mixed use building the change of the use on the fifth floor from commercial use (UG6) to residential use (UG2).

PREMISES AFFECTED – 408 Greenwich Street, a/k/a 22-24 Hubert Street, northwest corner of Hubert and Greenwich

# MINUTES

Street, Block 217, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES – None.

**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, November 18, 2008.

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## 736-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Midel Property Associates, LLC, owner; Exxon Mobil Corporation, lessee. SUBJECT – Application June 3, 2008 – Extension of Term/waiver for a previously granted variance for the operation of a gasoline service station (Mobil), in a C2-4/R8 zoning district, which expired on March 17, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 8, 2000.

PREMISES AFFECTED – 3740 Broadway, northeast corner of West 155<sup>th</sup> Street, Block 2114, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for decision, hearing closed.

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## 117-97-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for Gosehine Garcia, owner.

SUBJECT – Application August 28, 2008 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a legal non-conforming (UG6) eating and drinking establishment (Basille's) in an R3-2 zoning district which expired on September 15, 2008.

PREMISES AFFECTED – 1112 Forest Avenue, south side of Forest Avenue, 25' west of the intersection of Forest Avenue and Greenleaf Place, Block 352, Lot 47, 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, Commissioner Hinkson and

Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for decision, hearing closed.

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## 863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner. SUBJECT – Application September 25, 2008 – Extension of Term of a previously granted variance for a (UG16A) auto repair establishment, in an R-2 zoning district, which will expire on November 25, 2008.

PREMISES AFFECTED – 259-16 Union Turnpike, south east corner of 259<sup>th</sup> Street, Block 8678, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

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## 297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application October 6, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a (UG16) Gasoline Service Station (Mobil), in a C2-2/R6B zoning district, which will expire on February 12, 2009.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side of blockfront between Northern Boulevard and 45<sup>th</sup> Road, Block 7333, Lot 201, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Patrick Gorman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for decision, hearing closed.

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## 159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center Incorporated, owner; Dolphin Fitness Clubs, lessee.

SUBJECT – Application October 6, 2008 – Extension of Time to complete construction to allow the legalization of a P.C.E. on the second floor of a two story commercial building (Stillwell Sports Center) and an Extension of Time to Obtain a Certificate of Occupancy, in a C8-2 zoning district, which expired on May 27, 2008.

PREMISES AFFECTED – 2402 86<sup>th</sup> Street, southeast corner of 86<sup>th</sup> Street and 24<sup>th</sup> Avenue, Block 6864, Lot 37,

# MINUTES

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 121-08-A thru 132-08-A

APPLICANT – Philip L. Rampulla, for Rocco Berardi, owner.

SUBJECT – Application April 24, 2008 – Proposed construction of twelve homes not fronting a legally mapped street contrary to General City Law Section 36. R3x (SSRD) Series - 121-08-A thru 132-08-A.

PREMISES AFFECTED – 80, 70, 60, 59, 79, 15, 25, 39, 55, 50, 40, 30, Gallant Loop, Block 6517, Lot 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 4, 2008, acting on Department of Buildings Application Nos. 510032224, 510032233, 510032242, 510032251, 510032260, 510032279, 510032723, 510032288, 510032297, 510032304, 510032313, and 510032322, reads in pertinent part:

“The street giving access to proposed construction of a new residential building Use Group 1 in R3X 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 November 18, 2008, after due notice by publication in the *City Record*, then to closure and decision on

this same date; and

WHEREAS, the developer intends to build twelve single-family detached homes not fronting a legally mapped street; and

WHEREAS, the proposed development is located within the Special South Richmond Development District (SSRD) and the Lower Density Growth Management District (LDGMD), within an R3X zoning district; and

WHEREAS, by letter dated September 18, 2008, the Fire Department states that it has reviewed the subject proposal and advises the Board that it has no objections provided the applicant provides the following: (1) full sprinkler systems in all buildings; (2) “No Parking” zones on both sides of Gallant Loop; and (3) “No Parking- Fire Lane” signs throughout the development; and

WHEREAS, the applicant has provided a site plan showing compliance with the Fire Department’s requested provisions; and

WHEREAS, access to the site is provided by an existing easement agreement from Arbutus Avenue and Denise Court; and

WHEREAS, the developer has a pending application at the Department of City Planning for subdivision approval pursuant to ZR § 107-08 (Future Subdivisions); and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated April 4, 2008, acting on Department of Buildings Application Nos. 510032224, 510032233, 510032242, 510032251, 510032260, 510032279, 510032723, 510032288, 510032297, 510032304, 510032313, and 510032322, 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 29, 2008” – 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 DOB shall review the proposed plans to ensure that compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the applicant shall seek and obtain City Planning Commission approval of the subdivision pursuant to ZR § 107-08 prior to the issuance of building permits;

THAT the Department of Buildings must 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 18, 2008.

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## 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx Expressway, Block 3895, Lot 58, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

**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, November 18, 2008.

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## 266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S, LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for continued hearing.

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## 191-08-BZY

APPLICANT – Stuart A. Klein, for 1610 Avenue S, LLC, owner.

SUBJECT – Application July 14, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for continued hearing.

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## 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: Janine Gaylar, Department of Buildings; Kevin L. Smith, Arthur Lighthall and Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## 140-07-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application May 25, 2007 – Appeal 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, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## 39-07-A thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed



# MINUTES

construction of two , 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 3248, 3250 Wickham Avenue, unnamed street between Wickham and Givan Avenue,, Block 4755, Lots 65 & 66, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 9, 2009, at 10 A.M., for decision, hearing closed.

## 251-07-A thru 254-07-A

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner.

SUBJECT – Application November 2, 2007 – 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.

PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: James E. Smith and Kevin Hunt.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for decision, hearing closed.

## 34-08-A

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth (“NAG”) and People’s Firehouse, Inc. (“PFI”).

OWNER: North Seven Associates LLC

SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR §23-142 and ZR §12-10 which fails to provide adequate open space on the zoning lot to support the Building's floor area.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Kevin Shea and Peter Gillespie.

For Opposition: Peter Geis and Howard Hornstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 9, 2009, at 10 A.M., for decision, hearing closed.

## 70-08-A thru 72-08-A

APPLICANT – Eric Palatnik, P.C., for TOCS Developers, Inc., owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.

PREMISES AFFECTED – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

## 73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S.B. Holding, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

PREMISES AFFECTED –354 Van Name, northeast of the corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

## 149-08-A

APPLICANT – Jack Lester, for Neighbors, et al, owner.

SUBJECT – Application May 29, 2008 – Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 808 Columbus Avenue, 97<sup>th</sup> and 100<sup>th</sup> Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.

# MINUTES

## COMMUNITY BOARD #7M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for postponed hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 10:15 A.M.

## 168-08-A

APPLICANT – Cozen O'Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110' north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

## COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Peter Geis and Howard Hornstein.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

## 60-08-A

APPLICANT – Eric Palatnik, P.C., for F & Z Properties, owners.

SUBJECT – Application March 21, 2008 – Proposed construction of a four Story Community Facility located within the bed of a mapped street (102<sup>nd</sup> Street) contrary to General City Law Section 35. R6B (C1-4) zoning district.

PREMISES AFFECTED – 101-20 39<sup>th</sup> Avenue (formerly 101-20, 101-22 & 101-24 103<sup>rd</sup> Street, between 102<sup>nd</sup> and 103<sup>rd</sup> Streets, Block 1770, Lot 22, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

## 231-08-A

APPLICANT – Gerard E. Meyer, for Breezy Point Cooperative Inc., owner; Stephen D'Antonio, lessee.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning

PREMISES AFFECTED – 118 Beach 221<sup>st</sup> Street, southwest side of Beach 221<sup>st</sup> Street, 320' southeast of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for postponed hearing.

## REGULAR MEETING TUESDAY AFTERNOON, NOVEMBER 18, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

## ZONING CALENDAR

### 51-07-BZ

#### CEQR #07-BSA-063Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

#### COMMUNITY BOARD #8Q

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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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# MINUTES

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## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated January 22, 2007, acting on Department of Buildings Application No. 402507060 reads in pertinent part:

“Proposed commercial use is not permitted as-of-right in an R4 zoning district. This is contrary to ZR 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the construction of a one-story commercial building (Use Group 6) with accessory parking which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on February 5, 2008, after due notice by publication in *The City Record*, with continued hearings on April 15, 2008, August 19, 2008, and October 7, 2008, and then to decision on November 18, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 8, Queens, recommends disapproval of an earlier iteration of this application; and

WHEREAS, the proposed building will have one story and a cellar with a total floor area of 6,928 sq. ft., an FAR of 0.70, a height of 15'-6", and 27 accessory parking spaces; and

WHEREAS, the subject premises is located within an R4 zoning district on the northwest corner of Kissena Boulevard and 70th Road, and

WHEREAS, the site has a parallelogram shape, with 99'-3" of frontage on Kissena Boulevard and approximately 104'-0" of frontage on 70th Road extending to a depth of approximately 103'-0"; and

WHEREAS, the site is currently vacant and has a lot area of 9,921 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 18, 1932, when, under BSA Cal. No. 528-31-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station; such variance lapsed in 2000 although the use continued until 2006; and

WHEREAS, the applicant initially proposed a one-story building with a height of 20'-0" -8", a total commercial floor area of 7,438 sq. ft. (0.63 FAR), and five parking spaces; and

WHEREAS, the applicant subsequently provided another iteration of the plans which added a second floor for a conforming community facility use, increased the height to 24'-0" and the commercial/community facility floor area to 13,856 sq. ft., and provided 27 parking spaces; and

WHEREAS, the applicant now proposes a one-story commercial building with a streetwall and total height of 15'-6", a total commercial floor area of 6,928 sq. ft. (0.70 FAR) and 27 parking spaces; and

WHEREAS, the applicant states that the proposed first floor will be occupied by five retail stores; the cellar will be occupied by the 27 accessory parking spaces; and

WHEREAS, the applicant represents that the site does not qualify as a predominately built-up area pursuant to ZR § 12-10 and therefore does not qualify for the infill options for predominately built-up areas; and

WHEREAS, as noted above, the proposed building requires a use waiver; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following unique physical conditions create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site's soil prior contamination; (2) the site's location on a heavily-traveled arterial road; and (3) a deed restriction that limits the site's development potential; and

WHEREAS, the applicant represents that the site was in constant use for automotive uses from approximately 1934 until 2006; and

WHEREAS, the Board notes that the prior approved use of the site for automotive uses predates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant states that the soil was contaminated and required extensive remediation due to the history of automotive-related uses at the site; and

WHEREAS, a Phase 1 Environmental Assessment indicated that underground storage tanks, piping and associated gasoline/ waste oil equipment be closed and removed from the site and contaminated soil removed; and

WHEREAS, the site remediation specifically included: (1) excavation and removal of nine gasoline and waste oil tanks; (2) loading and disposal of all impacted soils within the zone of contamination in accordance with New York State Department of Environmental Conservation approved procedures; (3) residual waste disposal; (4) post-excavation sample collection and analysis; (5) backfilling the excavation; and (6) groundwater sampling; and

WHEREAS, the applicant has documented more than \$340,000 in premium costs associated with the remediation of the site; and

WHEREAS, the applicant states that expense of remediating the site's contaminated conditions impeded its development for a conforming residential or community facility use; and

WHEREAS, as to its location, the applicant states that the site is located on a major arterial roadway providing access to Long Island, which is lined with commercial uses and local service establishments; and

WHEREAS, the applicant further states that the site is directly north of a C1-2 zoning district at 71<sup>st</sup> Avenue along Kissena Boulevard; and

WHEREAS, the applicant represents that the heavy incidence of traffic and the preponderance of commercial uses limits the marketability of a complying residential development which would front on Kissena Boulevard; and

WHEREAS, the premises are also subject to a deed

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# MINUTES

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restriction requiring: (a) an open area with a width of 30'-0" along the westerly lot line; and (b) a height restriction of 30'-0" for residences and 25'-0" for non-residences; and

WHEREAS, the applicant represents that compliance with both the deed restrictions and the zoning requirements would limit a residential development to three three-story row houses with a total of eight dwelling units and a total floor area of 8,902 sq. ft., and that such a restriction constitutes a unique physical condition constraining an as-of-right development; and

WHEREAS, the applicant cites to the decision in *Thompson v. Curcio* (154 A.D.2d 602 (2d Dep't 1989)) in support for the proposition that a deed restriction assumed by a predecessor in title can represent a hardship warranting a variance; and

WHEREAS, the Board notes that Thompson concerned a property that was undersized and undevelopable due to a partial condemnation by New York State, for which the compensation was inadequate to cover the loss of all development rights; the variance application was filed by the children of the former owner who had inherited the property upon her death; and

WHEREAS, the Board finds that Thompson is inapplicable to the instant case, in which the owner purchased the property assumedly with knowledge of the deed restriction at a market value that ought to have reflected its reduced development potential; and

WHEREAS, based upon the above, the Board finds that the premium costs associated with the site's environmental remediation, when considered in the aggregate with the site's location on a busy thoroughfare with many commercial uses, creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed two as-of-right alternatives: (i) a development consisting of four two-family rowhouses with a total floor area of 8,318 sq. ft.; and (ii) a three-story community facility building with 19,713 sq. ft. of floor area and 40 accessory parking spaces; and (iii) an alternative that complies with the zoning requirements, as well as with the deed restriction, consisting of three three-story townhouses with eight dwelling units; and

WHEREAS, the study concluded that none of three scenarios would realize a reasonable return; and

WHEREAS, the proposed project, as modified, would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning district regulations 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 bulk and height of the proposed building comply with the R4 and C1-2 zoning parameters; and

WHEREAS, the applicant represents that the surrounding area is characterized by a preponderance of multi-family residential buildings with FARs ranging from 0.77 to 1.6, and an abundance of commercial uses; and

WHEREAS, a radius diagram submitted by the applicant indicates that there is a commercial overlay along Kissena Boulevard between 70<sup>th</sup> Road and 71<sup>st</sup> Avenue directly across from the subject site; and

WHEREAS, the applicant states that a commercial building is currently under construction on Kissena Boulevard directly to the south of the subject site and that an existing commercial building occupies another corner of the intersection; and

WHEREAS, further, photographs submitted by the applicant depict commercial buildings located directly across from the subject site; and

WHEREAS, additionally, the Board directed the applicant to relocate the trash collection site and exterior lighting away from residences; and

WHEREAS, in response, the applicant submitted revised plans relocating the trash collection site and redirecting exterior lighting; and

WHEREAS, the Board also notes that the façade of the proposed development was redesigned to better integrate it within the surrounding residential neighborhood; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's pre-existing contaminated subsoil condition, and heavily trafficked location; and

WHEREAS, the Board notes that an interim proposal by the applicant provided for a two-story building with a height of 24'-0" and a total commercial/community facility floor area of 13,856 sq. ft.; and

WHEREAS, during the hearing process, the applicant modified the proposal to eliminate the second floor, to reduce the building height and the floor area; 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, on June 6, 2007, DEC signed off on the environmental cleanup performed at the site; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

*Therefore it is Resolved*, that the Board of Standards and Appeals adopts DCP's Negative Declaration under Article 8

# MINUTES

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 proposed construction of a one-story and cellar commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 30, 2008"- (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 6,928 sq. ft., an FAR of 0.70, a height of 15'-6", and 27 accessory 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 construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2008.

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## 171-07-BZ

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED –167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

**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, November 18, 2008.

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## 76-08-BZ

### CEQR #08-BSA-073Q

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.

SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR section 24-36. R5 district.

PREMISES AFFECTED – 621 Beach 9<sup>th</sup> Street, south of Caffney Avenue, Block 1558, Lot 15, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated October 27, 2008, acting on Department of Buildings Application No. 402465195, reads in pertinent part:

“Proposed rear yard is contrary to ZR 24-36;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the legalization of a not-for-profit ambulance/emergency vehicle garage, dispatch center, and training facility (Use Group 4) that does not provide the required rear yard, contrary to ZR § 24-36; and

WHEREAS, this application is brought on behalf of Hatzolah of Far Rockaway (“Hatzolah”), a not-for-profit volunteer emergency ambulance service; and

WHEREAS, a public hearing was held on this application on August 19, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2008, following which the application was set for decision on October 28, 2008; and

WHEREAS, on October 28, 2008 the decision was deferred and set for November 18, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 14, Queens, recommends approval of the application; and

WHEREAS, the West Lawrence Civic Association and the Jewish Community Council of the Rockaway Peninsula submitted letters in support of this application; and

WHEREAS, the site is located on the west side of Beach 9<sup>th</sup> Street, between Caffrey Avenue and Hicksville Road, in an

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# MINUTES

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R5 zoning district; and

WHEREAS, the site has a total lot area of approximately 4,787 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building housing a non-profit ambulance/emergency vehicle garage, dispatch center, and training facility (Use Group 4); and

WHEREAS, the applicant seeks a variance to permit a building with a rear yard of 16'-2" at the second floor to a height of 26'-0" (a rear yard with a minimum depth of 30'-0" is required above the first floor or 23'-0"); and

WHEREAS, the Board notes that the subject site identified as "Lot 15" does not yet exist, and will be created through a subdivision of existing Lot 16; and

WHEREAS, the applicant submitted a partial lot deed and other documentation establishing that the subject site is the subject of a pending application to subdivide Lot 16 and create a separate zoning lot (Tentative Lot 15); and

WHEREAS, the applicant represents that, because the resulting zoning lot will be non-compliant with respect to its rear yard, approval of the lot subdivision is conditioned on approval of the instant application; and

WHEREAS, the applicant states that Hatzolah is a volunteer ambulance/emergency response service which is offered for free to all residents of the neighborhoods it serves; and

WHEREAS, the existing two-story building has a total floor area of approximately 3,381 sq. ft. and an FAR of 0.71 (an FAR of 2.0 is permitted for a community facility use); and

WHEREAS, the first floor is used as a garage for three ambulances, and is occupied by accessory administrative offices and equipment storage; and

WHEREAS, the second floor is occupied by a training room; and

WHEREAS, the applicant states that the following are the programmatic needs of Hatzolah: (i) a large training room for New York State Department of Health ("DOH") emergency medical training, (ii) parking for ambulances, (iii) a storage area for emergency medical equipment, and (iv) office space; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that Hatzolah is certified by DOH to provide emergency medical care and emergency support; and

WHEREAS, the applicant further states that Hatzolah is operated by volunteers, comprised of certified emergency medical technicians, paramedics, and medical doctors who are required to complete a DOH training program in emergency medical care, and to be recertified every three years; and

WHEREAS, the applicant represents that the rear yard waiver is necessary to provide a training room that is adequate in size to provide emergency medical training for up to 50 students; and

WHEREAS, the applicant states that the training of

volunteers consists of demonstrations and practical tests involving training dummies, stretchers, and emergency medical equipment which requires a substantial amount of space; and

WHEREAS, the applicant represents that complying with the rear yard requirement would reduce the size of the training room by nearly 50 percent, thereby providing an inadequate training area for prospective emergency medical technicians; and

WHEREAS, the applicant states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site's high water table; and

WHEREAS, as to the site's water conditions, the applicant states that soil borings indicate that the underground water table was measured to a depth of four feet; and

WHEREAS, the applicant states that the size of the site, and its high water table do not permit the training room to be accommodated below-grade; and

WHEREAS, the applicant represents that because the noted high water table constrains its ability to locate program uses below-grade, in order to accommodate the required program on the upper floors, a waiver of the rear yard requirement is necessary; and

WHEREAS, the Board finds that Hatzolah's programmatic needs are legitimate, and agrees that the proposed waiver is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions on the site, namely the high water table, when considered in conjunction with the programmatic needs of Hatzolah, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Hatzolah is a not-for-profit institution and the variance is needed to further its not-for-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 to bulk, the applicant states that the subject building has an FAR of 0.71, which is well below the permitted FAR of 2.0 in the subject zoning district; and

WHEREAS, the applicant submitted a 400-foot radius diagram and photographs establishing that the bulk and height of the subject building are consistent with or lower than those of the surrounding neighborhood; and

WHEREAS, the applicant notes that there are several other community facility buildings in the surrounding community, including a three-story Yeshiva that abuts the subject building; and

WHEREAS, the applicant states that the rear yard

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# MINUTES

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encroachment is limited to the second floor and extends 13'-10" into the 30'-0" rear yard, from a height of 14'-0" to 26'-0"; and

WHEREAS, ZR §24-33 provides a rear yard exemption for a community facility building located within a residence district, allowing the first floor, or up to a height of 23'-0" of the building, to encroach into the rear yard as a permitted obstruction; and

WHEREAS, the Board notes that, although the rear yard exemption does not apply to the second floor, the height of the subject building (26'-0") is generally within the height allowed as a permanent obstruction (23'-0"); further, the second floor is set back 16'-2" from the rear lot line; and

WHEREAS, the Board further notes that the adjacent lot to the rear, occupied by the Yeshiva, is set back 30'-0" from the common rear lot line; 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 caused by the inability of providing a cellar to accommodate the program based on the high water table was not self-created, and that no development that would meet the programmatic needs of Hatzolah could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested rear yard waiver is the minimum necessary to accommodate Hatzolah's current and projected programmatic needs; and

WHEREAS, the Board notes that the height and floor area of the subject premises are well below that permitted in the zoning district, that the front yard and side yards meet or exceed the minimum requirements of the district, and that the requested relief is limited to the rear yard encroachment on the second floor; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow Hatzolah 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 an Unlisted action pursuant to 6 NYCRR, Sections 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA073Q, dated March 27, 2008; 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 the required findings under ZR § 72-21 to permit, in an R5 zoning district, the legalization of a two-story ambulance/emergency vehicle garage, dispatch center, and training facility (Use Group 4), which is contrary to ZR § 24-36, *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 25, 2008," – (5) 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 building parameters shall include a rear yard depth of 16'-2" at the second floor, as reflected on the BSA-approved plans;

THAT the use shall be limited to an ambulance/emergency vehicle garage, dispatch center, and training facility (Use Group 4);

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);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT development shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2008.

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## 158-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Kay Robyn Askenazi and Shay Ashkenazi, owners.

SUBJECT – Application June 6, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot

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# MINUTES

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coverage and open space (§23-141); less than the minimum side yards (§23-461) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1814 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue R and Avenue S, Block 6832, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 6, 2008, acting on Department of Buildings Application No. 310129624, 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, 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, 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 September 9, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008, and then to decision on November 18, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, representatives of the Madison-Marine-Homecrest Civic Association provided testimony in opposition to the proposal; and

WHEREAS, other neighborhood residents also testified in opposition to the proposal; and

WHEREAS, the subject site is located on the west side of East 27<sup>th</sup> Street, between Avenue R and Avenue S; 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 1,679 sq. ft. (0.56 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from 1,679 sq. ft. (0.56 FAR) to 3,211 sq. ft. (1.07 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides 46 percent of lot coverage (a maximum of 35 percent is permitted) and 54 percent of open space (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 2'-8" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement provides a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the proposed enlargement provides a perimeter wall height of 22'-1" (a maximum perimeter wall height of 21'-0" is permitted)

WHEREAS, the Board requested the applicant to establish that the increased height of the perimeter wall of the proposed enlargement is equal to or less than the height of the perimeter wall of the adjacent building; and

WHEREAS, in response, the applicant submitted a survey demonstrating that the perimeter wall height of the proposed home is consistent with that of the adjacent residence; and

WHEREAS, at hearing, a representative of the Madison-Marine-Homecrest Civic Association questioned whether a recently adopted text amendment to the Zoning Resolution affected the ability of the Board to waive the 30'-0" minimum rear yard requirement; and

WHEREAS, the Board notes that the text amendment was not incorporated within ZR § 73-622, and therefore has no affect on the instant application; 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



# MINUTES

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, 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 September 29, 2008" – (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,211 sq. ft. (1.07 FAR); lot coverage of 46 percent; an open space of 54 percent; one side yard with a width of 2'-8" along the northern lot; a rear yard with a minimum depth of 20'-0"; and a perimeter wall height of 22'-1", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height and compliance with the sky exposure plane;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 18, 2008.

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## 185-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Claremont LaSalle, Incorporated c/o Manhattan Modern Management, owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to allow the enlargement of a six-story building and installation of an elevator, contrary to bulk regulations.

PREMISES AFFECTED – 170 Claremont Avenue, corner lot located on the eastside of Claremont Avenue and south side of LaSalle Street, Block 1993, Lot 43, Borough of Manhattan.

## COMMUNITY BOARD #9M

APPEARANCES – None.

**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, November 18, 2008.

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## 189-08-BZ

### CEQR #09-BSA-008M

APPLICANT – The Law Office of Fredrick A. Becker, for Broadway Mercer Associates, owner; TSI Mercer Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment in the cellar, first and second floors in the six-story mixed-use building. The proposal is contrary to ZR Section 32-10. C6-2 district.

PREMISES AFFECTED – 232 Mercer Street, Easterly side of Mercer Street 220' north of Blecker Street. Block 532, Lot 15, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 13, 2008, acting on Department of Buildings Application No. 104148165, reads in pertinent part:

"ZR 32-10. Proposed physical culture establishment is not permitted as-of-right in C6-2 District;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-2 zoning district within the NoHo Historic District, the legalization of a physical culture establishment (PCE) within two mixed-use commercial/residential buildings, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, and then to decision on November 18, 2008; and

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# MINUTES

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site occupies a through lot located on the east side of Broadway and the west side of Mercer Street between Bleecker Street and West 3<sup>rd</sup> Street; and

WHEREAS, the site is occupied by two mixed-use commercial/residential buildings: an eight-story building and a twelve-story building; and

WHEREAS, the PCE occupies a total of approximately 25,286 sq. ft. of floor area on the cellar, first floor, and second floor of each building; and

WHEREAS, the PCE is operated as “New York Sports Club”; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, and aerobics; and

WHEREAS, the site is located within the NoHo Historic District; the applicant represents that the use is compatible with the commercial and residential uses in the surrounding area; and

WHEREAS, the hours of operation of the PCE are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; Saturday, from 6:00 a.m. to 10:00 p.m.; and Sunday, from 7:00 a.m. to 8:00 p.m.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 2, 1999 when, under BSA Cal. No. 7-97-BZ, the Board granted a special permit under ZR § 73-36 to allow the legalization of an existing PCE occupying the cellar, first and second floors of the subject premises, to expire on February 28, 2006; and

WHEREAS, the Board modified the original grant by letter in 2005, to allow a small enlargement of the previously improved space; and

WHEREAS, the applicant represents that the subject premises have been in continuous operation as a PCE since the lapse of the prior special permit on February 28, 2006; and

WHEREAS, the Board notes that the previously approved special permit lapsed more than two years ago, therefore a new special permit is required; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions

and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.09BSA008M, dated October 2, 2008; 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 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 C6-2 zoning district within the NoHo Historical District, the legalization of a physical culture establishment occupying the cellar, first and second floors of an eight-story mixed-use commercial/residential building and a twelve-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 July 14, 2008”-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 18, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

# MINUTES

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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 18, 2008.

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## 214-08-BZ

APPLICANT – Harold Weinberg, for Yossi Cohen, owner.  
SUBJECT – Application August 19, 2008 – Special Permit (§73-622) for the enlargement of an existing family residence. This application seeks to vary floor area, lot coverage and open space (§23-141); less than the minimum side yard (§23-461) and less than minimum required rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1855 East 24<sup>th</sup> Street, east side 305' north of Avenue S between Avenue R and Avenue S, Block 6830, Lot 64, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Harold Weinberg, P.E. and Frank Sellitto, R.A.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 29, 2008, acting on Department of Buildings Application No. 310169411, reads in pertinent part:

“The proposed enlargement of the existing two-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 by exceeding the allowable floor area ratio and is contrary to sections 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 sections 23-141 and 54-31;

3. Increases the degree of non-compliance with respect to one side yard and is contrary to sections 23-461 and 54-31;

4. Increases the degree of non-compliance with respect to lot coverage and is contrary to sections 23-141 and 54-31;

5. Reduces the rear yard below 30'-0" 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 R3-2 zoning district, the proposed enlargement of an existing two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area, FAR, open space, 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 October 7, 2008, after due notice by publication in *The City Record*, and then to decision on November 18, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24<sup>th</sup> Street, between Avenue R and Avenue S; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a two-family residence with floor area of 2,431 sq. ft. (0.81 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from 2,431 sq. ft. (0.81 FAR) to 3,216 sq. ft. (1.07 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides approximately 56 percent of open space (a minimum of 65 percent is required) and approximately 44 percent of lot coverage (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 2'-11" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement provides a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); 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

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# MINUTES

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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, within an R3-2 zoning district, the proposed enlargement of a two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 54-31, 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 19, 2008"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,216 sq. ft. (1.07 FAR); an open space of approximately 56 percent; lot coverage of approximately 44 percent; one side yard with a width of 2'-11" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 18, 2008.

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## 11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41<sup>st</sup> Avenue,

Block 1598, Lots 7 & 8, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for adjourned hearing.

-----

## 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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

## COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Robert Gardioso.

For Opposition: Manny Carvana, Mike Armstrong, June Osman, Peggy Vitalo, Tony Nunziatto and Walter Sanchez..

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for decision, hearing closed.

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## 46-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.

SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility building. The proposals contrary to sections 24-11 (Floor area ratio and lot coverage) and 24-522 (front wall height, setback, sky exposure plane and number of stories). R6 district.

PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for continued hearing.

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## 61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86<sup>th</sup> Street, LLC, owner; TSI Bay Ridge 86<sup>th</sup> Street,

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# MINUTES

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LLC dba New York Sports Club, lessee.  
SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR §32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86<sup>th</sup> Street, north side of 86<sup>th</sup> Street and east of 4<sup>th</sup> Avenue, Block 6035, Lot 64, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for continued hearing.

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**155-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Scott Kurland, Judith Baron and Samuel Falack.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for continued hearing.

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**159-08-BZ**

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Jay Segal.

For Opposition: Jennifer Polovetsky and Raul Velazques.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for decision, hearing closed.

-----

**172-08-BZ**

APPLICANT – Mitchell A. Korbey, Esq., for Sunnyside Jewish Center, owners.

SUBJECT – Application June 27, 2008 – Variance (§72-21) to permit the conversion of an existing two-story residential building to a house of worship. The proposal is contrary to ZR Section 24-35 (a) (Side yards). R5 district.

PREMISES AFFECTED – 40-20 47<sup>th</sup> Avenue, aka 4702-4710 41<sup>st</sup> Street, southwest corner of 47<sup>th</sup> Avenue and 41<sup>st</sup> Street, Block 198, Lot 36, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Eldad Gothelf.

For Administration: Regina Liang.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

-----

**188-08-BZ**

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.

PREMISES AFFECTED – 35 East 76<sup>th</sup> Street, (975-983 Madison; 981 Madison; 35-53 East 76<sup>th</sup> Street) northeast corner of Madison Avenue and East 76<sup>th</sup> Street, Block 1391, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Kenneth Barbina.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for postponed hearing.

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**199-08-BZ**

APPLICANT – Rizzo Group, LLP, for Acadia PA East Fordham Acqustns, LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 28, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the third floor in an existing 14-story mixed-use building. The proposal is contrary to ZR §32-10. C4-4 district.

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# MINUTES

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PREMISES AFFECTED – 400 East Fordham Road (aka 2506-2526 Webster Avenue/4747-4763 Park Avenue). Block 3033, Lot 12, Borough of Bronx.

**COMMUNITY BOARD #6BX**

APPEARANCES –

For Applicant:

For Opposition:

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for decision, hearing closed.

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**224-08-BZ**

APPLICANT – Omnipoint Communications Inc., for Remzija Suljovic, Rizo Muratovic, Brahim Muratovic, owners; Omnipoint Communications Inc., lessee.

SUBJECT – Application August 29, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower, to mount nine small panel antennas and related equipment cabinets on the rooftop.

PREMISES AFFECTED – 47-10 Laurel Hill Boulevard, south side of Laurel Hill Boulevard, bounded by 47<sup>th</sup> Street, to the west and 48<sup>th</sup> Street to the east, Block 2305, Lot 22, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.

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**225-08-BZ**

APPLICANT – Lewis E. Garfinkel, R.A., for Lewis Sternlicht, owner.

SUBJECT – Application September 2, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1155 East 24<sup>th</sup> Street, between Avenue K and Avenue L, Block 7624, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik, Lewis Garfinkel and Esther Schlosser.

For Opposition: Michael Marcus and Janet Marcus.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for decision, hearing closed.

-----

**230-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.

SUBJECT – Application September 5, 2008 – 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); and less than minimum rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1019 East 23<sup>rd</sup> Street, East side of 23<sup>rd</sup> Street between Avenue J and Avenue K, Block 7605, Lot 36, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 4:30 P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, No. 46

December 4, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

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**SUSAN M. HINKSON**

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**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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### CONTENTS

DOCKET .....788/789

**CALENDAR** of December 16, 2008

Morning .....790/791

Afternoon .....791/792

---

# DOCKET

---

**MINUTES** of Regular Meetings,  
**Tuesday, November 25, 2008**

Morning Calendar .....793

**Affecting Calendar Numbers:**

|                   |  |
|-------------------|--|
| 681-86-BZ         | 137-42 Guy Brewer Boulevard, Queens                  |
| 197-00-BZ         | 420 Lexington Avenue, Manhattan                      |
| 395-60-BZ         | 2557-2577 Linden Boulevard, Brooklyn                 |
| 398-85-BZ         | 2090 Bronxdale Avenue, Bronx                         |
| 239-97-BZ         | 1499 Bruckner Boulevard, Bronx                       |
| 306-05-BZY        | 206A Beach 3 <sup>rd</sup> Street, Queens            |
| 81-08-A & 82-08-A | 514-516 & 515 East 5 <sup>th</sup> Street, Manhattan |
| 164-08-A          | 26-1/2 State Road, Queens                            |
| 174-08-A          | 617 Bayside Drive, Queens                            |
| 192-08-A          | 772 Bayside, Queens                                  |
| 202-08-BZY        | 131 Second Place, Brooklyn                           |
| 212-08-A          | 131 Second Place, Brooklyn                           |
| 217-08-BZY        | 126 First Place, Brooklyn                            |
| 239-08-A          | 23 Hudson Walk, Queens                               |
| 141-07-A          | 129-48 Hookcreek Boulevard, Queens                   |
| 33-08-A           | 67 Brighton 1 <sup>st</sup> Land, Brooklyn           |
| 103-08-BZY        | 208 Grand Street, Brooklyn                           |
| 120-08-A          | 186 Grand Street, Brooklyn                           |

Afternoon Calendar .....820

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 203-08-BZ | 1245 East 23 <sup>rd</sup> Street, Brooklyn                         |
| 178-07-BZ | 2261-2289 Bragg Street, Brooklyn                                    |
| 220-07-BZ | 847 Kent Avenue, Brooklyn   |
| 20-08-BZ  | 53-55 Beach Street, Manhattan                                       |
| 40-08-BZ  | 3957 Laconia Avenue, Bronx  |
| 42-08-BZ  | 182 Girard Street, Brooklyn   |
| 93-08-BZ  | 112-12, 112-18, 112-24 Astoria Boulevard, Queens                    |
| 163-08-BZ | 2022 Avenue M, Brooklyn   |
| 175-08-BZ | 141 Allen Street, Manhattan   |
| 178-08-BZ | 153 Norfolk Street, Brooklyn  |
| 190-08-BZ | 41-43 Bond Street, Manhattan  |
| 195-08-BZ | 1350 East 27 <sup>th</sup> Street, Brooklyn                         |
| 196-08-BZ | 792 Tenth Avenue, a/k/a 455 West 53 <sup>rd</sup> Street, Manhattan |
| 216-08-BZ | 1624 Shore Boulevard, Brooklyn                                      |
| 236-08-BZ | 1986 East 3 <sup>rd</sup> Street, Brooklyn                          |



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# DOCKET

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New Case Filed Up to November 25, 2008  
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**277-08-BZY**

23 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 20, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**278-08-BZY**

26 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 4, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**279-08-BZY**

27 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 19, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**280-08-BZY**

31 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 18, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**281-08-BZY**

35 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block , Lot(s) 17, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**282-08-BZY**

39 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 16, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**283-08-BZY**

43 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 15, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**284-08-BZY**

47 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 14, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**285-08-BZY**

55 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 12, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**286-08-BZY**

59 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 11, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**287-08-BZY**

63 Opal Lane, Bounded by Idaho Avenue, Bloomingdale Road and Amboy Road., Block 6993, Lot(s) 10, Borough of **Staten Island, Community Board: 3.** Extension of Time (11-332) to complete construction under the prior zoning district.  
-----

**288-08-BZ**

2955 Veterans Road West, Cross streets:Tyrellian Avenue & West Shore Parkway, Block 7511, Lot(s) 1, Borough of **Staten Island, Community Board: 3.** Special Permit (73-36) to legalize the operation of existing martial arts studio.  
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# DOCKET

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**289-08-BZ**

966 East 23rd Street, West side of east 23rd, 220 feet north of Avenue J., Block 7586, Lot(s) 75, Borough of **Brooklyn, Community Board: 14**. 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 yards (23-461); and less than the required rear yard (23-47) in an R-2 zoning district.

-----

**290-08-BZ**

13-61 Beach Channel Drive, Southwest of the intersection of Beach Channel Drive and Birdsall Avenue., Block 15659, Lot(s) 18, Borough of **Queens, Community Board: 14**. Variance to allow proposed community facility use, contrary to bulk regulations.

-----

**291-08-BZ**

3141 Bedford Avenue, West side 140' south of the intersection of Bedford Avenue & Avenue J., Block 7607, Lot(s) 37, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.

-----

**292-08-A**

123 87<sup>th</sup> Street, North side of 87th Street 480 feet westerly from the northwest corner of 87<sup>th</sup> Street & Ridge Boulevard, Block 6042, Lot 67, Borough of **Brooklyn, Community Board: 10**. An Appeal Challenging Department of Buildings interpretation that Section 23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 Zoning District

-----

**293-08-A**

36-40 166th Street, Northwest corner of Depot Road and 166th Street., Block 5288, Lot(s) 39 & 40, Borough of **Queens, Community Board: 7**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

-----

**294-08-A**

36-40 166th Street, Northwest corner of Depot Road and 166th Street, Block 5288, Lot(s) 39 & 40, Borough of **Queens, Community Board: 7**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

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**296-08-A**

45-02 111th Street, East side of 45th Avenue 100'south of the intersection of 111th Street and 45th Avenue., Block 2001, Lot(s) 37, Borough of **Queens, Community Board: 4**.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**DECEMBER 16, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 16, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----

## **SPECIAL ORDER CALENDAR**

### **337-90-BZ**

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92<sup>nd</sup> Street, northeast corner of East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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### **239-07-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: YHA New York Inc.

SUBJECT – Application October 24, 2007 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43/71' west of 108<sup>th</sup> Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.

**COMMUNITY BOARD #4Q**

-----

### **63-08-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Manton Holding, LLC.

LESSEE: Royal Palace

SUBJECT – Application March 27, 2008 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

**COMMUNITY BOARD #6Q**

-----

### **147-08-BZY**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Beachway Equities, Incorporated.

SUBJECT – Application May 23, 2008 – To consider

dismissal for lack of prosecution. Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

**COMMUNITY BOARD #12Q**

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## **APPEALS CALENDAR**

### **200-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Michelle & Robert Bernabo, lessees.

SUBJECT – Application July 29, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of a mapped street and the upgrade of an existing non conforming private disposal system located in the bed of a mapped street contrary to General City Law Section 35.

PREMISES AFFECTED – 171 Bayside Drive, south side Bayside Drive, 138.75' west of Beach 178<sup>th</sup> Street, Block 16340, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **204-08-A**

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Inc., owner; Kathleen & Ralph Reed, lessees.

SUBJECT – Application August 5, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 26 Roosevelt Walk, west side Roosevelt Walk, 488.46' south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

-----

### **205-08-A**

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Domenic Guastadisegni, owner.

SUBJECT – Application August 6, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of mapped street contrary to General City Law Section 35 and not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 32 Tioga Walk, west side of Tioga Walk, north of 6<sup>th</sup> Avenue, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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## **232-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary & Steven Maceda, lessees.  
SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street (B216th) contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 50 Tioga Walk, west side Tioga Walk 126.5' south of 6<sup>th</sup> Avenue, Block 16350, Lot p/o 400, Borough of Queens.

### **COMMUNITY BOARD #14Q**

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## **233-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Elizabeth & Geoffrey Gilmartin, lessees.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Hillside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located within the bed of a mapped street contrary to GCL 35 and the Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 56 Hillside Avenue, south side Hillside Avenue 72.54' west of intersection with Rockaway Point Boulevard, Block, 16340, Lot p/o 50, Borough of Queens.

### **COMMUNITY BOARD #14Q**

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## **240-08-A**

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Victoria and William Fernandez, lessees.

SUBJECT – Application September 25, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street and the upgrade of an existing private disposal system in the bed of the mapped street contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 167 Bayside Drive, south side of Bayside Drive 100' west of mapped Beach 178<sup>th</sup> Street, Block 16340, Lot p/o 50, Borough of Queens.

### **COMMUNITY BOARD #14Q**

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## **261-08-BZY & 262-08-A**

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.  
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.

### **COMMUNITY BOARD # 7Q**

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## **263-08-BZY & 264-08-A**

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

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 R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 29-23 40<sup>th</sup> Road and 30-02 40<sup>th</sup> Avenue, Block 402, Lots 12 & 35, Borough of Queens.

### **COMMUNITY BOARD #1Q**

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**DECEMBER 16, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 16, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **162-08-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93<sup>rd</sup> Street Corporation, owner.

SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.

PREMISES AFFECTED – 150 East 93<sup>rd</sup> Street, southeast corner of East 93<sup>rd</sup> Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.

### **COMMUNITY BOARD #8M**

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### **198-08-BZ**

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the

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# CALENDAR

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second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (aka 268-276 Park Avenue South) west side of Park Avenue South at East 21<sup>st</sup> Street, Block 850, Lot 39, Borough of Manhattan.

**COMMUNITY BOARD #5M**  
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## **206-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.  
SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-51 (side yard setback), and parking (§25-31). R2X zoning district.

PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Anapolis Street, Block 15578, Lot 8, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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## **226-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district.

PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**  
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## **250-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5<sup>th</sup> Street, east side of East 5<sup>th</sup> Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn

**COMMUNITY BOARD # 15BK**  
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## **251-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Cynthia Esses, owner.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing one family

residence. This application seeks to vary side yards (§23-48) and less than the required rear yard (§23-47) in an R5 (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 2153 Ocean Parkway, east side of Ocean Parkway between Avenue U and Avenue V, Block 7133, Lot 50, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, NOVEMBER 25, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.

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## **SPECIAL ORDER CALENDAR**

### **681-68-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Sharon Cohen, owner.

SUBJECT – Application June 4, 2008 – Amendment to a previously granted Variance (§72-21) for the change of use on the first floor of an existing one story building from Offices (UG6) and Air-Freight Storage (UG16) to Retail Stores (UG6), in an R3-1 zoning district, with accessory storage in the cellar and accessory parking for patrons to remain.

PREMISES AFFECTED –137-42 Guy Brewer Boulevard, northwest corner of 140<sup>th</sup> Avenue and Guy Brewer Boulevard, Block 12309, Lot 17, 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

Absent: Commissioner Montanez.....1

#### **THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, to permit a change in use from offices (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6); and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in the *City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, Council Member Thomas J. White, Jr. provided testimony in opposition to this application; and

WHEREAS, Queens Borough President Helen Marshall provided testimony in support of the application, with conditions; and

WHEREAS, at hearing, certain members of the community opposed this application, including the United Neighbors Civic Association; and

WHEREAS, the site is located on the northwest corner of the intersection at 140<sup>th</sup> Avenue and Guy Brewer Boulevard, within an R3-1 zoning district; and

WHEREAS, the site is currently occupied by a one-story building, consisting of offices (Use Group 6) and an air freight terminal (Use Group 16) with accessory storage in the cellar, and an accessory parking area with 35 spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 24, 1964 when, under BSA Cal. No. 877-64-BZ, the Board granted a variance to permit the enlargement of the parking area which was accessory to a one-story retail store building located at the subject premises; and

WHEREAS, on November 26, 1968, under the subject calendar number, the Board granted a variance to permit a change in use of the retail store portion of the building to an air freight terminal; and

WHEREAS, the applicant represents that the portion of the subject building approved for use as an air freight terminal is now occupied by offices (Use Group 6), such that the entire building is currently occupied by offices (Use Group 6); and

WHEREAS, the applicant now seeks an amendment to permit a change in use of the subject building from office use (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6); and

WHEREAS, no enlargement to the subject building or change to the site plan is proposed; and

WHEREAS, the Queens Borough President recommended that the applicant provide screening and landscaping as a buffer to neighboring residences; and

WHEREAS, further, at hearing, the Board requested that the applicant take measures to buffer adjacent residential lots from the proposed retail use of the site; and

WHEREAS, the applicant states that both the southern lot line, adjoining a residential district, and the eastern lot line will be screened with a continuous six-foot high chain link fence with slat enclosures to create a 50 percent opaque effect, with a two-foot wide planting strip along the perimeter of the fence; and

WHEREAS, revised plans submitted by the applicant also indicate that street trees will be planted along Guy Brewer Boulevard and 140<sup>th</sup> Avenue pursuant to ZR § 26-41, that all lighting in the parking area will be directed down and away from residential properties, and that a loading dock will be provided to ensure that deliveries are made off-street; and

WHEREAS, at hearing, the Board raised concerns as to whether the subject site provides an adequate number of parking spaces for the proposed retail use; and

WHEREAS, the applicant confirmed that the subject site contained only 35 parking spaces while 36 spaces are required for the corresponding C-1 zoning district pursuant to ZR § 36-21; and

WHEREAS, in response, the applicant submitted revised drawings establishing that an additional parking space has been provided; and

WHEREAS, the Board finds that the change of use from offices (Use Group 6) and air freight terminal (Use Group 16)

# MINUTES

to retail stores (Use Group 6) will not adversely affect the character of the neighborhood.

*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 permit the change in use from offices (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6), *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 15, 2008"-(2) sheets and "November 12, 2008"-(1) sheet; and *on further condition*:

THAT the hours of operation of the retail stores shall be limited to: Monday through Sunday, from 8:00 a.m. to 11:00 p.m.;

THAT all signage shall comply with C1 zoning district regulations;

THAT DOB shall review and ensure compliance with landscaping and screening requirements 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 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. 410015987)

Adopted by the Board of Standards and Appeals, November 25, 2008.

## 197-00-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for SLG Graybar Sublease LLC, owner; Equinox 44<sup>th</sup> Street, Incorporated, lessee.

SUBJECT – Application August 8, 2008 – Application to amend a special permit previously granted by the Board of Standards and Appeals to permit, in a C5-3 (MiD) zoning district, a 1,010 sq. ft. extension of an existing physical culture establishment ("Equinox Fitness") within an existing commercial building.

PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208'4" north of East 42<sup>nd</sup> Street, Block 1280, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #5M

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

Absent: Commissioner Montanez.....1  
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit, to permit an increase in floor area of a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on October 28, 2008 after due notice by publication in the *City Record*, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on the west side of Lexington Avenue between 43<sup>rd</sup> and 44<sup>th</sup> Streets, within a C5-3 zoning district within the Special Midtown District; and

WHEREAS, the zoning lot is occupied by a 30-story commercial building; and

WHEREAS, on December 5, 2000, the Board granted a special permit under the subject calendar number to allow the establishment of a PCE occupying 10,950 sq. ft. of floor area on the first floor, 11,750 sq. ft. of floor area on what is known as the "upper first floor," and 5,870 sq. ft. of floor area on the mezzanine level, for a total of 28,570 sq. ft. of floor area; and

WHEREAS, the grant was for a term of ten years, to expire on December 4, 2010; and

WHEREAS, the PCE is operated as an Equinox Fitness facility; and

WHEREAS, on August 22, 2006, the Board amended the grant to allow for an increase of 5,781 sq. ft. of total floor area, from 28,570 sq. ft. to 34,351 sq. ft., with the addition of 2,248 sq. ft. of floor area on the first floor, 1,510 sq. ft. of floor area on the upper first floor, and 2,023 sq. ft. of floor area on the mezzanine level; and

WHEREAS, the applicant now proposes to further enlarge the PCE to include the addition of 1,010 sq. ft. of floor area on the first floor, resulting in an increase in total floor area occupied by the PCE from 34,351 sq. ft. to 35,361 sq. ft.; and

WHEREAS, the additional space will be utilized as a locker room with a shower and sauna area; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the special permit; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on December 5, 2000, so that as amended this portion of the resolution shall read: "to permit an increase in floor area occupied by the PCE on the first floor

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# MINUTES

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on condition that all work shall substantially conform to drawings filed with this application and marked 'Received August 8, 2008'-(3) sheets; and on further condition:

THAT the floor area of the PCE post-enlargement shall not exceed 35,361 sq. ft.;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the 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.”

(DOB Application. No. 102690081)

Adopted by the Board of Standards and Appeals, November 25, 2008.

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## 395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

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## 389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application June 13, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an Amendment to legalize the conversion of the service bays to a convenience store.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of

Bronx.

## COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 10 A.M., for decision, hearing closed.

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## 239-97-BZ

APPLICANT – Kenneth H. Koons, for B.W. Partners Incorporated, owner.

SUBJECT – Application September 3, 2008 – Extension of Term for a UG16 automotive service station and UG8 parking lot, in an R-6 zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1499 Bruckner Boulevard, north west corner of Wheeler Avenue, Block 3712, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: K. H. Koons.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

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# MINUTES

## APPEALS CALENDAR

### 306-05-BZY

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (§11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED – 206A Beach 3<sup>rd</sup> Street, Block 15604, Lot 34, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Abrugail Patterson.

**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

Absent: Commissioner Montanez.....1

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 foundations of five two-family attached dwellings, located on contiguous zoning lots; and

WHEREAS, a public hearing was held on this application on May 6, 2008 after due notice by publication in *The City Record*, with continued hearings on June 24, 2008, August 26, 2008, and October 28, 2008, and then to decision on November 25, 2008; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommends disapproval of the application; and

WHEREAS, the subject site consists of five adjacent lots (tentative Lots 31, 131, 32, 132 & and 34), located at the northeast corner of Seagirt Avenue and Beach 3<sup>rd</sup> Street; and

WHEREAS, the five lots are the result of a subdivision of a larger, pre-existing lot (formerly Lot 34); and

WHEREAS, each lot is 20 ft. wide by approximately 91 ft. deep; and

WHEREAS, each prospective zoning lot is proposed to be developed with a three-story, two-family attached dwelling (with the units side by side), a single garage and a single parking pad; and

WHEREAS, thus, on each zoning lot there will be two dwelling units, for a total of ten units over the entire proposed development (hereinafter, the “Proposed Development”); and

WHEREAS, on July 17, 2005, the applicant filed professionally-certified plans with the Department of Buildings; and

WHEREAS, five permits were issued on September 1, 2005 for the Proposed Development (NB Permit No. 402190883-01 for the building at 202 Beach 3<sup>rd</sup> Street; NB Permit No. 402190865-01 for the building at 204 Beach 3<sup>rd</sup> Street; NB Permit No. 402190847-01 for the building at 204A Beach 3<sup>rd</sup> Street; NB Permit No. 402190856-01 for the

building at 206 Beach 3<sup>rd</sup> Street; and NB Permit No. 402190874-01 for the building at 206A Beach 3<sup>rd</sup> Street (the “Permits”); and

WHEREAS, when the Permits were issued and when construction commenced, the site was within an R5 zoning district; and

WHEREAS, the Proposed Development complied with the R5 zoning, because attached dwellings and the proposed amount of floor area and other bulk parameters were allowed; and

WHEREAS, however, on September 15, 2005 (hereinafter, the “Rezoning Date”), the City Council voted to enact the Far Rockaway and Mott Creek rezoning proposal, which changed the site’s zoning from R5 to R3X; and

WHEREAS, in R3X zoning districts, only detached single-family and two-family dwellings are allowed; as noted above, the Proposed Development contemplates attached two-family dwellings; and

WHEREAS, additionally, the Proposed Development would not comply with R3X district provisions regarding floor area and open space; and

WHEREAS, because the Proposed Development violates these provisions of the R3X zoning and work on foundations was not completed, the issued permits lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a Revocation of Approval and Permit on October 10, 2008; and

WHEREAS, the applicant now applies to the Board to reinstate the Permits 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 Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations.”; and

WHEREAS, a threshold issue in this case is the proper categorization of the Proposed Development; and

WHEREAS, ZR § 11-31(c) sets forth definitions for

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# MINUTES

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various types of development, including “major development” and “minor development”; and

WHEREAS, major development includes construction of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit, as evidenced by an approved site plan showing all of the buildings; and

WHEREAS, minor development includes construction of multiple non-conforming buildings on contiguous zoning lots, again, provided that it can be shown that the development was planned as a unit; and

WHEREAS, the applicant has submitted a DOB-approved site plan showing that the Proposed Development was planned as a unit; however, this does not establish whether it is a major or a minor development; and

WHEREAS, the applicant contends that the Proposed Development is a major development, noting that the five buildings would be non-complying as to the above-mentioned bulk parameters; and

WHEREAS, pursuant to ZR § 11-331, major developments may be vested upon a showing of progress on foundation construction for just one of the multiple buildings; and

WHEREAS, minor developments, however, may be vested only upon a showing of progress of foundation construction for each of the buildings; and

WHEREAS, a submission by DOB states that the Proposed Development is non-complying in terms of bulk, but also notes that that the Proposed Development contemplates attached homes, which are a non-conforming use in R3X zoning districts pursuant to ZR § 22-00; and

WHEREAS, ZR § 12-10 defines a “non-conforming use” as “any lawful use, whether of a building or other structure . . . which does not conform to any one or more of the applicable use regulations of the district in which it is located . . . A non-conforming use shall result from failure to conform to the applicable district regulations”; and

WHEREAS, accordingly, a failure to conform with the residential uses allowed in the R3X district (limited to single-family or two-family detached residences) renders the Proposed Development non-conforming by definition; and

WHEREAS, the Board observes that the ZR is structured so that use regulations are plainly distinguished and separated from bulk regulations; thus, the Board views the inclusion of provisions concerning residential building type (attached, semi-detached, detached) in the clearly delineated use regulations as an indication that they are to be treated as use regulations; and

WHEREAS, a submission by the General Counsel of the Department of City Planning (“DCP”) concurs with DOB’s determination that attached two-family homes in an area rezoned to R3X would constitute non-conforming uses under the Zoning Resolution; and

WHEREAS, the DCP General Counsel also cites to a letter to the Board dated October 8, 1996 from the former General Counsel of the DCP regarding BSA Cal. No. 160-96-A, a case seeking to vest a 96-unit development

consisting of attached semi-attached and multiple family residential units in a district that was rezoned R3A (the “1996 Letter”), to illustrate the consistency of the department’s position on the issue; and

WHEREAS, based on facts which mirror the instant case, the former DCP General Counsel stated that the attached, detached or semi-detached nature of a residence is a use distinction rather than a bulk distinction, as provided by §§ 22-00 and 22-12 of the Zoning Resolution which govern uses in residence districts; and

WHEREAS, the 1996 Letter also points out that the definition of “use” in ZR § 12-10 supports the determination that different housing types constitute different uses; and

WHEREAS, the DCP General Counsel further concurs with DOB that in a case where the development would be both nonconforming and non-complying, such as the instant case, the more restrictive vesting standard is applicable, and the development would be properly categorized as a minor development; and

WHEREAS, thus, the Board disagrees with the applicant that the attached homes of the Proposed Development are merely non-complying; rather, the Board also considers the proposed attached dwellings non-conforming uses under the R3X zoning; and

WHEREAS, thus, the Board finds that the Proposed Development meets the definition of a minor development, since it is non-complying as to bulk, and a major development, since it is non-conforming as to use; and

WHEREAS, as noted above, the standards for a right to continue construction are different for the two categories; and

WHEREAS, since the Proposed Development meets the definitions of both a “minor development” and a “major development,” the Board must determine which definition’s standard to apply; and

WHEREAS, the Board observes that the standard for a minor development is more restrictive, in that it requires a consideration of excavation and progress on foundations for all buildings, not just one; and

WHEREAS, ZR § 11-22 provides that when two ZR provisions set forth overlapping or contradictory regulations, “that provision which is more restrictive or imposes higher standards or requirements shall govern”; and

WHEREAS, thus, it is appropriate for the Board to require that the applicant meet the more stringent standard for minor development; that is, to show that excavation had been completed and substantial progress had been made on each of the foundations, not just one; and

WHEREAS, in BSA Cal. No. 144-05-BZY, which also involved an application to renew a building permit for a development of attached homes which were rendered non-complying and non-conforming by a rezoning, the Board similarly required the application to meet the standard for a minor development; and

WHEREAS, the Board therefore requested that the applicant revise the instant application to reflect that the Proposed Development is a minor development; and

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# MINUTES

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WHEREAS, the applicant refused, and made various submissions purportedly supporting the classification of the Proposed Development as a major development; and

WHEREAS, the applicant argued that the Board's decisions in BSA Cal. No. 347-04-BZY and BSA Cal. No. 384-04-BZY, cases in which developments covering multiple lots were characterized as "major developments" determine that that the instant application should be evaluated as a major development; and

WHEREAS, the Board disagrees, noting that in each of the cited cases excavation was completed for the entire site and foundation work was performed over the entire site and, therefore, the analysis was based on the standard for a minor development, even if the respective development was mischaracterized as a "major development;" and

WHEREAS, the applicant additionally argues that ZR § 11-22 is inapplicable, asserting that the "'use' relates merely to the purpose for which the building or structure is used or intended to be used" and as the intended "use" is as a two-family home, which is permitted within a R3X district, the use has not changed; and

WHEREAS, the Board notes that the use of the property for attached residences, is specifically not permitted by the use provisions ZR § 22-00 in an 3X district; and therefore, the proposed development is non-conforming as to use; and

WHEREAS, the Board further notes that the applicant misstates the holdings of a number of court decisions (see e.g., *Farmers Bank of Fayetteville v. Hale*, 14 Sickles 53 (N.Y. 1894); *Wilcox v. Zing. Bd. of Apps of the City Yonkers* (17 N.Y.2d 249 (1966); *Nat'l Merritt, Inc. v. Weiss*, 41 N.Y.2d 438 (1977)) to support a proposition that the legislative intent of the Zoning Resolution is to construe the use of the subject lots as two-family attached homes to be the same as the use of the property for two-family detached homes in the R3X district, notwithstanding specific language stating otherwise; and

WHEREAS, the Board further notes that the cases cited by the appellant fail to support a finding that the use provisions of the Zoning Resolution pertaining to R3X districts should be interpreted inconsistently with the plain meaning of the Zoning Resolution; based on the appellant's imputation of underlying legislative intent; and

WHEREAS, furthermore, such a finding would be inconsistent with the fundamental rule of statutory construction -- that statutory language that is clear and unambiguous must be construed to give effect to the plain meaning of the words used (see *Raritan Development Corp. v. Silva*, 91 N.Y.2d 98 (1997)); and

WHEREAS, in *Raritan*, the Court of Appeals held that the Board has no discretion to broaden the scope and application of a provision of the Zoning Resolution that is clear and unambiguous (*id.*); and

WHEREAS, the Board finds that ZR § 22-00 is a use provision that clearly limits the development of attached two-family homes in an R3X district; and

WHEREAS, the applicant summarily concluded that

since the bulk provisions are violated, the application was appropriately categorized as a major development; and

WHEREAS, the Board does not accept the applicant's conclusion, since it has no basis in fact; and

WHEREAS, the Board finds that a provision that allows vesting upon a showing that progress has been made on just one foundation for a building in a multi-unit development constructed on contiguous zoning lots is inherently contradictory to a different provision that allows vesting only upon a showing that progress has been made on each foundation, where it can be shown that both provisions would apply based upon a development's non-conforming and non-complying status; and

WHEREAS, accordingly, the Board again requested that the application be revised to reflect that the Proposed Development is a minor development; and

WHEREAS, the applicant refused to revise the application to reflect this change; and

WHEREAS, since the Proposed Development is a minor development, the Board must find that excavation was completed and substantial progress was made over the entire development site and as to each required excavation and foundation; and

WHEREAS, the Board notes that the applicant does not refute that excavation and some foundation work was performed for only one building and that excavation was not complete for all buildings; and

WHEREAS, however, the threshold issue is that any work performed in support of a vesting claim must be performed pursuant to a valid permit; and

WHEREAS, as noted above, pursuant to DOB's professional certification program, the owner pre-filed applications for New Building permits for the proposed development on July 17, 2005; and

WHEREAS, the Permits were subsequently obtained by the owner on September 1, 2005, and work commenced; and

WHEREAS, on September 9, 2005, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on non-compliance with the R5 zoning, as well as with the Zoning Resolution and Building Code based on certain objections identified by a special audit review<sup>1</sup> (the

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<sup>1</sup> The DOB audit identified nine objections: "(1) Floor area ratio exceeded permitted as per ZR 12-141 (a) clarify mechanical room exemption required; (2) Building structure shall comply with earthquake code Local Law 17/95 – submit structural calculation as part of NB Application documentation; (3) Submit approved SDQ No. 646/05 3B Approved Drawing (a) drywall shall be located 10'-0" away from any foundation, (b) drywall shall not be located below water level; (4) Questionable storage room at first and second floor; (5) Party wall – fire division shall comply with BC 27-332/333; (6) Correction on PW1A required (a) zoning lot declaration, (b) Note as required by TPPN 1/2008 (c) penthouse shall be changed to third floor, (d) two unit only, not three."

# MINUTES

“Notice of Intent”); and

WHEREAS, the applicant attended a meeting with a meeting with the Chief Plan Examiner, in response to the letter of intent to revoke, but failed to resolve the objections; and

WHEREAS, on October 10, 2008, DOB revoked all permits and ordered that work be stopped on the basis that the Objections listed in the Notice of Intent had not been resolved; and

WHEREAS, DOB states that the Permits were issued in error and were properly revoked due to the applicant’s failure to resolve the building code and zoning objections cited in the September 9, 2005 Letter of Intent to Revoke; and

WHEREAS, at hearing, the applicant testified that all DOB objections had been satisfied, other than one regarding an audit by the Department of Environmental Conservation pertaining to forms submitted with the permit applications; and

WHEREAS, however, the applicant was unable to demonstrate to the Board that the objections were cured and that the Permits were valid; and

WHEREAS, indeed, in an affidavit submitted to the Board, the Chief Plan Examiner categorically states that at no point since the issuance of September 9, 2005 Letter of Intent to Revoke, had the applicant consulted with him regarding the objections to the plans, and the objections therefore remain intact; and

WHEREAS, it is well settled that vested rights cannot be acquired in reliance upon an invalid permit (see *Matter of Natchev v. Klein*, 41 N.Y.2d 834, 834 (1977); *Jayne Estates v. Raynor*, 22 N.Y.2d 417, 422 (1968));

WHEREAS, even where DOB erroneously issues a permit due to its own initial failure to notice that a builder's plans do not comply with provisions of the Zoning Resolution, no vested rights are acquired, since the permit could not have been validly granted in the first place (see *Perrotta v. City of New York*, 107 A.D.2d 320, 325 (1<sup>st</sup> Dep’t) aff’d 66 N.Y.2d 859 (985) and *GRA V, LLC v. Srinivasan*, 862 N.Y.S.2d 358 (1st Dep’t 2008)); and

WHEREAS, as stated by the Court in *Perrotta*, “[a] determination as to whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise” (107 A.D.2d at 324); and

WHEREAS, accordingly, DOB has determined that the permit was invalid ab initio and the right to complete the work cannot have vested; and

WHEREAS, the Board agrees with DOB that any work performed cannot be considered for vesting purposes because the plans would not have complied with the zoning requirements and therefore no permits could be properly issued to permit the construction that was performed; and

WHEREAS, accordingly, because the permits were erroneously issued for a non-compliant building and were therefore invalid when issued, DOB rejects the Appellant’s

vesting claim; and

WHEREAS, the Board agrees with DOB and notes that New York State courts have consistently held that vested rights may only be granted for work performed pursuant to valid permits; and

WHEREAS, accordingly, 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; and

WHEREAS, as a final matter, the Board observes that the applicant, in a written submission, claims that the owner has established vested rights under the common law; and

WHEREAS, however, the applicant has not expanded upon this assertion nor provided any evidence in support of it; and

WHEREAS, additionally, the Board notes that the subject application was brought pursuant to ZR § 11-331; the issue of common law vesting was not discussed by the applicant at hearing, nor was a formal application made for the Board’s consideration of such a claim, as required by Board practice; accordingly, the Board declines to render a determination as to this claim; and

*Therefore it is Resolved* that this application to renew NB Permit Nos. 402190883-01, 402190865-01, 402190847-01, 402190856-01 and 402190874-01 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, November 25, 2008.

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## 81-08-A

APPLICANT – Harvey Epstein, Esq., for 514-516 East 5<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 4, 2008 – Appeal seeking to revoke permit and approvals for a vertical enlargement of an existing non- fireproof tenement building which fails to comply with the applicable provisions of the MDL regarding fire safety standards. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, between A and Avenue B, Block 401, Lot 17, 18 & 56, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Harvey Epstein.

**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

Absent: Commissioner Montanez.....1

THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a determination of the Manhattan Borough Commissioner, dated March 6, 2008, to uphold the approval

1 Headings are utilized only in the interests of clarity and organization.

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# MINUTES

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of Alteration Permit No. 104744877 permitting the enlargement of a five-story non-fireproof tenement building; and

WHEREAS, the Final Determination reads, in pertinent part:

“[t]he Department has determined that the applicant’s proposed design upgrades the level of fire protection afforded the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require any sprinklers. Additionally, the Department will require hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so.

Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unnecessary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.

. . . The addition of the sprinkler system and the hard-wired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded them.

This shall be considered a Final Determination by the Department on . . . 514/516 East 6<sup>th</sup> Street, Manhattan;”

and

WHEREAS, this appeal was heard concurrently with a companion appeal under BSA Cal. No. 82-08-A, decided the date hereof, requesting a finding by the Board that the issuance of Alteration Permit No. 104744877 violated the New York State Multiple Dwelling Law and a revocation of the permit; and

WHEREAS, because the two appeals present the same issues of law and fact, in the interest of convenience, the Board heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this appeal on October 7, 2008, after due notice by publication in the *City Record*, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

## PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by Jean Chin, a tenant of the subject premises (the “appellant”); and

WHEREAS, the appellant, the Department of Buildings (“DOB”) and the owner of the subject buildings have been

represented by counsel throughout this proceeding; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this appeal; and

WHEREAS, Council Member Rosie Mendez provided written and oral testimony in support of this appeal; and

WHEREAS, Manhattan Borough President Scott Stringer provided testimony in support of this appeal; and

WHEREAS, State Senator Thomas K. Duane and Assembly Majority Leader Sheldon Silver also provided testimony in support of this appeal; and

WHEREAS, representatives of the Association for Neighborhood and Housing Development, The Greenwich Village Society for Historic Preservation and the Good Old Lower East Side, Inc. also provided written and oral testimony in support of this appeal; and

## THE SITE

WHEREAS, the subject site consists of two five-story “old-law” non-fireproof tenement buildings located on the south side of East 6<sup>th</sup> Street, between Avenue A and Avenue B which were constructed before 1901 (described interchangeably herein as the “Buildings” and the “subject buildings”); and

## PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the enlargement of the Buildings; and

WHEREAS, on October 3, 2007, DOB issued Alteration Permit No. 104744877 (the “Permit”) permitting a two-story vertical enlargement of the Buildings; and

WHEREAS, on October 26, 2007 and November 5, 2007, counsel for the appellant wrote the Manhattan Borough Commissioner requesting reconsideration of DOB’s approval of the Permit based on the alleged violation of the Multiple Dwelling Law; and

WHEREAS, on March 6, 2008, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on April 4, 2008, the appellant filed the instant appeal at the BSA; and

## ISSUES PRESENTED

WHEREAS, the appellant makes the following primary arguments in support of its position that DOB should revoke the Permit for the subject buildings: (i) the Multiple Dwelling Law expressly prohibits enlargement of non-fireproof tenement buildings unless they are brought up to all applicable code requirements governing new construction; (ii) DOB lacked authorization to permit alternative safety upgrades in lieu of meeting requirements of the Multiple Dwelling Law; and

WHEREAS, these two arguments are addressed below; and

## *Requirements of Enlargement of Tenement Buildings*

WHEREAS, the appellant contends the enlargement of the Buildings violates the fire protection measures of the Multiple Dwelling Law and therefore that the Permit should be revoked; and

WHEREAS, the appellant represents that that the Multiple Dwelling Law was enacted by the State Legislature

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# MINUTES

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in 1929 in part to provide fire protection to residents in New York City tenement buildings; and

WHEREAS, the appellant asserts that the enlargements of the Buildings is governed by MDL § 211, which prohibits the enlargement of any non-fireproof tenement to exceed a height of five stories; and

WHEREAS, the appellant states that MDL § 211 permits enlargements above five stories only in two circumstances: 1) a five-story old law tenement can be increased to six stories provided there is no increase in the height of the existing roof beams above curb level; and 2) any tenement can be enlarged to any height provided it meets all applicable requirements for comparable new fireproof construction under the MDL (see MDL § 3(11); and

WHEREAS, the appellant states pursuant to Local Law 76 of 1968, the City Council adopted a new building code (the "Building Code") which included egress requirements for multiple dwellings; and

WHEREAS, the appellant further states that because these provisions, as well as others in the Building Code, exceed the minimum requirements set forth in the MDL, the State Legislature amended the MDL to specifically allow the Building Code to be applied, at the option of the property owner, to alterations affecting multiple dwellings (see MDL § 3 (11) MDL); and

WHEREAS, the appellant states that § 27-120 of the Building Code incorporates the option afforded under the MDL; newly constructed multiple dwellings, as opposed to alterations to those existing in 1968, must comply with the City's stricter Building Code requirements; and

WHEREAS, the appellant contends that the enlargement of the subject buildings comply neither with the requirements of the MDL, nor with the stricter requirements of the Building Code, concerning fireproof construction, interior exit stairs, and elevators, among other deficiencies; and

WHEREAS, as defined by the MDL, the height of the subject buildings exceed six stories (see MDL § 4 (35) and (36)); and

WHEREAS, the appellant contends that the enlargement of the subject buildings above five stories triggers a requirement that the Buildings meet the MDL requirements for fireproof construction (MDL § 3(11)); and

WHEREAS, the appellants further contend that these requirements mandate that the floors and roof be made of non-combustible materials of one and one-half hour fire resistive rating (see MDL § 4(25); and

WHEREAS, it is undisputed that the Buildings do not meet this standard; and

WHEREAS, with respect to interior exit stairs, the Appellant states that the MDL requires interior exit stairs in fireproof buildings to be enclosed in noncombustible three-hour fire-rated walls (MDL §§ 102, 148); and

WHEREAS, the appellant represents that the approved assembly for three-hour fire-rated partitions is comprised of two layers of fire-rated sheetrock on both sides of 3-5/8" metal studs; and

WHEREAS, the appellant contends that the existing stair enclosures are comprised of plaster and wood lath on wood studs which is laminated only on the stair-side with fire-rated sheetrock; and

WHEREAS, the appellant further contends that fire-retarding a single side of an interior stair is not acceptable under the MDL for a two-story multiple dwelling, much less a seven story one (see MDL § 148 (3)); and

WHEREAS, the appellant argues that that the width of the staircase in 514 East 6<sup>th</sup> Street also violates the MDL; and

WHEREAS, the MDL requires interior exit stairs to be at least 36 inches in clear width (see MDL § 231(2)) and the appellant represents that the existing stair serving 514 East 6th Street is only 31 inches in width; and

WHEREAS, the appellant states that the MDL provides that apartment entry doors may not open directly onto an exit stair to prevent the egress stair from filling up with smoke in the event of a fire inside an apartment where the apartment entry door is left open (see MDL § 148); and

WHEREAS, the appellant contends that DOB approved an enlargement of the subject buildings despite the fact that the apartment entry doors open directly onto an exit stair; and

WHEREAS, DOB states that the sprinklering of the Buildings is an effective substitute for the requirements of MDL § 148; and

WHEREAS, the appellant asserts that the sprinklering of the Buildings would be ineffective to remediate a smoke condition, and that doing so would therefore not provide an equivalent level of protection and therefore would fail to be an acceptable substitute for the statutory requirement; and .

WHEREAS, the appellant argues that at more than six stories and 60 feet in height, the subject buildings also do not comply with the MDL requirements for elevator accessibility; and

WHEREAS, under the MDL, each building must be equipped with a passenger elevator accessible to every apartment above the entrance story and an elevator is required for any building exceeding four stories (see MDL § 51(6)); and

WHEREAS, the appellant states that the subject buildings have no elevators; and

WHEREAS, DOB argues that the Appellant's claim that elevators are required because the Buildings exceed six stories and 60 feet in height is incorrect, because longstanding DOB policy applies Building Code § 27-306 for the purposes of defining height limits; and

WHEREAS, if Building Code § 27-306 were applied to the Buildings, the seventh floor penthouses would not be included within the height or number of stories and, at a resulting six stories and less than 60 feet, the elevators would not be required; and

WHEREAS, however, as an interpretation of a provision of the MDL is at issue, the MDL definitions of height and number of stories must be applied;

WHEREAS, as stated above, under the MDL, the height

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# MINUTES

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of the subject buildings exceeds six stories and 60 feet (see MDL § 4 (35) and (36)); therefore elevators would be required; and

WHEREAS, the appellant contends that the aforementioned non-compliances as to fireproof construction, interior exit stairs, and elevators constitute a sampling of the deficiencies in MDL compliance by the subject buildings; and

WHEREAS, it is undisputed by DOB and the owner that the MDL requires fire safety upgrades in conjunction with the enlargement of tenement buildings; and

*Authorization to Vary the Application of the MDL*

WHEREAS, the appellant contends that DOB lacked authority to approve the enlargement of the subject buildings because of their non-compliance with the fire safety measures required by the MDL in conjunction with such enlargements; and

WHEREAS, the DOB states that the MDL was enacted in 1929, prior to the widespread use of sprinklers and other advancements in construction materials and represents that the design for the subject buildings upgraded the level of fire protection to a level at least equivalent to the standard required by the MDL (see February 1, 2008 letter from Deputy Commissioner Fatma M. Amer, P.E., to Council Member Mendez), but

WHEREAS, in her February 1, 2008 letter, Deputy Commissioner Amer also stated that “the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties that would be caused in this particular case by the compliance with the strict letter of the MDL provisions”; and

WHEREAS, in a submission to the Board, DOB states that strict compliance with the fire safety upgrades required by the MDL would make it virtually impossible for tenements such as the Buildings to be enlarged; and

WHEREAS, DOB represents that unless enlargement of such buildings were permitted in the manner implemented by DOB, increased fire safety measures would not be imposed, and

WHEREAS, DOB states that the fire safety upgrades which include: (i) sprinklering of the Buildings; (ii) installation of hard-wired smoke detectors in all apartments; (iii) increased fire-resistive rating of the stair and entrance hall walls and cellar ceilings; and (iv) the construction of fire passages in the rear yards (collectively, the “alternative safety measures”) are an effective alternative method of fire safety improvement that increase the safety of tenement residents; and

WHEREAS, Board acknowledges that the intent of the alternative safety measures was to ensure that tenement residents were better protected against fire than would be possible absent the enlargement of the Buildings; and

WHEREAS, the appellant asserts that by approving alterations that were inconsistent with the MDL, and with the alternative framework of the Building Code, DOB was in effect granting a variance from the strict requirements of the MDL; and

WHEREAS, the appellant argues that DOB lacks

authority to vary the application of the MDL; and

WHEREAS, the appellant states that DOB is required by the MDL to enforce its provisions (MDL § 303 (1)) and cannot refuse to do so or adopt new exceptions, and that Section 643 of the City Charter additionally provides that the Department “shall enforce” the provisions of the MDL, among other statutes; and

WHEREAS, the Appellant further states that the NYC Charter provides that the Commissioner of DOB “shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein” (NYC Charter § 645); and

WHEREAS, the appellant contends that the term “shall” used in the above-referenced statutes is mandatory, not optional, and does not allow DOB any latitude in its enforcement of the MDL; and

WHEREAS, the appellant points out that DOB is expressly granted the power to vary MDL requirements only with respect to loft dwellings (see MDL Article 7-b); and

WHEREAS, the appellant states that MDL instead vests the Board with the power to grant relief to the “strict letter” of its requirements (MDL § 310 (2)); and

WHEREAS, the appellant concludes that, other than with respect to loft dwellings, only the Board is empowered to grant variances to the strict letter of the MDL, and that variances granted by DOB would exceed its authority under the law; and

WHEREAS, the appellant further states that permitting an alternative scheme of fire protection also amounts to an attempt to legislate by DOB, without undergoing a formal rulemaking process, and points out that when the Council adopted the Building Code, the NYS Legislature made conforming amendments to the MDL to specifically allow the City’s code to be applied instead; and

WHEREAS, the Board notes that DOB has not provided statutory or legal authority supporting its authority to waive the MDL; and

WHEREAS, a submission by the owner argues that DOB has the ability to disregard the contested provisions of the MDL under its reserved police powers; and

WHEREAS, the Board disagrees that these provision allow DOB to enforce the MDL in a manner other than as prescribed, because they empower a City or town to make local laws, ordinances, resolutions or regulations concerning matters within the province of the MDL; and

WHEREAS, such a provision would not apply to the instant appeal because the alternative safety measures in question are not the subject of a local law, ordinance, resolution or regulation expressly permitting their implementation; and

WHEREAS, the Board further notes that MDL § 3 (7) expressly prohibits any local law, ordinance, rule or regulation from modifying or dispensing with any provision of the MDL; and

WHEREAS, the owner also argues that the alternative fire safety measures are not necessarily invalid, simply because they are not identical to the MDL, citing Schilhaus

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# MINUTES

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v. Gilroy (22 Misc. 2d 524 (Sup. Ct. 1959)), Dankner v. City of New York (cite) and Matter of Sacer Realty Corp. (73 N.Y.S. 2d 211 (Qns. Sup. Ct. 1947)) in support; and

WHEREAS, the Board notes that the afore-mentioned cases provide support for the proposition that a municipality can impose more restrictive measures to protect public health and safety and are therefore irrelevant to the question of whether DOB can adopt alternative safety measures that are not alleged to be more restrictive than the MDL; and

WHEREAS, the Board finds that MDL § 211 requires the enlargement of the subject buildings to comply with the MDL provisions governing fireproof buildings and that the alternative safety measures are inconsistent with the requirements of the MDL for fireproof buildings; and

WHEREAS, in the absence of stated authority for the approval of the alternative safety measures, the Board further finds that the Permit for the enlargement of the subject buildings was invalidly issued; and

*Authorization of the Board to Grant the Appeal*

WHEREAS, the owner argues that the Board does not have authority to decide this appeal, citing decisions in Cherry v. Brumbaugh (255 A.D. 880 (2d Dep't 1938)); Downey v. Vill. of Kensington (257 N.Y. 331 (1931)), and Levy v. Bd. of Stds. and Apps., 267 N.Y. 347 (1935)); and

WHEREAS, however, none of the cited cases support the owner's contention; the Cherry and Downey cases, inasmuch as they deal with issues concerning the constitutionality of zoning resolutions, are entirely inapposite to the question of the BSA's authority to hear appeals of DOB decisions and the Levy case actually supports the appellant's position that legislation is required to implement the alternative safety measures; and

WHEREAS, the Board's authority to hear the instant appeal is clearly conferred by Sections 648 and 666(6)(a) of the New York City Charter; and

WHEREAS, further, the Board concludes that it has the power to determine whether DOB was authorized to approve fire safety measures that were inconsistent with the requirements of the MDL; and

*Providing Relief to the Owner*

WHEREAS, the owner argues that if the law and facts dictate an approval of the instant appeal, the Board should nonetheless deny it and re-open the hearing to take evidence of the Owner's own hardship appeal; and

WHEREAS, the owner, argues that the Board should, within the context of the instant appeal, exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that addresses the Owner's "practical difficulties and or unnecessary hardship" in strictly complying with the MDL; and

WHEREAS, the Board notes that City Charter § 666(7) provides authority for it to hear an appeal concerning the application of the MDL; however, Section 1-07 of the Board's Rules of Practice and Procedure sets forth certain procedural and notification requirements necessary before the Board can act, including the filing of a formal application; and

WHEREAS, the owner has not met these requirements; and

WHEREAS, the owner states that decisions by the Board respecting applications filed as BSA Cal. Nos. 330-03-A, 132-03-A and 174-05-A provide precedent for it to seek and obtain relief in the instant appeal; and

WHEREAS, the Board disagrees that the cited resolutions provide a basis for the owner to seek and obtain relief in the instant appeal: in BSA Cal. No. 330-03-A and BSA Cal. No. 132-03-A, the Board acted on requests by applicants pursuant to Section 666 of the Charter, rather than on a request by a third party, such as the owner in the instant appeal; and in BSA Cal. No. 174-05-A, on the record presented, the Board modified a variance previously granted by DOB pursuant to Building Code § 27-107 that was within the authority of the agency; in the latter case, as with the two former cases, the Board was acting on an application before it, not in response to a request interposed by a third party seeking relief pursuant to an application filed by an unrelated party; and

WHEREAS, alternatively, the Owner also argues that if the law and facts dictate a grant of the instant appeal, that the Board has the jurisdiction to fashion relief so as to make its rule prospective only and to not revoke the Permit of the subject buildings; and

WHEREAS, the Board does not have the authority to simultaneously determine that the Permit for the enlargement of the Buildings was issued without authorization, and then to ignore that fundamental fact; and

WHEREAS, the Board finds that: (i) the proposed enlargement of the subject buildings under Alteration Permit No. 104744877 must meet the requirements of Multiple Dwelling Law for fireproof construction; (ii) the proposed enlargement of the Buildings does not comply with the requirements of the Multiple Dwelling Law for fireproof construction; and (iii) as DOB has not provided any evidence of statutory or legal authority to approve alternative safety measures, the enlargement must meet the requirement of the MDL for fire proof construction

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated March 6, 2008, and a revocation of Alteration Permit No. 104744877, is hereby granted; and

Adopted by the Board of Standards and Appeals, November 25, 2008.

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**82-08-A**

APPLICANT – Harvey Epstein, Esq., for 514-516 East 5<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 4, 2008 – Appeal seeking to revoke permit and approvals for a vertical enlargement of an existing non- fireproof tenement building which fails to comply with the applicable provisions of the MDL regarding fire safety standards. R7-2 zoning district.

PREMISES AFFECTED – 515 East 5<sup>th</sup> Street, between A and Avenue B, Block 401, Lot 17, 18 & 56, Borough of



# MINUTES

Manhattan.

## COMMUNITY BOARD #3M

### APPEARANCES –

For Applicant: Harvey Epstein.

### 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

Absent: Commissioner Montanez.....1

### THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a determination of the Manhattan Borough Commissioner, dated March 6, 2008, to uphold the approval of Alteration Permit No.104368845 permitting the enlargement of a five-story non-fireproof tenement building; and

WHEREAS, the Final Determination reads, in pertinent part:

“[t]he Department has determined that the applicant’s proposed design upgrades the level of fire protection afforded the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require any sprinklers. Additionally, the Department will require hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so.

Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unnecessary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.

. . . The addition of the sprinkler system and the hard-wired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded them.

This shall be considered a Final Determination by the Department on 515 East 5<sup>th</sup> Street . . . , Manhattan;”

and

WHEREAS, this appeal was heard concurrently with a companion appeal under BSA Cal. No. 81-08-A, decided the date hereof, requesting a finding by the Board that the issuance of Alteration Permit No.104368845 violated the New

York State Multiple Dwelling Law and a revocation of the permit; and

WHEREAS, because the two appeals present the same issues of law and fact, in the interest of convenience, the Board heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this appeal on October 7, 2008, after due notice by publication in the *City Record*, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

### PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by Monte Shapiro, Sharon Jane Smith, Alice Baldwin and Joseph Lubaszka, tenants of the subject premises (the “appellant”); and

WHEREAS, the appellant, the Department of Buildings (“DOB”) and the owner have been represented by counsel throughout this proceeding; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this appeal; and

WHEREAS, Council Member Rosie Mendez provided written and oral testimony in support of this appeal; and

WHEREAS, Manhattan Borough President Scott Stringer provided testimony in support of this appeal; and

WHEREAS, State Senator Thomas K. Duane and Assembly Majority Leader Sheldon Silver also provided testimony in support of this appeal; and

WHEREAS, representatives of the Association for Neighborhood and Housing Development, the Greenwich Village Society for Historic Preservation, and the Good Old Lower East Side, Inc. also provided written and oral testimony in support of this appeal; and

WHEREAS, the owner of 515 East 5<sup>th</sup> Street (the “owner”) provided written and oral testimony in opposition to this appeal; and

### THE SITE

WHEREAS, the subject site consists of a five-story “old-law” non-fireproof tenement building located on the north side of East 5<sup>th</sup> Street, between Avenue A and Avenue B which was constructed before 1901 (described interchangeably herein as the “Building” and the “subject building”); and

### PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the enlargement of a five-story non-fireproof tenement building (the “Building”) built prior to 1901; and

WHEREAS, on March 7, 2006, pursuant to its professional certification program, DOB issued Alteration Permit No. 104368845 permitting a two-story vertical enlargement of the Building; and

WHEREAS, at the request of City Council Member Mendez and other government officials, DOB conducted a special audit review of the Permit in May, 2006, and certain objections were raised; and

WHEREAS, according to the appellant, in response to these issues, the owner filed a second permit application

1 Headings are utilized only in the interests of clarity and organization.

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# MINUTES

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seeking to sprinkler the Building; and

WHEREAS, the appellant further states that in response to a request for reconsideration submitted by certain elected officials, DOB conducted a second special audit review which identified a number of violations of the Multiple Dwelling Law; and

WHEREAS, the complainants also questioned whether the enlargement complied with ZR § 23-692, known as the “Sliver Law”; and

WHEREAS, in February 2007, DOB issued a final determination with respect to the Sliver Law issue; an appeal to the Board followed under BSA Cal. No. 67-07-A which was granted on September 11, 2007; and

WHEREAS, on March 6, 2008, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on April 4, 2008, the appellant filed the instant appeal at the BSA; and  
ISSUES PRESENTED

WHEREAS, the appellant makes the following primary arguments in support of its position that DOB should revoke the Permit for the subject building: (i) the Multiple Dwelling Law expressly prohibits enlargement of non-fireproof tenement buildings unless they are brought up to all applicable code requirements governing new construction; (ii) DOB lacked authorization to permit alternative safety upgrades in lieu of meeting requirements of the Multiple Dwelling Law; and

WHEREAS, these two arguments are addressed below; and

#### *Requirements of Enlargement of Tenement Buildings*

WHEREAS, the appellant contends the enlargement of the Building violates the fire protection measures of the Multiple Dwelling Law and therefore that the Permit should be revoked; and

WHEREAS, the appellant represents that that the Multiple Dwelling Law was enacted by the State legislature in 1929 in part to provide fire protection to residents in New York City tenement buildings; and

WHEREAS, the appellant asserts that the enlargements of the Building is governed by MDL § 211, which prohibits the enlargement of any non-fireproof tenement to exceed a height of five stories; and

WHEREAS, the appellant states that MDL § 211 permits enlargements above five stories only in two circumstances: 1) a five-story old law tenement can be increased to six stories provided there is no increase in the height of the existing roof beams above curb level; and 2) any tenement can be enlarged to any height provided it meets all applicable requirements for comparable new fireproof construction under the MDL (see MDL § 3(11)); and

WHEREAS, the appellant states pursuant to Local Law 76 of 1968, the City Council adopted a new building code (the “Building Code”) which included egress requirements for multiple dwellings; and

WHEREAS, the appellant further states that because

these provisions, as well as others in the Building Code, exceed the minimum requirements set forth in the MDL, the State Legislature amended the MDL to specifically allow the Building Code to be applied, at the option of the property owner, to alterations affecting multiple dwellings (see MDL § 3 (11) MDL)); and

WHEREAS, the appellant states that § 27-120 of the Building Code incorporates the option afforded under the MDL; newly constructed multiple dwellings, as opposed to alterations to those existing in 1968, must comply with the City’s stricter Building Code requirements; and

WHEREAS, the appellant contends that the enlargement of the subject building complies neither with the requirements of the MDL, nor with the stricter requirements of the Building Code, concerning fireproof construction, interior exit stairs, and elevators, among other deficiencies; and

WHEREAS, as defined by the MDL, the height of the subject building exceeds six stories (see MDL § 4 (35) and (36)); and

WHEREAS, the appellant contends that the enlargement of the subject building above five stories triggers a requirement that the Building meet the MDL requirements for fireproof construction (MDL § 3(11)); and

WHEREAS, the appellants further contend that these requirements mandate that the floors and roof be made of non-combustible materials of one and one-half hour fire resistive rating (see MDL § 4(25)); and

WHEREAS, it is undisputed that the Building does not meet this standard; and

WHEREAS, with respect to interior exit stairs, the Appellant states that the MDL requires interior exit stairs in fireproof buildings to be enclosed in noncombustible three-hour fire-rated walls (MDL §§ 102, 148); and

WHEREAS, the appellant represents that the approved assembly for three-hour fire-rated partitions is comprised of two layers of fire-rated sheetrock on both sides of 3-5/8” metal studs; and

WHEREAS, the appellant contends that the existing stair enclosures are comprised of plaster and wood lath on wood studs which is laminated only on the stair-side with fire-rated sheetrock; and

WHEREAS, the appellant further contends that fire-retarding a single side of an interior stair is not acceptable under the MDL for a two-story multiple dwelling, much less a seven story one (see MDL § 148 (3)); and

WHEREAS, the appellant states that the MDL provides that apartment entry doors may not open directly onto an exit stair to prevent the egress stair from filling up with smoke in the event of a fire inside an apartment where the apartment entry door is left open (see MDL §148); and

WHEREAS, the appellant contends that DOB approved an enlargement of the subject building despite the fact that the apartment entry doors open directly onto an exit stair; and

WHEREAS, DOB states that the sprinklering of the Building is an effective substitute for the requirements of MDL § 148; and

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# MINUTES

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WHEREAS, the appellant asserts that the sprinkling of the Building would be ineffective to remediate a smoke condition, and that doing so would therefore not provide an equivalent level of protection and therefore would fail to be an acceptable substitute for the statutory requirement; and .

WHEREAS, the appellant argues that at more than six stories and 60 feet in height, the subject building also does not comply with the MDL requirements for elevator accessibility; and

WHEREAS, under the MDL, each building must be equipped with a passenger elevator accessible to every apartment above the entrance story and an elevator is required for any building exceeding four stories (see MDL § 51(6)); and

WHEREAS, the appellant states that the subject building has no elevator; and

WHEREAS, DOB argues that the Appellant's claim that an elevator is required because the Building exceeds six stories and 60 feet in height is incorrect, because longstanding DOB policy applies Building Code § 27-306 for the purposes of defining height limits; and

WHEREAS, if Building Code § 27-306 were applied to the Building, the seventh floor penthouse would not be included within the height or number of stories and, at a resulting six stories and less than 60 feet, an elevator would not be required; and

WHEREAS, however, as an interpretation of a provision of the MDL is at issue, the MDL definitions of height and number of stories must be applied;

WHEREAS, as stated above, under the MDL, the height of the subject building exceeds six stories and 60 feet (see MDL § 4 (35) and (36)); therefore an elevator would be required; and

WHEREAS, the appellant contends that the aforementioned non-compliances as to fireproof construction, interior exit stairs, and elevators constitute a sampling of the deficiencies in MDL compliance by the subject building; and

WHEREAS, it is undisputed by DOB and the owner that the MDL requires fire safety upgrades in conjunction with the enlargement of tenement buildings; and

#### *Authorization to Vary the Application of the MDL*

WHEREAS, the appellant contends that DOB lacked authority to approve the enlargement of the subject building because of non-compliance with the fire safety measures required by the MDL in conjunction with such enlargement; and

WHEREAS, the DOB states that the MDL was enacted in 1929, prior to the widespread use of sprinklers and other advancements in construction materials and represents that the design for the subject building upgraded the level of fire protection to a level at least equivalent to the standard required by the MDL (see February 1, 2008 letter from Deputy Commissioner Fatma M. Amer. P.E., to Council Member Mendez), but

WHEREAS, in her February 1, 2008 letter, Deputy Commissioner Amer also stated that "the fire-safety upgrades in the proposed design maintain the spirit and

intent of the MDL, given the practical difficulties that would be caused in this particular case by the compliance with the strict letter of the MDL provisions"; and

WHEREAS, in a submission to the Board, DOB states that strict compliance with the fire safety upgrades required by the MDL would make it virtually impossible for tenements such as the Building to be enlarged; and

WHEREAS, DOB represents that unless enlargement of such buildings were permitted in the manner implemented by DOB, increased fire safety measures would not be imposed, and

WHEREAS, DOB states that the fire safety upgrades which include: (i) sprinkling of the Building; (ii) installation of hard-wired smoke detectors in all apartments; (iii) increased fire-resistive rating of the stair and entrance hall walls and cellar ceilings; and (iv) the construction of fire passages in the rear yards (collectively, the "alternative safety measures") are an effective alternative method of fire safety improvement that increase the safety of tenement residents; and

WHEREAS, Board acknowledges that the intent of the alternative safety measures was to ensure that tenement residents were better protected against fire than would be possible absent the enlargement of the Building; and

WHEREAS, the appellant asserts that by approving alterations that were inconsistent with the MDL, and with the alternative framework of the Building Code, DOB was in effect granting a variance from the strict requirements of the MDL; and

WHEREAS, the appellant argues that DOB lacks authority to vary the application of the MDL; and

WHEREAS, the appellant states that DOB is required by the MDL to enforce its provisions (MDL § 303 (1)) and cannot refuse to do so or adopt new exceptions, and that Section 643 of the City Charter additionally provides that the Department "shall enforce" the provisions of the MDL, among other statutes; and

WHEREAS, the Appellant further states that the NYC Charter provides that the Commissioner of DOB "shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein" (NYC Charter § 645); and

WHEREAS, the appellant contends that the term "shall" used in the above-referenced statutes is mandatory, not optional, and does not allow DOB any latitude in its enforcement of the MDL; and

WHEREAS, the appellant points out that DOB is expressly granted the power to vary MDL requirements only with respect to loft dwellings (see MDL Article 7-b); and

WHEREAS, the appellant states that MDL instead vests the Board with the power to grant relief to the "strict letter" of its requirements (MDL § 310 (2)); and

WHEREAS, the appellant concludes that, other than with respect to loft dwellings, only the Board is empowered to grant variances to the strict letter of the MDL, and that variances granted by DOB would exceed its authority under the law; and

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# MINUTES

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WHEREAS, the appellant further states that permitting an alternative scheme of fire protection also amounts to an attempt to legislate by DOB without undergoing a formal rulemaking process, and points out that when the Council adopted the Building Code, the NYS Legislature made conforming amendments to the MDL to specifically allow the City's code to be applied instead; and

WHEREAS, the Board notes that DOB has not provided statutory or legal authority supporting its authority to waive the MDL; and

WHEREAS, a submission by the owner argues that DOB has the ability to disregard the contested provisions of the MDL under its reserved police powers; and

WHEREAS, the Board disagrees that these provision allow DOB to enforce the MDL in a manner other than as prescribed, because they empower a City or town to make local laws, ordinances, resolutions or regulations concerning matters within the province of the MDL; and

WHEREAS, such a provision would not apply to the instant appeal because the alternative safety measures in question are not the subject of a local law, ordinance, resolution or regulation expressly permitting their implementation; and

WHEREAS, the Board further notes that MDL § 3 (7) expressly prohibits any local law, ordinance, rule or regulation from modifying or dispensing with any provision of the MDL; and

WHEREAS, the owner also argues that the alternative fire safety measures are not necessarily invalid, simply because they are not identical to the MDL, citing *Schilhaus v. Gilroy* (22 Misc. 2d 524 (Sup. Ct. 1959)), *Dankner v. City of New York* (cite) and *Matter of Sacer Realty Corp.* (73 N.Y.S. 2d 211 (Qns. Sup. Ct. 1947)) in support; and

WHEREAS, the Board notes that the afore-mentioned cases provide support for the proposition that a municipality can impose more restrictive measures to protect public health and safety and are therefore irrelevant to the question of whether DOB can adopt alternative safety measures that are not alleged to be more restrictive than the MDL; and

WHEREAS, the Board finds that MDL § 211 requires the enlargement of the subject building to comply with the MDL provisions governing fireproof buildings and that the alternative safety measures are inconsistent with the requirements of the MDL for fireproof buildings; and

WHEREAS, in the absence of stated authority for the approval of the alternative safety measures, the Board further finds that the Permit for the enlargement of the subject building was invalidly issued; and

#### *Authorization of the Board to Grant the Appeal*

WHEREAS, the owner argues that the Board does not have authority to decide this appeal, citing decisions in *Cherry v. Brumbaugh* (255 A.D. 880 (2d Dep't 1938)); *Downey v. Vill. of Kensington* (257 N.Y. 331 (1931)), and *Levy v. Bd. of Stds. and Apps.*, 267 N.Y. 347 (1935)); and

WHEREAS, however, none of the cited cases support the owner's contention; the *Cherry* and *Downey* cases, inasmuch as they deal with issues concerning the

constitutionality of zoning resolutions, are entirely inapposite to the question of the BSA's authority to hear appeals of DOB decisions and the *Levy* case actually supports the appellant's position that legislation is required to implement the alternative safety measures; and

WHEREAS, the Board's authority to hear the instant appeal is clearly conferred by Sections 648 and 666(6)(a) of the New York City Charter; and

WHEREAS, further, the Board concludes that it has the power to determine whether DOB was authorized to approve fire safety measures that were inconsistent with the requirements of the MDL; and

#### *Providing Relief to the Owner*

WHEREAS, the owner argues that if the law and facts dictate an approval of the instant appeal, the Board should nonetheless deny it and re-open the hearing to take evidence of the Owner's own hardship appeal; and

WHEREAS, the owner, argues that the Board should, within the context of the instant appeal, exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that addresses the Owner's "practical difficulties and or unnecessary hardship" in strictly complying with the MDL; and

WHEREAS, the Board notes that City Charter § 666(7) provides authority for it to hear an appeal concerning the application of the MDL; however, Section 1-07 of the Board's Rules of Practice and Procedure sets forth certain procedural and notification requirements necessary before the Board can act, including the filing of a formal application; and

WHEREAS, the owner has not met these requirements; and

WHEREAS, the owner states that decisions by the Board respecting applications filed as BSA Cal. Nos. 330-03-A, 132-03-A and 174-05-A provide precedent for it to seek and obtain relief in the instant appeal; and

WHEREAS, the Board disagrees that the cited resolutions provide a basis for the owner to seek and obtain relief in the instant appeal: in BSA Cal. No. 330-03-A and BSA Cal. No. 132-03-A, the Board acted on requests by applicants pursuant to Section 666 of the Charter, rather than on a request by a third party, such as the owner in the instant appeal; and in BSA Cal. No. 174-05-A, on the record presented, the Board modified a variance previously granted by DOB pursuant to Building Code § 27-107 that was within the authority of the agency; in the latter case, as with the two former cases, the Board was acting on an application before it, not in response to a request interposed by a third party seeking relief pursuant to an application filed by an unrelated party; and

WHEREAS, alternatively, the Owner also argues that if the law and facts dictate a grant of the instant appeal, that the Board has the jurisdiction to fashion relief so as to make its rule prospective only and to not revoke the Permit of the subject building; and

WHEREAS, the Board does not have the authority to simultaneously determine that the Permit for the enlargement

# MINUTES

of the Building was issued without authorization, and then to ignore that fundamental fact; and

WHEREAS, the Board finds that: (i) the proposed enlargement of the subject building under Alteration Permit No. 104368845 must meet the requirements of Multiple Dwelling Law for fireproof construction; (ii) the proposed enlargement of the Building does not comply with the requirements of the Multiple Dwelling Law for fireproof construction; and (iii) as DOB has not provided any evidence of statutory or legal authority to approve alternative safety measures, the enlargement must meet the requirement of the MDL for fireproof construction.

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated March 6, 2008, and a revocation of Alteration Permit No. 1104368845, is hereby granted; and

Adopted by the Board of Standards and Appeals, November 25, 2008.

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## 164-08-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Michelle & James Fox, owners.

SUBJECT – Application June 17, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling in the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 26-1/2 State Road, north side Rockaway Point Boulevard, west of Beach 178<sup>th</sup> Street, Block 16350, Lot 50, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**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

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated June 10, 2008, acting on Department of Buildings Application No. 410078632 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

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated July 23, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 8, 2008, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 2008, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated June 10, 2008, acting on Department of Buildings Application No. 410078632, 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 1, 2008 ”-(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, November 25, 2008.

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## 174-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lydia & Cosmo Lenaro, owners.

SUBJECT – Application July 1, 2008 – Proposed reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 617 Bayside Drive, partially in the southeast corner of the intersection of mapped Bayside Drive and Beach 202<sup>nd</sup> 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 Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated June 20, 2008, acting on Department of Buildings Application No. 410094785 reads, in pertinent part:

A-1 The existing building to be altered lies within

# MINUTES

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 November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated July 22, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 29, 2008, the Department of Environmental Protection ("DEP") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 2008, the Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated June 20, 2008, acting on Department of Buildings Application No. 410094785, 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 1, 2008"- (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, November 25, 2008.

## 192-08-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Margaret Campione, owner.

SUBJECT – Application July 15, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to GCL 35 and not fronting a mapped street contrary to GCL 36. R4 Zoning District.

PREMISES AFFECTED – 772 Bayside, west side of Bayside 90' north of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

**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

Absent: Commissioner Montanez.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner dated July 8, 2008, acting on Department of Buildings Application No. 410119312 reads, in pertinent part: For the Board of Standards and Appeals Only:

A-1 - The proposed enlargement is on a site where the building and lot are located partially in the bed of a mapped street therefore no Certificate of Occupancy can be issued as per Art. 3, Section 35 of the General City Law; and

A-2 - The street giving access to the existing building altered 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 altered does not have at least 8% of the total perimeter of the building fronting space, contrary to Section 27-291 of the Administrative Code.

A-3 - The proposed upgrade of the private disposal system is contrary to the Department of Building policy;" and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated July 28, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated August 11, 2008, the Department of Environmental Protection ("DEP") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 2008, the Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 8, 2008, acting on Department of Buildings Application No. 410119312 is modified by the power vested in the Board by Section 35/36 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 July 15, 2008" – 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*

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# MINUTES

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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 DOB shall review the proposed plans to ensure that it complies with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 25, 2008.

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## 202-08-BZY

APPLICANT – Greenberg Traurig by Deirdre Carson, for Oliver Development, LLC, owner.

SUBJECT – Application August 1, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to a text amendment on July 23, 2008. R6 Zoning district.

PREMISES AFFECTED – 131 Second Place, northwest corner of Second Place and Smith Street, Block 459, Lot 24, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

#### APPEARANCES –

For Applicant: Deirdre Carson.

**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

Absent: Commissioner Montanez.....1

#### 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 seven-story residential building; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 212-08-A, decided the date hereof, which is a request for a finding that the owner of the site has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, the cases were heard together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on September 24, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site

and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn recommends disapproval of this application; and

WHEREAS, a representative of Assemblywoman Joan L. Millman testified in opposition to this application; and

WHEREAS, several community residents testified in favor of this application; and

WHEREAS, certain community residents also opposed this application, including members of the Carroll Gardens Neighborhood Association, Inc., and the Carroll Gardens Coalition for Respectful Development, (collectively, the “Opposition”); and

WHEREAS, specifically, the Opposition raised the following concerns: (1) the permit is invalid; (2) the excavation was not complete; and (3) substantial progress on the foundation was not complete; and

WHEREAS, the subject site is located at the northwest corner of Second Place and Smith Street in the Carroll Gardens neighborhood of Brooklyn; and

WHEREAS, the site has a frontage of approximately 82.5 feet on Smith Street and 115 feet on Second Place; the Zoning Lot has a total lot area of 23,023 sq. ft.; and

WHEREAS, the site shares the Zoning Lot with a two-story school/day care facility located at 342 Smith Street; the subject site occupies approximately 9,400 sq. ft. of the Zoning Lot area; and

WHEREAS, the site is proposed to be developed with a seven-story 48-unit residential building (the “Building”), with a total floor area of 61,031 sq. ft. (2.7 FAR); and

WHEREAS, the subject site is located on a “Place Street” which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district; and

WHEREAS, the subject site is subject to an easement in favor of the Transit Authority for a subway entrance, and contains subway structures at or near grade and a subway line below grade; and

WHEREAS, on February 22, 2008, New Building Permit No. 302290777-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, revised structural plans were approved on April 15, 2008 and revised architectural plans were approved on May 5, 2008; the Owner commenced construction of the foundation on April 15, 2008; and

WHEREAS, when the Permit was issued, Second Place was a “wide street” under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19<sup>th</sup> century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text Amendment, which redefined Second Place as a “narrow

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# MINUTES

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street;” and

WHEREAS, the applicant represents that the Building complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 2.7 (a maximum FAR of 3.0 is permitted), a floor area of 61,031 sq. ft., a street wall height of 66 feet, and a total building height of 70 feet; and

WHEREAS, because the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2, a maximum residential floor area of 43,631 (because of envelope restrictions), a streetwall height of 45 feet, and a maximum building height of 55 feet; and

WHEREAS, because the Building violates these limitations on development fronting on a narrow street and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on July 24, 2008 for the Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior R6 zoning as applied to a wide street; 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 Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations;” and

WHEREAS, a threshold requirement in this application is that the Permit is valid; 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, the record indicates that the Permit was issued to the owner by DOB on February 22, 2008 authorizing

construction of the proposed Building; and

WHEREAS, at hearing, the Opposition contested the validity of the Permit based on two issues: (i) the alleged non-compliance of the outer court; and (ii) an alleged discrepancy in the zoning lot description; and

WHEREAS, the Opposition contends that the proportions of the outer court of a one-story permitted obstruction in the rear yard of the building do not comply with ZR § 23-841; therefore, that the permit is invalid; and

WHEREAS, further, the Opposition contends that there is a discrepancy between the Zoning Lot Description approved by DOB for the Permit application which was recorded with the Office of the City Register on April 11, 2007 and the Zoning Lot description submitted to the Board by the applicant; and

WHEREAS, at hearing, in response to the Opposition’s concerns, the Board requested DOB to respond to both issues; and

WHEREAS, in response, the Department of Buildings issued an objection to the applicant on October 20, 2008 based on the potential non-compliance of the Building plans with the outer court requirements of ZR § 23-841; and

WHEREAS, a subsequent submission by DOB states that amended plans that addressed the objection concerning ZR § 23-841 were approved on October 24, 2008; therefore the Permit was lawfully issued on February 22, 2008; 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, a further submission by DOB stated that the respective Zoning Lot Descriptions recorded at the City Register and submitted to the Board were essentially identical except for the different format of the lot diagrams; and

WHEREAS, ZR § 11-31(a) provides that the Commissioner of DOB shall determine whether a building permit authorizes the proposed construction; and

WHEREAS, DOB has provided a submission confirming the validity of the permit; and

WHEREAS, based on the determination by DOB, the Board accepts the validity of the Permit on the referenced date of issuance, which is prior to the Enactment Date; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth ZR § 11-31(a) and a decision may be rendered provided the other findings are met; 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

WHEREAS, the applicant states that excavation began on April 21, 2008 and was completed July 22, 2008, and



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# MINUTES

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that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, the applicant further states that the excavation was completed in stages, as follows: (1) the entire foundation area was excavated to a level two feet above the final sub-grade level to provide a necessary platform for the drilling rig; and (2) the remaining soil was removed as the piles were installed, with the south end of the site excavated immediately prior to completion; and

WHEREAS, the Opposition asserts that the excavation of the site was not complete since photographs of the site indicated that a mound of earth measuring approximately 1,400 sq. ft. remained on the Enactment Date that was to have been cleared for the foundation; and

WHEREAS, the Opposition further states that no excavation had occurred in an area at the former subway plaza, despite plans depicting that area as a site for a mat foundation; and

WHEREAS, at hearing the Building engineer explained that all excavation for the foundation was complete and that the soil remaining was meant to protect the subway during the construction; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundation was approximately 86 percent complete as of the Enactment Date; and

WHEREAS, the applicant states that, as a result of the location of the subject site over a subway station and the MTA right of way, the Building's foundation is unusual and consists of two components; and

WHEREAS, applicant states that one component of the foundation consists of 91 70-foot long drilled friction piles and a 505 cubic yard reaction mass; and

WHEREAS, the applicant further states that the piles do not reach bedrock and are constructed in parts by drilling a hollow steel pipe containing rebar to the full pile depth, filling the pipe with concrete grout, and adding and filling additional pipes on top of each other; many of the piles are drilled at a 24 degree angle; and

WHEREAS, after the piles are completed, the reaction mass is poured around their tops to serve as a large, single pile cap and as a slab to bear the vertical and lateral loads of the portion of the Building located above the reaction mass as well as lateral loads from the remainder of the Building; and

WHEREAS, the applicant represents that the other component of the foundation consists of the existing subway foundation and structure which covers the majority of the site and was engineered to support a six-story manufacturing building at loads heavier than that of the Building; and

WHEREAS, the applicant states that the subway structure will support the Building's loads in the following manner: existing subway columns support the subway roof, constructed of steel and concrete, which is currently covered

with mastic and a layer of fire brick and a thin layer of fill; and

WHEREAS, additional fill and the concrete slab will be placed on the existing fill layer and then neoprene vibration isolators will be placed on the concrete mat to support the Building's columns; and

WHEREAS, the applicant represents that the Building's loads will be transferred through the neoprene pads, through the concrete mat, fill, fire brick, and mastic, to the subway roof and its columns and ultimately to the soil below; and

WHEREAS, the applicant further represents that the creation of a foundation to support a building above was contemplated by the MTA in its design for the station, as evidenced by the MTA's original drawing which states that "columns may be placed within the easement area to support structure above the upper plane of easement, provided loads to be supported on subway roof shall not exceed twenty seven hundred (2,700) pounds per square foot" and

WHEREAS, the applicant represents that the use of the existing subway structure to support the Building is consistent with the Building Code definition of a "foundation" as "a construction that transfers building loads to the supporting soil" (see Building Code of the City of New York, Title 27, Subchapter 2); and

WHEREAS, the applicant asserts that because the only construction on the Property that will transfer the Building's loads to the soil will be the reaction mass and the piles -- and the remainder of the Building's loads will be transferred to the existing subway structure (or, in the case of lateral loads, to the reaction mass), which, in turn, will transfer those loads to the soil -- the only components of the Building project that may properly be considered "new foundation" are the reaction mass and the piles, as the existing subway structure forms part of the foundation; and

WHEREAS, the applicant represents that the foundation was approximately 86 percent complete as of the Enactment Date; and

WHEREAS, as noted above, because all 91 required piles had been installed the applicant represents that it has met the threshold necessary to establish substantial progress within the meaning of the statute; and

WHEREAS, the Opposition contends that approximately only 20 percent of the foundation is complete, based on a statement in the July 24, 2008 Stop Work Order issued subsequent to the Enactment Date; and

WHEREAS, the Board notes that the conclusions of the inspector in the Stop Work Order are recorded for the purposes of a finding that the Permit for the property has or has not vested under ZR § 11-331(a), requiring completion of the foundations, and was not meant to be dispositive of the amount of work performed or remaining; and

WHEREAS, the Opposition further contends that the proposed concrete slab serves as the structural system that disperses vertical point loads to the subsurface materials and because it and the proposed five-foot thick pile caps have not yet been installed, that the foundation has not been

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# MINUTES

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substantially completed to permit the project to be vested under ZR § 11-331; and

WHEREAS, the Board notes that the standard for vesting set forth in ZR § 11-331 is “substantial progress” on the foundation, rather than “substantial completion,” as propounded by the Opponents; and

WHEREAS, the Opposition further contends that the subway structure cannot serve as the foundation for the Building because the Building and its columns are not supported directly by it; and

WHEREAS, a submission by the Building’s structural engineer states that the slab above the subway roof is not a concrete mat slab, but is a two-way structural slab which was requested by the New York City Transit Authority to protect the tunnel roof during construction from falling objects and debris; and

WHEREAS, in his submission, the engineer further states that the slab is not designed to transfer building loads to the subway structure; and

WHEREAS, a submission by a consulting structural engineer, based on a review of the structural drawings prepared by the Building’s structural engineers concluded that the Building’s column loads are distributed through a layer of soil to the rooftop of the substructure where the loads are then directed the substructure’s columns and then by extension to the spread footings; and

WHEREAS, the Board finds that the submissions clearly demonstrate that the Building is indeed supported by the existing subway structure and foundation; and

WHEREAS, the Opponents also argue that the precedent created by use of the subway foundation would allow any structure built over a subway to be vested ab initio conferring a windfall for a property owner; and

WHEREAS, a submission by the applicant points out that this outcome is highly unlikely as the requirements for such construction by the MTA are exceedingly onerous and led to extensive delays in the project design and permit approval process for the Building, as well as imposing significant limitations on the location of a newly-developed building; and

WHEREAS, at hearing, the Board asked the applicant to provide a breakdown of the amount of concrete required to complete the foundation; and

WHEREAS, in order to complete the foundation, the applicant states that the owner must pour 502 cubic yards of concrete forming the reaction mass; and

WHEREAS, the applicant states that the work remaining on the foundation would take six weeks to complete, including two weeks necessary to mobilize the crew; and

WHEREAS, the applicant represents that even if the reaction mass were deemed foundation, the total cost of the work required for that portion of the project is estimated at \$650,000, substantially less than the \$1,670,000 expense of the 91 completed friction piles; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure

associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Board has reviewed all of the applicant’s representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, while the Board is not swayed by any of the Opposition’s arguments, it nevertheless understands that the community residents and elected officials worked diligently on the Carroll Gardens Narrow Street/ Wide Street Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, however, if the owner has met the test for a vested rights determination pursuant to ZR § 11-331, 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 ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

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. 302290777-01-NB 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 May 25, 2009; this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 212-08-A.

Adopted by the Board of Standards and Appeals, November 25, 2008.

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**212-08-A**

APPLICANT – Greenberg Traurig by Deirdre Carson for Oliver Development, LLC, owner.

SUBJECT – Application August 1, 2008 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior zoning district regulations. R6 zoning district.

PREMISES AFFECTED – 131 Second Place, northwest corner of Second Place and Smith Street, block 459, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Deirdre Carson.

**ACTION OF THE BOARD** – Appeals granted.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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# MINUTES

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Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0  
Absent: Commissioner Montanez.....1  
THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete construction of a proposed building at the referenced premises; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 202-08-BZY (the “BZY Application”), decided the date hereof, which requested a finding by the Board that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on September 24, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn recommends disapproval of this application; and

WHEREAS, a representative of Assemblywoman Joan L. Millman testified in opposition to this application; and

WHEREAS, several community residents testified in favor of this application; and

WHEREAS, certain members of the community also opposed this application, including the Carroll Gardens Neighborhood Association, Inc., and the Carroll Gardens Coalition for Respectful Development, (collectively, the “Opposition”); and

WHEREAS, specifically, the Opposition raised the following concerns: (1) the permit was invalid; (2) substantial construction was not undertaken; (3) the owner was aware of the proposed rezoning and therefore did not proceed in good faith; (4) the owner unreasonably delayed construction on the development; and (5) the owner is developing on a merged zoning lot; and

WHEREAS, the subject site is located on the northwest corner of Second Place and Smith Street in the Carroll Gardens neighborhood of Brooklyn; and

WHEREAS, the site has a frontage of approximately 82.5 feet on Smith Street and 115 feet on Second Place; the Zoning Lot has a total lot area of 23,023 sq. ft.; and

WHEREAS, the site shares the Zoning Lot with a two-story school/day care facility located at 342 Smith Street; the subject site occupies approximately 9,400 sq. ft. of the Zoning Lot area; and

WHEREAS, the site is proposed to be developed with a seven-story 48-unit residential building (the “Building”), with

a total floor area of 61,031 sq. ft. (2.7 FAR); and

WHEREAS, the subject site is located on a “Place Street” which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district; and

WHEREAS, the subject site is subject to an easement in favor of the Transit Authority for a subway entrance, and contains subway structures at or near grade and a subway line below grade; and

WHEREAS, on February 22, 2008, New Building Permit No. 302290777-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, revised structural plans were approved on April 15, 2008 and revised architectural plans were approved on May 5, 2008; the Owner commenced construction of the foundation on April 15, 2008; and

WHEREAS, at the time the permits were issued, Second Place was a “wide street” under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19<sup>th</sup> century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text Amendment, which redefined Second Place as a “narrow street;” and

WHEREAS, the applicant represents that the Building, complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 2.7 (a maximum FAR of 3.0 is permitted), a floor area of 61,031 sq. ft., a street wall height of 66 feet, and a total building height of 70 feet; and

WHEREAS, because the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2, a maximum residential floor area of 43,631 (because of envelope restrictions), a maximum streetwall height of 45 feet, and a maximum building height of 55 feet; and

WHEREAS, because the Building violates these limitations on development fronting on a narrow street and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on July 24, 2008, for the permit; and

WHEREAS, it is from this order that the applicant appeals; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR § 11-30 et seq. does not prevent a property owner from also

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# MINUTES

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seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, as reflected in the resolution for the BZY Application, the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, 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 applicant cites to *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that 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, as to substantial construction, the applicant represents that after the issuance of the Permit, the following work was completed: (1) 100 percent of the excavation; and (2) installation of 91 friction piles, which comprises approximately 86 percent of the foundation work; and

WHEREAS, in support of this statement, the applicant has submitted photographs, cancelled checks, accounting tables, and invoices for labor and material; and

WHEREAS, the applicant cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Opposition argues that substantial construction, as required by the common law, was not undertaken because a proposed concrete slab, which is an element of the Building’s foundation, has not yet been installed; and

WHEREAS, for the reasons set forth in the BZY Resolution, the Board finds that the concrete slab is not an element of the Building’s foundation because it is not designed to support the Building; and

WHEREAS, assuming *arguendo* that the Opposition is correct, the applicant states that the balance of the construction work performed at the site would still qualify as “substantial work” 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;

and

WHEREAS, specifically, the Board has reviewed 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, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, the Board notes that the appropriate comparison is between the amount of construction work here and that cited by other courts; and

WHEREAS, in light of such comparison, the Board can only conclude that the noted work is substantial; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that the significant progress was made on foundations prior to the Enactment Date, and that said work was substantial; 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 included in the applicant’s analysis; and

WHEREAS, as to costs, the applicant states that 26 percent of the budgeted expenditures for the proposed development had been either expended or committed pursuant to irrevocable contracts by the Enactment Date; and

WHEREAS, the Board notes that the budgeted expenditures included site purchase and financing costs, which for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant’s representation as to the total project cost and these particular disallowed costs, the Board concludes that the actual construction costs for the proposed development, both soft and hard, approximate \$21.8 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$2,123,150 for construction and construction management fees, \$58,144 for general conditions work, and \$16,788 for temporary utilities and power; and

WHEREAS, other costs included \$672,632 for architectural and engineering services and plans, \$140,235 for other design consultants, \$210,704 for testing and inspections, and \$22,722 on permits and fees; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$1,228,000 in connection with the proposed development, because it had executed a binding contract for concrete work; and

WHEREAS, the total of these construction-related costs and commitments is approximately \$4.5 million, which means that approximately 20.5 percent of the construction related project costs have been expended or committed; and

WHEREAS, based upon its review of the expenditures

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# MINUTES

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and commitments made by the owner and the evidence submitted in support of them, the Board agrees that such costs are substantial; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the Building under the current zoning, the applicant states that the floor area would be reduced from 61,031 sq. ft. to 43,631 sq. ft. (from an FAR of 2.7 to an FAR of 2.2); and

WHEREAS, the applicant further states that the current zoning would require a reduction in the base height of the Building from 60 feet to 45 feet, and a reduction in the total building height from 70 feet to 55 feet, resulting in the loss of the top two floors of the Building; and

WHEREAS, the applicant states that this would lead to financial loss because approximately 30 percent of the floor area would be lost; and

WHEREAS, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, the applicant states that a 30 percent reduction in floor area would result in a net loss of \$11,758,645 in rental income, assuming a 5.5 percent capitalization rate; and

WHEREAS, the Board agrees that the significant reduction in floor area will result in a serious loss; and

WHEREAS, the Board notes that the applicant would also suffer financial loss under the current zoning because further architectural and engineering costs would be required to reconfigure and redesign the Building to account for the loss of the top two floors; and

WHEREAS, the Board additionally notes that 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; and

WHEREAS, the Board further notes that the Building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB could not be recouped; 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, at hearing, the Opposition argued that the instant application must be denied because the owner was aware of the City's intention to rezone the subject site and should therefore not be able to take advantage of the vested rights doctrine to escape the zoning change; and

WHEREAS, the Board notes that ignorance of a zoning change is not a condition to the vesting of a permit; and

WHEREAS, the Opposition also argued that the subject application must be denied because the owner did not begin construction of the Building until several years after purchasing the subject site in 2004, and should not be afforded relief for its purportedly self-created delay; and

WHEREAS, the Board notes that the purchase date of the subject site has no bearing on the analysis of whether the applicant's rights have vested under the common law; and

WHEREAS, the Opposition also argued that the subject application must be denied because the owner "manipulated the system" by developing on a merged zoning lot; and

WHEREAS, the Board notes that real estate development routinely includes the development of merged zoning lots, in which parties enter into an agreement to allocate floor area between different portions of the resulting zoning lot, and that the merger of a zoning lot is not a ground for denial of the instant application; and

WHEREAS, as discussed in the BZY Resolution, the Opposition also expressed concerns about various other aspects of this application; and

WHEREAS, the Board asked the applicant to respond to these concerns, and for the reasons set forth in the BZY Resolution, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; and

WHEREAS, while the Board is not swayed by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Carroll Gardens Narrow Street/ Wide Street Rezoning and that the Building does not comply with the new 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 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 New Building Permit No. 302290777-01-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 for four years from the date of this resolution, to expire on November 25, 2012.

Adopted by the Board of Standards and Appeals, November 25, 2008.

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**217-08-BZY**

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# MINUTES

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APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Steven Reich, owner.

SUBJECT – Application October 28, 2008 – Extension of time to complete construction (§11-332) of an enlargement to an existing development commenced prior to the text amendment on July 23, 2008. R6 zoning district.

PREMISES AFFECTED – 126 First Place, southside of First Place, 300’ east of the intersection of Court Street and First Place, Block 459, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Frank Chaney.

**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

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to renew a building permit and extend the time for the completion of a two-story enlargement to an existing three-story residential building; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of First Place, between Clinton Street and Court Street; and

WHEREAS, the subject site has a total lot area of approximately 2,495 sq. ft. and is currently occupied by a three-story residential building; and

WHEREAS, the applicant proposes a two-story enlargement, with an increase in floor area from 5,035 sq. ft. (2.0 FAR) to approximately 7,467 sq. ft. (3.0 FAR); and

WHEREAS, the subject site is located on a “Place Street” which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district;

WHEREAS, on August 16, 2007, Alteration Permit No. 302334365-01-AL (the “A1 Permit”) was issued by the Department of Buildings (“DOB”) for the proposed enlargement; and

WHEREAS, when the A1 Permit was issued, First Place was a “wide street” under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19<sup>th</sup> century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text

Amendment (the “Amendment”), which redefined First Place as a “narrow street;” and

WHEREAS, the applicant represents that the proposed enlargement complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 3.0 (a maximum FAR of 3.0 is permitted) and a proposed lot coverage of 63 percent (a maximum lot coverage of 65 percent is permitted); and

WHEREAS, because, as a result of the Amendment, the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2 and a maximum lot coverage of 60 percent; and

WHEREAS, because the proposed enlargement violates these limitations on development fronting on a narrow street and construction was not completed as of the Enactment Date, the A1 Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on July 24, 2008 for the permit; and

WHEREAS, the applicant now applies to the Board to reinstate the A1 Permit pursuant to ZR § 11-332, so that the proposed enlargement may be fully constructed under the prior R6 zoning as applied to a wide street; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(3) defines construction such as the proposed enlargement as “other construction”; and

WHEREAS, for “other construction,” an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[F]or other construction if construction has not been completed on 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...one term of not more than three months for other construction. 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) reads: “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

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# MINUTES

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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.";

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 A1 Permit was issued to the owner by DOB on August 16, 2007 authorizing the proposed enlargement; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; 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 an enlargement; and

WHEREAS, the Board notes that the text of this provision requires the Board to evaluate the degree of completed work against what remains to be done; and

WHEREAS, thus, the Board's deliberation focuses upon the amount of work completed versus what remains in terms of actual construction; and

WHEREAS, useful gauges of the substantiality of the completed work are the time spent on construction up to the Enactment Date versus how much time the proposed enlargement will take to complete, as well as a discussion of the complexity of the work already done versus that which remains; 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 A1 Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed enlargement subsequent to the issuance of the A1 Permit includes: 100 percent of the foundations, footings, structural steel, masonry, exterior framing, roof, concrete floors, elevator shaft, fire stair, and chimney; 85 percent of

mechanical work; 80 percent of work on interior partitions; 75 percent of elevator and sprinkler work; 50 percent of electrical work; and 30 percent of plumbing work; and

WHEREAS, in support of this statement the applicant has submitted the following: approved building plans; a construction timeline and estimate of the time remaining to complete construction; construction documents indicating the work completed; a breakdown of the construction costs by line item and percentage completed; copies of concrete pour tickets, financial records, copies of cancelled checks; and photographs of the interior and exterior of the site, showing that the entire building envelope and much of the interior work is complete; 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 permit; and

WHEREAS, the applicant represents that work commenced on the subject site on August 16, 2007, under the original A1 Permit; and

WHEREAS, the applicant further represents that work continued under the A1 Permit until its expiration on February 23, 2008; the A1 Permit was reissued on March 7, 2008, at which time work re-commenced and was ongoing until the Enactment Date; and

WHEREAS, the applicant states that the most complex work has already been completed, including 100 percent of the building envelope, which is the portion of the project affected by the Amendment; and

WHEREAS, the applicant notes that the remaining work consists of exterior finishes and the completion of mechanical and interior work, which would take approximately 12 weeks to complete; and

WHEREAS, the applicant concludes that based upon the actual work performed under the A1 Permit, the amount of days worked versus those remaining, and the complexity, that substantial construction has been completed sufficient to satisfy the standard in ZR § 11-332; and

WHEREAS, the Board agrees that the number of days that work proceeded, as well as its complexity, are useful as gauges, but further notes that the actual physical construction completed is substantial in of itself, in that it resulted in numerous visible alterations to the existing building necessary to the proposed enlargement; and

WHEREAS, as to costs, the applicant states that from the date of the issuance of the A1 Permit to the date of the zoning amendment, the total expenditures for the enlargement represent approximately \$1,011,292 or 64 percent of the \$1,592,305 cost to complete; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, as noted, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that this percentage of expenditure is substantial and meets the finding set forth at Z.R. § 11-

# MINUTES

332; and

WHEREAS, additionally, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that substantial construction was completed and substantial expenditures were made since the issuance of the permit; 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 permit, and all other permits necessary to complete the proposed enlargement; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a three-month 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. 302334365-01-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 enlargement and obtain a certificate of occupancy for one term of three months from the date of this resolution, to expire on February 25, 2009.

Adopted by the Board of Standards and Appeals, November 25, 2008.

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## 239-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Maureen Strada, lessee.

SUBJECT – Application September 25, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to GCL36 and the upgrade of an existing non-conforming private disposal system partially in the bed of a service road contrary to DOB policy. R4 Zoning District.

PREMISES AFFECTED – 23 Hudson Walk, east side, 90' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**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

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated September 18, 2008 acting on Department of Buildings Application No. 410147906, reads in pertinent part:

“A1- 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 contrary to Section 27-291 of the Administrative Code.

A2 - The proposed upgraded private disposal system is partially in the bed of the service road contrary to Department of Building policy;” and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated October 17, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated September 18, 2008, acting on Department of Buildings Application No. 410147906, 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 25, 2008”–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 DOB shall review the proposed plans to ensure that it complies with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 25, 2008.

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## 141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.

SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in



# MINUTES

the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

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## 33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1<sup>st</sup> Lane, a/k/a 209-213 Brighton 1<sup>st</sup> Lane, north side of Brighton 1<sup>st</sup> lane, 63.19'W of Brighton 1<sup>st</sup> Street, Block 8670, Lot 80, Borough of Brooklyn.

## COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Abigail Patterson.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## 103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to compete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

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## 120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.

SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law

vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.

PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman and Nelson Cuesta.

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING

**TUESDAY AFTERNOON, NOVEMBER 25, 2008**

**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.

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## ZONING CALENDAR

### 203-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Avi Babayof, owner.

SUBJECT – Application August 1, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and less than the minimum rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1245 East 23<sup>rd</sup> Street, located on the east side of East 23<sup>rd</sup> Street between Avenue L and Avenue M. Block 7641, Lot 26, 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

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 18, 2008, acting on Department of Buildings Application No. 310105775, reads in pertinent part:

“Proposed enlargement of residential building in

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# MINUTES

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R2 zoning district:

1. Exceeds permitted floor area pursuant to ZR section 23-141;
2. Provides less than the minimum required open space as per ZR section 23-141;
3. Provides less than the required side yards as per ZR section 23-461;
4. Provides less than the required rear yard as per ZR section 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 an existing two-family residence, and conversion into a single-family home which does not comply with the zoning requirements for floor area, 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 October 7, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 23<sup>rd</sup> Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family residence with a floor area of approximately 2,469 sq. ft. (0.62 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from approximately 2,469 sq. ft. (0.62 FAR) to 4,189 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides an open space ratio of 52.6 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 4'-11½" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement maintains the existing non-complying rear yard with a depth of 18'-1½" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the Board notes that ZR § 73-622(2) prohibits any enlargement within a rear yard from being located within 20'-0" of the rear lot line; and

WHEREAS, the applicant represents that, while it will maintain the existing 18'-1½" rear yard, the proposed extension to the home will be located 20'-0" from 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 R2 zoning district, the proposed enlargement of a two-family residence, to be converted into 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 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 21, 2008"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 4,189 sq. ft. (1.04 FAR); an open space ratio of 52.6 percent; one side yard with a width of 4'-11½" along the northern lot line; and a rear yard with a minimum depth of 18'-1½" for the existing portion of the building and 20'-0" for the enlarged portion of the building, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 25, 2008.

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**178-07-BZ**

# MINUTES

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district. PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Mark McCarthy.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

## 220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Letitia James and Elba Cornier.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for a continued hearing.

## 20-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner.

SUBJECT – Application January 30, 2008 – Special Permit (§75-53) to permit a 2,900 square foot vertical enlargement to an existing warehouse (UG 17); M1-5 District/Special Tribeca Mixed Use District.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, 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

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for decision, hearing closed.

## 40-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue Northwest corner of east 224<sup>th</sup> Street Block 4871, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Father Gorman and Alonzo de Castro.

**ACTION OF THE BOARD** – Laid over January 27, 2009, at 1:30 P.M., for decision, hearing closed.

## 42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Leonard Mazarisi.

For Opposition: Joseph Barch.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for decision, hearing closed.

## 93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use

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# MINUTES

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regulations (§22-00). R6 district.  
PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

## COMMUNITY BOARD #3Q

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

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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## 163-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.

SUBJECT – Application June 13, 2008 – Variance (§72-21 to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR §24-11 (floor area, FAR ad lot coverage), §24-34 (front yard), §24-35 (side yards), and §25-30 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 2022 Avenue M, southwest corner of the intersection of Avenue M and East 21<sup>st</sup> Street, Block 7656, Lot 31, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel, Jodah Eckstein, Naftoli Verschlejses.

For Opposition: Maryann Barchuk and Eeva Unger.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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## 175-08-BZ

APPLICANT – Eric Palatnik, P.C., for Mama Spa Corporation, owner.

SUBJECT – Application July 3, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment at the cellar, first and second floors of an existing five-story building. The proposal is contrary to ZR §32-10. C6-1 district.

PREMISES AFFECTED – 141 Allen Street, between Rivington Street and Delancy Street, Block 415, Lot 24, Borough of Manhattan.

## COMMUNITY BOARD #3M

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

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for decision, hearing closed.

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## 178-08-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.

SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.  
PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to December 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 190-08-BZ

APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.

SUBJECT – Application July 14, 2008 – Variance (§72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§42-10). M1-5B district.

PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 24, 2009, at 1:30 P.M., for deferred decision.

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## 195-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Aron Bistritzky, owner.

SUBJECT – Application July 16, 2008 – 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 required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2

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# MINUTES

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zoning district.

PREMISES AFFECTED – 1350 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue N and Avenue M, Block 7662, Lot 72, 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

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to December 16, 2008, at 1:30 P.M., for decision, hearing closed.

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**196-08-BZ**

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.

SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.

PREMISES AFFECTED – 792 Tenth Avenue, a/k/a 455 West 53<sup>rd</sup> Street, north east corner of Tenth Avenue and West 53<sup>rd</sup> Street, Block 1063, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Joanna Stoica.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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**216-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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**236-08-BZ**

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3<sup>rd</sup> Street, west side of East 3<sup>rd</sup> Street, 100’ south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 93, Nos. 47-48

December 19, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                     |     |
|-------------------------------------|-----|
| DOCKET .....                        | 827 |
| <b>CALENDAR</b> of January 13, 2009 |     |
| Morning .....                       | 828 |
| Afternoon .....                     | 829 |

---

# CONTENT

---

**MINUTES of Regular Meetings,  
Tuesday, December 9, 2008**

Morning Calendar .....830

**Affecting Calendar Numbers:**

389-85-BZ 2090 Bronxdale Avenue, Bronx  
117-97-BZ 1112 Forest Avenue, Staten Island  
297-99-BZ 45-05 Bell Boulevard, Queens  
159-07-BZ 2402 86<sup>th</sup> Street, Brooklyn  
217-03-BZ 142 Pennsylvania Avenue  
26-02-BZII 1680 Richmond Avenue, Staten Island  
242-03-BZII 1858 East 26<sup>th</sup> Street, Brooklyn  
39-07-A thru  
40-07-A 3248, 3250 Wickham Avenue, Bronx  
266-07-A 1610 Avenue S, Brooklyn  
191-08-BZY 1610 Avenue S, Brooklyn  
34-08-A 144 North 8<sup>th</sup> Street, Brooklyn  
211-08-A 434 Oceanside Avenue, Queens  
231-08-A 118 Beach 221<sup>st</sup> Street, Queens  
115-07-A &  
116-07-A 310 & 335 Ramona Avenue, Staten Island  
56-08-A &  
57-08-A 322 & 328 Ramona Avenue, Staten Island

Afternoon Calendar .....852

**Affecting Calendar Numbers:**

178-08-BZ 153 Norfolk Street, Brooklyn  
199-08-BZ 400 East Fordham Road, (aka Block 2506-2526 Webster Avenue), Bronx  
119-07-BZ 443 39<sup>th</sup> Street, Brooklyn  
134-08-BZ 34 Lawrence Avenue, Brooklyn  
135-08-BZ 71-52 172<sup>nd</sup> Street, Queens  
170-08-BZ 411-431 East 69<sup>th</sup> Street, Manhattan  
224-08-BZ 47-10 Laurel Hill Boulevard, Queens  
45-08-BZ 55 Androvette Street, Staten Island  
201-08-BZ 40-38 216<sup>th</sup> Street, Queens  
223-08-BZ 4553 Arthur Kill Road, Staten Island  
234-08-BZ 1702 Avenue Z, Brooklyn  
244-08-BZ 139-153 East 53<sup>rd</sup> Street, Manhattan

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# DOCKET

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New Case Filed Up to December 9, 2008  
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**297-08-BZ**

3496 Bedford Avenue, Between Avenue M and Avenue N., Block 7660, Lot(s) 78, Borough of **Brooklyn, Community Board: 14**. 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 less than the required rear yard (23-47) in an R2 zoning district.  
-----

**298-08-BZ**

1156 East 22nd Street, Between Avenue J and Avenue K., Block 7603, Lot(s) 81, Borough of **Brooklyn, Community Board: 14**. 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 less than the required rear yard (23-47) in an R-2 zoning district.  
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**299-08-BZ**

3857-3861 Third Avenue, Located approximately 62 feet from the northwest intersection of Claremont Parkway and Third Avenue., Block 2919, Lot(s) 39,42,43,44, Borough of **Bronx, Community Board: 3**. Variance to allow proposed community facility use, contrary to bulk regulations.  
-----

**300-08-A**

39-35 27th Street, East site of 27th Street 125 feet northeast of the intersection of 27th Street and 40th Avenue., Block 397, Lot(s) 2, Borough of **Queens, Community Board: 1**. An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior zoning district regulations. M1-2 /R5B .  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**



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# CALENDAR

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**JANUARY 13, 2009, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 13, 2009, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **617-56-BZ**

APPLICANT – Kenneth H. Koons, R.A., for John O'Dwyer, owner.

SUBJECT – Application December 4, 2008 – Extension of Term/waiver for the continued use of a (UG8) parking lot which expired on September 27, 2007 in an R6 (C1-3, C2-3) zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, east side, 72.7' north of West 231<sup>st</sup> Street, Block 3267, Lot 15, Borough of Bronx.

**COMMUNITY BOARD #15BX**

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### **1228-79-BZ**

APPLICANT – Harold Weinberg, P.E., for Mike Sedaghati, owner.

SUBJECT – Application December 5, 2008 – Extension of Term/waiver of a previously granted variance for the operation of a (UG6) retail store, in an R5 zoning district, which expired on July 21, 2005 and for an Extension of Time to obtain a Certificate of Occupancy which expired on May 21, 1997.

PREMISES AFFECTED – 2436 McDonald Avenue, between Avenue W and Village Road South, Block 7149, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **245-03-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Allied Enterprises LLC, owner.

SUBJECT – Application November 25, 2008 – Extension of Term of a previously granted special permit for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), in an R3-2/C1-2 zoning district, which expired on December 9, 2008.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### **97-08-BZ**

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Chesky Berkowitz.

LESSEE: Central UTA.

SUBJECT – Application April 18, 2008– To consider dismissal for lack of prosecution – Special Permit (§73-19) to allow legalization of existing community facility use, contrary to use regulations.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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## **APPEALS CALENDAR**

### **213-08-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Thomas Durante, lessee.

SUBJECT – Application August 19, 2008 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street and not fronting on a mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 68 Hillside Avenue, south side of Hillside Avenue, 172.10' east of mapped Beach 178<sup>th</sup> Street, Block 16340, Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **242-08-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Noreen Haggerty, lessee.

SUBJECT – Application September 26, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Section 36 of the GCL and partially in the bed of a mapped street contrary to Section 35 of the GCL. R4 zoning district.

PREMISES AFFECTED – 53 Beach 216<sup>th</sup> Street, east side Tioga Walk, 225.04' south of 6<sup>th</sup> Avenue, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **245-08-BZY**

APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.

SUBJECT – Application October 23, 2008 - Extension of time to complete construction (§11-331) of minor development commenced under the prior C2-2/R3-2 district regulations. C1-1/R3X.

PREMISES AFFECTED – 219-05 North Conduit Boulevard, bounded by Springfield Boulevard, 144<sup>th</sup> Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.

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# CALENDAR

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## COMMUNITY BOARD #13Q

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**JANUARY 13, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 13, 2009, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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### ZONING CALENDAR

#### 63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner  
SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.  
PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77<sup>th</sup> and 78<sup>th</sup> Avenues, Block 2268, Lot 23, Borough of Queens.

#### COMMUNITY BOARD #6Q

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#### 188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.  
SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.  
PREMISES AFFECTED – 35 East 76<sup>th</sup> Street, (975-983 Madison; 981 Madison; 35-53 East 76<sup>th</sup> Street) northeast corner of Madison Avenue and East 76<sup>th</sup> Street, Block 1391, Lot 21, Borough of Manhattan.

#### COMMUNITY BOARD #8M

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#### 207-08-BZ

APPLICANT – Eric Palatnik, P.C., for Cheon Park, owner.  
SUBJECT – Application August 11, 2008 – Variance (§72-21) to permit the expansion on the first floor of an existing day care center. The proposal is contrary to ZR Section 24-34 (front yard). R4 district.  
PREMISES AFFECTED – 40-69 94<sup>th</sup> Street, northern corner of the intersection formed by 41<sup>st</sup> Avenue and 94<sup>th</sup> Street, Block 1587, Lot 1, Borough of Queens.

#### COMMUNITY BOARD #7Q

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#### 222-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.

SUBJECT – Application August 29, 2008 – 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); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beumont Street, for east side of Beumont Street, 200' north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

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#### 257-08-BZ

APPLICANT – Slater & Beckerman, LLP, for 120 East 56<sup>th</sup> Street, LLC, owner; Susan Ciminelli, Inc., lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the second floor in an existing 15-story commercial building. The proposal is contrary to ZR Section 32-10. C5-2 district.

PREMISES AFFECTED – 120 East 56<sup>th</sup> Street, between Park Avenue and Lexington Avenue, Block 1310, Lot 65, Borough of Manhattan.

#### COMMUNITY BOARD #5M

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#### 289-08-BZ

APPLICANT – Dennis D. Dell'Angelo, for Ephraim Nierenberg, owner.

SUBJECT – Application November 21, 2008 – 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 yards (23-461); and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 966 East 23<sup>rd</sup> Street, west side of East 23<sup>rd</sup>, 220' north of Avenue J, Block 7586, Lot 75, Borough of Brooklyn.

#### COMMUNITY BOARD #14BK

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 9, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**389-85-BZ**

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application June 13, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an Amendment to legalize the conversion of the service bays to a convenience store.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #11BX**

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses, and an amendment to permit certain modifications to the previously approved site plan; and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008 and November 25, 2008, and then to decision on December 9, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Bronx, recommends disapproval of this application; and

WHEREAS, the site is located on the north side of Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, within a C2-3 (R7-1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1985 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-211 authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, the grant was extended on October 26, 1999 for a term of 15 years from the expiration of the prior grant, to expire November 26, 2015; a condition of the grant was that a new certificate of occupancy be obtained by October 26, 2000; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that the delay in obtaining a new certificate of occupancy was due to a filing error by the previous applicant; and

WHEREAS, the applicant also seeks to amend the grant to legalize site conditions that fail to conform to the previously approved plans, to reflect: (i) the conversion of the service building to an accessory convenience store; (ii) the enlargement to 35 feet of the two 30-foot curb cuts located on White Plains Road from and enlargement of the curb cut located on Bronx Park East from 26 feet to 31 feet; (iii) the relocation of parking spaces from the Bronx Park East property line to the west side of the service building; and (iv) the addition of a sign on both the east and west sides of the service building; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the retail convenience store is contained within a completely enclosed building; and (ii) the retail convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store located within the enclosed building has a retail selling space of less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, initially, the applicant also sought to legalize the enlargement of the two curb cuts on Bronxdale Avenue; and

WHEREAS, at hearing, the Board raised concerns about the dimensions of the curb cuts; and

WHEREAS, in response, the applicant submitted revised plans indicating that the two curb cuts on Bronxdale Avenue would be restored to the dimensions specified on the BSA-approved plans; and

WHEREAS, the Board also questioned whether it was necessary to maintain all of the five curb cuts located on the site; and

WHEREAS, in response, the applicant submitted a traffic flow diagram indicating that all five curb cuts are necessary so that the delivery process can take place without

# MINUTES

causing on-site traffic congestion; deliveries must be made approximately every 36 hours because the site has only 12,000 gallons of storage capacity; and

WHEREAS, the Board notes that the New York State Department of Environmental Conservation (“DEC”) recorded active spills at this site, identified as Spill No. 0409198 and Spill No. 9914247; and

WHEREAS, in response, the applicant provided a statement confirming that it will contact DEC and comply with the necessary remediation procedures; and

WHEREAS, based upon its review of the record, the Board finds that the requested one-year extension of time to obtain a certificate of occupancy and amendment to the approved plans are appropriate with certain conditions as set forth below.

*herefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 26, 1985, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 9, 2009, and to permit the noted site modifications; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received October 14, 2008”–(6) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained by December 9, 2009;

THAT all signage shall comply with C2 zoning district regulations;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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. 210037244)

Adopted by the Board of Standards and Appeals December 9, 2008.

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## 117-97-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for Gosehine Garcia, owner.

SUBJECT – Application August 28, 2008 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a legal non-conforming (UG6) eating and drinking establishment (Basille's) in an R3-2 zoning district which expired on September 15, 2008.

PREMISES AFFECTED – 1112 Forest Avenue, south side of Forest Avenue, 25’ west of the intersection of Forest Avenue and Greenleaf Place, Block 352, Lot 47, Borough of

Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term, which expired on September 15, 2008; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2008, and then to decision on December 9, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of the proposal; and

WHEREAS, the site is located on the south side of Forest Avenue, between Greenleaf Avenue and Dubois Avenue; and

WHEREAS, the site is within an R3-2 zoning district and is occupied by a two-story eating and drinking establishment (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1998 when, under the subject calendar number, the Board granted a variance permitting the enlargement of a legal non-conforming eating and drinking establishment (Use Group 6); and

WHEREAS, the applicant now seeks to extend the term of the special permit, which expired on September 15, 2008; and

WHEREAS, the Board notes that, based on observations from its site visits, conditions on the site varied from previously approved plans, in that: (i) an outdoor seating area was located on the roof of the first floor, at the rear of the building; (ii) the signage was non-compliant with previous plans; and (iii) the hours of operation were not being complied with; and

WHEREAS, at hearing, the Board directed the applicant to conform the site conditions to the BSA-approved drawings; and

WHEREAS, in response the applicant submitted revised plans indicating that the first floor roof at the rear of the building is not to be used as a seating area at any time, and that the signage is now in compliance with C1 zoning regulations; and

WHEREAS, additionally, the applicant represents that the hours of operation are now compliant with the terms of the prior grant; and

# MINUTES

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 September 15, 1998, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on September 15, 2018, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received December 8 2008”-(7) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the term shall expire on September 18, 2018;

THAT the site be maintained free of debris and graffiti;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all signage shall comply with C1 zoning regulations;

THAT the Department of Buildings shall review the approved plans for compliance with all egress 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)/configuration(s) not related to the relief granted.”

(DOB Application No. 510051382)

Adopted by the Board of Standards and Appeals, December 9, 2008.

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## 297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application October 6, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a (UG16) Gasoline Service Station (Mobil), in a C2-2/R6B zoning district, which will expire on February 12, 2009.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side of blockfront between Northern Boulevard and 45<sup>th</sup> Road, Block 7333, Lot 201, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 9, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the site is located on the east side of Bell Boulevard between 45<sup>th</sup> Road and Northern Boulevard, in a C2-2 (R6B) zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, on May 3, 1960, under BSA Cal. No. 477-31-BZ, the Board granted a variance to permit the construction of a gasoline service station located partially within a business district and partially within a residential district; and

WHEREAS, on September 19, 2000, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the replacement of the existing non-conforming gasoline service station with a larger gasoline service station and an accessory convenience store, to expire on September 19, 2010; and

WHEREAS, on February 12, 2008, under the subject calendar number, the Board permitted an amendment to the plans and an extension of time to complete construction and obtain a certificate of occupancy; the grant included a condition that a new certificate of occupancy be obtained by February 12, 2009; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that the owner will be unable to obtain the certificate of occupancy by the stipulated date due to a boundary dispute with the adjoining property owner; and

WHEREAS, the Board requested that the applicant establish that it is in the process of resolving the boundary dispute; and

WHEREAS, in response, the applicant submitted a motion to quiet title over the area in dispute, which it has filed with the New York State Supreme Court, Queens County; and

WHEREAS, based upon its review of the record, the Board finds that a one-year extension of time to obtain a certificate of occupancy until February 12, 2010 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 September 19, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to February 12, 2010; *on condition*:

THAT a certificate of occupancy shall be obtained by February 12, 2010;

# MINUTES

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 9, 2008.

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## 159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center Incorporated, owner; Dolphin Fitness Clubs, lessee. SUBJECT – Application October 6, 2008 – Extension of Time to complete construction to allow the legalization of a P.C.E. on the second floor of a two story commercial building (Stillwell Sports Center) and an Extension of Time to Obtain a Certificate of Occupancy, in a C8-2 zoning district, which expired on May 27, 2008.

PREMISES AFFECTED – 2402 86<sup>th</sup> Street, southeast corner of 86<sup>th</sup> Street and 24<sup>th</sup> Avenue, Block 6864, Lot 37, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy for a physical culture establishment (PCE), which expired on May 27, 2008; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 9, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the site is located on the southeast corner of the intersection at 86<sup>th</sup> Street and 24<sup>th</sup> Avenue, in a C8-2 zoning district; and

WHEREAS, the site is currently occupied by a two-story mixed-use commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 27, 2007, when, under the subject calendar number, the Board permitted the legalization of a PCE on the second floor of the building; a condition of the grant was that a new certificate of occupancy be obtained by May 27, 2008; and

WHEREAS, the applicant represents that the owner was

unable to obtain the certificate of occupancy within the stipulated time due to the lengthy approval process of the plans; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a one-year extension of time to obtain a certificate of occupancy until December 9, 2009 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 November 27, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 9, 2009; *on condition*:

THAT a certificate of occupancy shall be obtained by December 9, 2009;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 9, 2008.

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## 217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 10 A.M., for an adjourned hearing.

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## 26-02-BZII

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee.

SUBJECT – Application June 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C1-2/R3X zoning district, which expired on December 10, 2006.

PREMISES AFFECTED – 1680 Richmond Avenue, northwest corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Patrick Gorman.

# MINUTES

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## 242-03-BZII

**APPLICANT** – Moshe M. Friedman, P.E., for Sion Maslaton, owner.

**SUBJECT** – Application November 18, 2008 – Extension of Time/waiver to obtain a Certificate of Occupancy which expired on January 13, 2008 and an Amendment to legalize the as-built condition of a previously granted Special Permit (§73-622) in an R3-2 zoning district.

**PREMISES AFFECTED** – 1858 East 26<sup>th</sup> Street, West side 285'-0" north of the intersection formed by East 26<sup>th</sup> Street and Avenue S. Block 6831, Lot 30, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Yosef S. Gottdiener.

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

## 39-07-A thru 40-07-A

**APPLICANT** – Sheldon Lobel, P.C., for Blue Granite, owner.

**SUBJECT** – Application February 2, 2007 – Proposed construction of two, 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

**PREMISES AFFECTED** – 3248, 3250 Wickham 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** – Application granted on condition.

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough

Commissioner, dated January 19, 2007, acting on Department of Buildings Application Nos. 201088401 and 201088410, reads in pertinent part:

“Proposed three family dwelling is in the bed of an unnamed 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, these applications request permission to build two three-story, three-family semi-detached homes partially in the bed of an unnamed mapped street located between Givan Avenue and Wickham Avenue; and

WHEREAS, a public hearing was held on these applications on December 11, 2007, after due notice by publication in the *City Record*, with continued hearings on January 15, 2008, February 26, 2008, April 15, 2008, June 24, 2008, August 19, 2008, October 7, 2008 and November 18, 2008; the hearing was then closed and set for decision December 9, 2008, and

WHEREAS, the hearing was reopened on December 9, 2008 to allow a submission by the Department of Transportation (DOT), and then to decision; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this proposal; and

WHEREAS, by letters dated February 21, 2007 and June 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 27, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that Amended Drainage Plan No. 43-Q (30), dated November 6, 1979, calls for a future 15-inch diameter combined sewer in the unnamed mapped street between Givan Avenue and Wickham Avenue; and

WHEREAS, DEP also notes that Tentative Lots 65 and 66 front an existing 24-inch diameter combined sewer in Wickham Avenue between Givan Avenue and Burke Avenue and a 36-inch diameter combined sewer in Givan Avenue between Bruner Avenue and Wickham Avenue, and there is an existing 20-inch diameter city water main in the bed of the unnamed mapped street; and

WHEREAS, DEP requested that the applicant provide a site plan showing the width of the unnamed mapped street between Wickham Avenue and Givan Avenue and the distance between the existing 20-inch diameter city water main and the proposed development; and

WHEREAS, in response, the applicant submitted a revised site plan indicating that the existing 20-inch diameter city water main is located 15'-11" away from the lot line of Tentative Lots 65 and 66; and

WHEREAS, by letter dated June 22, 2007, DEP states that it has reviewed the revised site plan and has no further objections; and

# MINUTES

WHEREAS, by letter dated July 10, 2007, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that, because the proposed development is located at a bend in the intersection of Givan Avenue and Wickham Avenue, and the submitted site plan provides for off-street parking spaces, the proposed development may present an issue of stopping sight distance for vehicles turning at this location; and

WHEREAS, in response, the applicant submitted a traffic analysis study which concluded that the proposed development should not create a hazardous situation because: (i) the proposed driveways would be 89 feet from the intersection of Wickham and Givan Avenues, well in excess of the 50-foot minimum typically required by DOT; (ii) sightlines from the intersection of Wickham Avenue and Givan Avenue are not obstructed; (iii) traffic volume in the area is low; and (iv) multiple stop signs near the subject site would limit the speed of passing traffic; and

WHEREAS, the Board requested that the applicant investigate the possibility of installing a stop sign near the proposed driveways on the subject site to further ensure that the stopping sight distance presents no traffic hazard; and

WHEREAS, the applicant represents that DOT's traffic sign division has confirmed that, based on the findings of the traffic analysis study, no additional signage is necessary; and

WHEREAS, on October 2, 2007, DOT advised the Board that the northerly extension of the sidewalk now located at the southern end of the subject site will be required along the entire length of the proposed development adjacent to Wickham Avenue to a width of 11'-0"; and

WHEREAS, the applicant submitted a revised site plan incorporating the required sidewalk extension; and

WHEREAS, DOT also notes that the proposed development of the subject site will block the driveway of the adjacent property (Lot 64) and requests that the applicant enter into an easement agreement permitting the owner of Lot 64 vehicular access to Wickham Avenue; and

WHEREAS, in response, the applicant submitted a proposed driveway easement agreement giving the owner of Lot 64 vehicular access to Wickham Avenue; and

WHEREAS, DOT initially recommended maintenance of a pedestrian walkway between Bruner Avenue and Wickham Avenue which bisects the subject site; and

WHEREAS, by letter dated November 28, 2008, DOT rescinded its recommendation that the pedestrian walkway be maintained; and

WHEREAS, correspondence from the Department of Transportation states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, therefore, no transportation improvements requiring the street are contemplated; 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 January 19, 2007, acting on New Building Permit Nos. 201088401-01-NB and 201088410-01-NB, is hereby 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 drawings filed with the application marked "Received October 3, 2008 -(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 approval of building permits shall be conditioned on submission of evidence that an easement providing driveway access to the owner of Lot 64 has been executed and recorded with the City Register of the County Clerk;

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, December 9, 2008.

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## 266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S, LLC, owner.

SUBJECT – Application November 21, 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 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

#### APPEARANCES –

For Applicant: Deirdre A. Carson.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

#### THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete construction of a proposed building at the referenced premises; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 191-08-BZY (the "BZY Application"), decided the date hereof, which requested a finding by the Board that the owner of the premises has obtained a right to continue construction



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# MINUTES

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pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while the court was ordered to hear the BZY Application by judicial order, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on May 20, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 9, 2008, after which the hearing was closed and the application was set for decision on October 28, 2008; and

WHEREAS, on October 28, 2008, the hearing was reopened to allow additional submissions by the parties, the hearing was then closed, and the decision was deferred to November 18, 2008; and

WHEREAS, on November 18, 2008, the decision was deferred to December 9, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn recommends disapproval of this application; and

WHEREAS, City Council Member Michael C. Nelson provided a letter to the Board concerning the performance of after-hours construction work by the applicant; and

WHEREAS, New York State Assemblyman Steven Cymbrowitz provided written testimony in opposition to this application; and

WHEREAS, City Council Member Tony Avella testified in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association, represented by counsel, also opposed this application; this group of neighbors was represented by the same counsel in BSA Cal. No. 191-08-BZY; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following concerns with respect to the instant application: (1) that the owner has not undertaken substantial construction; (2) that the owner was aware of the proposed rezoning and therefore did not proceed in good faith; (3) that construction was unsafe and/or shoddy; and (4) the owner disregarded safety requirements and made false statements concerning the amount of work performed; and

WHEREAS, the subject site is located on the south side of Avenue S between East 16<sup>th</sup> Street and East 17<sup>th</sup> Street in the Homecrest neighborhood of Brooklyn;

WHEREAS, the site has a frontage of 85 feet and a depth of 95 feet, and a total lot area of 8,075 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story 25-unit residential building with community facility use on the first floor (the "Building"); and

WHEREAS, on January 5, 2006, pursuant to DOB's professional certification program, the owner pre-filed an application for a New Building permit for the proposed development; and

WHEREAS, New Building Permit No. 302054568-01-NB was subsequently obtained by the owner on January 11, 2006, and work commenced; and

WHEREAS, DOB initiated a special audit review of the Permit on January 18, 2006, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on January 20, 2007, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, on February 11, 2006, DOB issued Environmental Control Board Violation No. 34501798P (the "ECB Violation") for a failure to protect the adjoining property during excavation (the "SWO") and ordered that work on the Building be stopped, other than work "to make necessary and safe repairs"; and

WHEREAS, work was performed at the project site under the supervision of DOB inspectors between February 13, 2006 and February 15, 2006; and

WHEREAS, on February 14, 2006, DOB revoked all permits and ordered that work be stopped on the basis that the Objections listed in the Notice of Intent had not been resolved; and

WHEREAS, on February 15, 2006 (the "Enactment Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, an inspection conducted on February 15, 2006 mistakenly concluded that all foundation walls and footings were in place in accordance with the plans, leading to the erroneous conclusion that the Permit had vested pursuant to ZR § 11-331; and

WHEREAS, on March 30, 2006, DOB rescinded the revocation and issued a "stop work rescind letter" on April 13, 2006, based on the applicant's resolution of the Objections; and

WHEREAS, the SWO issued in response to the ECB Violation was lifted on April 19, 2006 after a DOB inspection concluded that the foundation work performed had made the site safe; and

WHEREAS, by letter dated May 10, 2006, DOB stated that the permits had vested pursuant to ZR § 11-331 based on the February 15, 2006 inspection report that erroneously concluded that, as of the Enactment Date, all foundation walls and footings were in place in accordance with the plans; and

WHEREAS, on October 15, 2007, a new stop work order was issued based on the finding that the foundations had not in fact been completed as of the Enactment Date and, on October 22, 2007, based on the lapse of the Permit by operation of law, a letter was issued ordering all work to stop; and

WHEREAS, it is from this order that the applicant appeals; and

WHEREAS, DOB approved revised plans on November 18, 2008 that address the objections identified by the second audit and has rescinded the second letter of intent to revoke the Permit on November 21, 2008; and

WHEREAS, at the time the Permit was issued, the site was located within an R6 zoning district; and

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# MINUTES

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WHEREAS, as discussed above, on February 15, 2006, the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the applicant represents that the Building complies with the Quality Housing Program requirements for the former R6 zoning district; specifically, the proposed use as a mixed-use residential/ community facility building with an FAR of 3.0 and a floor area of 26,674 sq. ft., a permitted lot coverage of 80 percent, a perimeter wall height of 66 feet, and a total building height of 70 feet, and no side yards; and

WHEREAS, because the site is now within an R4-1 zoning district, the Building would not comply with the requirements limiting the use to detached or semi-detached one-family or two-family homes and community facility use with a maximum FAR of 1.3, a maximum floor area of approximately 10,500 sq. ft., a maximum perimeter wall height of 25 feet, a maximum building height of 35 feet, and two side yards if the home is detached and one side yard if the home is semi-detached; and

WHEREAS, because the Building violated these provisions of the R4-1 zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR § 11-30 *et seq.* does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, as reflected in the resolution for the BZY Application (the "BZY Resolution"), the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

WHEREAS, 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 applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that 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, as to substantial construction, the applicant represents that after the issuance of the Permit, the following work was completed (1) 100 percent of the excavation; and (2) pouring of 74 percent of the concrete for the footings and foundation walls; and

WHEREAS, in support of this statement, the applicant has submitted photographs, invoices for labor and material, and affidavits from construction personnel; and

WHEREAS, the applicant cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Opposition argues that substantial construction, as required by the common law, was not undertaken because the east and south walls were not permitted foundation walls, but instead are temporary shoring walls that would need to be replaced; and

WHEREAS, assuming *arguendo* that the Opposition is correct, the balance of the construction work performed at the site would qualify as "substantial construction" 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; and

WHEREAS, specifically, the Board has reviewed 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, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, the Board notes that the appropriate comparison is between the amount of construction work here and that cited by other courts; and

WHEREAS, in light of such comparison, the Board can only conclude that the noted work is substantial; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that the significant progress was made on foundations prior to the Enactment Date, and that said work was substantial; 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, as to costs, the applicant states that 12 percent of the budgeted expenditures for the proposed development were either expended or committed pursuant to

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# MINUTES

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irrevocable contracts by the Enactment Date; and

WHEREAS, the Board notes that the budgeted expenditures included site preparation and financing costs which, for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost and these particular disallowed costs, the Board concludes that the actual construction costs for the proposed enlargement, both soft and hard, approximate \$5.9 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$35,540 in project manager and site manager's fees, and \$219,502 to the foundation contractor; and

WHEREAS, other costs included \$60,000 for the architect and \$17,068 to other consultants and engineers; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional \$392,405 in connection with the proposed enlargement, because it had executed binding contracts for work, including \$162,000 in outstanding fees to the architect, \$183,000 for the project manager, and an additional \$51,405 for the foundation; and

WHEREAS, the total of these construction related costs and commitments is approximately \$728,515, which means that approximately 12 percent of the construction related project costs has been expended or committed; and

WHEREAS, based upon its review of the expenditures and commitments made by the owner and the evidence submitted in support of them, the Board agrees that such costs are substantial; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, the Board's consideration is again guided by cases considering how much expenditure is needed to vest rights under the prior zoning, as well as the expenditure percentages; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the floor area would be reduced from approximately 26,674 sq. ft. to approximately 10,500 sq. ft. (from an FAR of 3.30 to an FAR of 1.3, including community facility floor area of 0.4); and

WHEREAS, further, the number of residential units that could be developed would be reduced from 25 to eight; and

WHEREAS, the applicant states that this would lead to financial loss because: (1) further architectural and engineering costs would be required to reconfigure and redesign the building to account for this loss; and (2) approximately 63 percent of floor area would be lost; and

WHEREAS, the Board notes that 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; and

WHEREAS, here, the Board agrees that the building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB could not be recouped; and

WHEREAS, additionally, as noted by the applicant, a new foundation would have to be installed for a complying building, further compounding the economic harm to the owner; and

WHEREAS, additionally, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, here, the Board agrees that a significant reduction in floor area will result in a serious loss; 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 argues that the instant application must be denied because the applicant was aware of the City's intention to rezone the subject site, citing Pelham View Apts. V. Switzer (224 N.Y.S. 56 (Sup. Ct. 1927)) and Rosenzweig v. Crinnion (139 N.Y.S.2d 172 (Sup. Ct. 1954) for the proposition that property owners who are aware of proposed zoning changes should not be able to take advantage of the vested rights doctrine to escape such changes; and

WHEREAS, the Board notes that these cases are superseded inter alia by the Appellate Division's precedent-setting decision in Kadin v. Bd. of Stds. and Apps. (163 A.D. 2d 308 (2d Dep't 1990), and that ignorance of a zoning change is no longer a condition to the vesting of a permit; and

WHEREAS, the Board further notes that property owners are not barred from attempting to "beat the clock" by commencing foundation construction in advance of a proposed rezoning; and

WHEREAS, the Opposition contends that the foundation walls fail to meet Building Code standards and asserts that the BSA has the authority to deny a claim of common law vesting where shoddy construction is present, citing Steam Heat v. Silva (230 A.D. 800 (2d Dep't 1996)) in support; and

WHEREAS, without accepting the Opposition's assertions regarding the adequacy of the foundation walls, the Board finds that Steam Heat is inapposite to the instant case in three respects: (i) the case is an appeal of a denial of a vesting application filed pursuant to ZR § 11-332, not under the common law; (ii) the denial was based on the lack of evidence of substantial construction, and the flimsiness of the construction was cited as evidence that substantial construction as required by the statute had not been performed; and (iii) the Board has no authority to render a determination on the sufficiency of construction, that is

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# MINUTES

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properly within the purview of DOB; and

WHEREAS, the Opposition has argued that, in addition to making the findings concerning work performed, expenditures and serious loss, that New York common law also requires the application of equity principles to a vesting determination by the Board; and

WHEREAS, the Opposition contends that the denial of the instant application is therefore required based on allegedly false statements concerning the amount and type of foundation work performed and the disregard of safety requirements by the applicant, and

WHEREAS, because the Board is an administrative body, rather than a court, it is not empowered to grant equitable relief (see People ex rel. New York Tel. Co. v. Pub. Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd of Stds. and Apps., 45 N.Y.2d 560, 565 (1978)), and therefore cannot consider equitable arguments in connection with an application to vest a building permit under the common law; and

WHEREAS, while the Board is not swayed by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Homecrest Rezoning and that the Building does not comply with the new 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, however, as discussed in the BZY Resolution, the Opposition expressed concerns about various aspects of this application; and

WHEREAS, the Board asked the applicant to respond to these concerns, and for the reasons set forth in the BZY Resolution, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; 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 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. 302054568-01-NB, 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, December 9, 2008.

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## 191-08-BZY

APPLICANT – Stuart A. Klein, for 1610 Avenue S, LLC, owner.

SUBJECT – Application July 14, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331 to renew a building permit and extend the time for the completion of the foundation of a six-story mixed-use residential/community facility building; and

WHEREAS, this application is accompanied by a companion application under BSA Cal. No. 266-07-A, filed at an earlier date, which is a request for a finding that the owner of the site has obtained a vested right to continue construction under the common law; and

WHEREAS, the initial filing of the instant application was refused because it failed to accord with the statutory deadline set forth in ZR §11-331; the application was heard pursuant to an order by the New York Supreme Court, County of Kings (captioned 1610 Avenue S, LLC. v. City of New York, Index No. 46374/2007) directing the Board to accept the application; and

WHEREAS, the Board notes that while BSA Cal. No. 266-07-A was filed separately from the instant application, in the interest of convenience, the cases were heard together, and the record is the same for both; and

WHEREAS, a public hearing was held on this application on September 9, 2008, after due notice by publication in *The City Record*, after which the hearing was closed and the application was set for decision on October 28, 2008; and

WHEREAS, on October 28, 2008, the hearing was reopened to allow additional submissions by the parties, the hearing was then closed, and the decision was deferred to November 18, 2008; and

WHEREAS, on November 18, 2008, the decision was deferred to December 9, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn recommends disapproval of this application; and

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# MINUTES

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WHEREAS, City Council Member Michael C. Nelson provided a letter to the Board concerning the performance of after-hours construction work by the applicant; and

WHEREAS, New York State Assemblyman Steven Cymbrowitz provided written testimony in opposition to this application; and

WHEREAS, City Council Member Tony Avella testified in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association, represented by counsel, also opposed this application; this group of neighbors was represented by the same counsel in BSA Cal. No. 266-07-A; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following concerns: (1) excavation was not complete; (2) substantial progress on the foundation was not complete; (3) the construction did not comply with the approved plans; (4) the construction may be unsafe and/or in violation of the Building Code and therefore "unlawful"; and (5) some construction took place after working hours; and

WHEREAS, the subject site is located on the south side of Avenue S between East 16<sup>th</sup> Street and East 17<sup>th</sup> Street in the Homecrest neighborhood of Brooklyn;

WHEREAS, the site has a frontage of 85 feet and a depth of 95 feet, and a total lot area of 8,075 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story 25-unit residential building with community facility use on the first floor (the "Building"); and

WHEREAS, on January 5, 2006, pursuant to DOB's professional certification program, the owner pre-filed an application for a New Building permit for the proposed development; and

WHEREAS, New Building Permit No. 302054568-01-NB was subsequently obtained by the owner on January 11, 2006, and work commenced; and

WHEREAS, DOB initiated a special audit review of the Permit on January 18, 2006, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on January 20, 2007, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, on February 11, 2006, DOB issued Environmental Control Board Violation No. 34501798P (the "ECB Violation") for a failure to protect the adjoining property during excavation (the "SWO") and ordered that work on the Building be stopped, other than work "to make necessary and safe repairs"; and

WHEREAS, work was performed at the project site under the supervision of DOB inspectors between February 13, 2006 and February 15, 2006; and

WHEREAS, on February 14, 2006, DOB revoked all permits and ordered that work be stopped on the basis that the Objections listed in the Notice of Intent had not been resolved; and

WHEREAS, on February 15, 2006 (the "Enactment

Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, an inspection conducted on February 15, 2006 mistakenly concluded that all foundation walls and footings were in place in accordance with the plans, leading to the erroneous conclusion that the Permit had vested pursuant to ZR § 11-331; and

WHEREAS, on March 30, 2006, DOB rescinded the revocation and issued a "stop work rescind letter" on April 13, 2006, based on the applicant's resolution of the Objections; and

WHEREAS, the SWO issued in response to the ECB Violation was lifted on April 19, 2006 after a DOB inspection concluded that the foundation work performed had made the site safe; and

WHEREAS, by letter dated May 10, 2006, DOB stated that the permits had vested pursuant to ZR § 11-331 based on the February 15, 2006 inspection report that erroneously concluded that all foundation walls and footings were in place as of the Enactment Date in accordance with the plans; and

WHEREAS, on October 15, 2007, a new stop work order was issued based on the finding that the foundations had not in fact been completed as of the Enactment Date and, on October 22, 2007, based on the lapse of the Permit by operation of law, a letter was issued ordering all work to stop; and

WHEREAS, on January 16, 2008, DOB issued a second letter of intent to revoke the permit based on a second audit that raised additional objections; and

WHEREAS, DOB approved revised plans on November 18, 2008 that address the objections identified by the second audit and rescinded the second letter of intent to revoke the Permit on November 21, 2008; and

WHEREAS, at the time the Permit was issued, the site was located within an R6 zoning district; and

WHEREAS, as discussed above, on February 15, 2006, the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the applicant represents that the Building complies with the Quality Housing Program requirements for the former R6 zoning district; specifically, the proposed use as a mixed-use residential/ community facility building with an FAR of 3.0 and a floor area of 26,674 sq. ft., a perimeter wall height of 66 feet, a total building height of 70 feet, and no side yards; and

WHEREAS, because the site is now within an R4-1 zoning district, the Building would not comply with the requirements limiting the use to detached or semi-detached one-family or two-family homes with a maximum FAR of 0.9, a maximum residential floor area of approximately 8,076 sq. ft., a maximum perimeter wall height of 25 feet, a maximum building height of 35 feet, and two side yards if the home is detached and one side yard if the home is semi-detached; and

WHEREAS, because the Building violated these provisions of the R4-1 zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

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# MINUTES

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WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior R6 zoning; 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 Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations”; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; 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, the record indicates that New Building Permit No. 302054568;-01-NB was issued to the owner by DOB on January 11, 2006 for the proposed building; 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, by a letter submitted in response to a request by the Board, the Department of Buildings has confirmed that the Permit issued was valid when issued; and

WHEREAS, the Board accepts the validity of the Permit when issued; and

WHEREAS, the Opposition contends that the revocation of the Permit prior to the Enactment Date renders the permits void ab initio, and concludes that, since all of the work prior to the zoning change was performed pursuant to an invalid permit, no construction completed prior to February 15, 2006 may be counted toward a vesting pursuant to ZR § 11-331; and

WHEREAS, as discussed above, DOB revoked all

permits and ordered that work be stopped on February 14, 2006, on the basis that the Objections listed in the January 20, 2006 Letter of Intent had not been resolved; and

WHEREAS, the applicant subsequently resolved the Objections and on March 30, 2006, DOB rescinded the February 14, 2006 revocation; and

WHEREAS, the Opposition further contends that DOB’s rescission of the revocation cannot retroactively validate the Permit, citing BSA Cal. No. 353-05-BZY for the proposition that “once the permit is revoked, the available cure of resolving the outstanding objections in order to prevent revocation and a determination of invalidity is foreclosed;” and

WHEREAS, the Board finds BSA Cal. No. 353-05-BZY to be inapplicable to the instant case; and

WHEREAS, the Board notes that the applicant in the latter case sought to reinstate a permit pursuant to ZR § 11-331 that had been reissued after significant modifications were made to the building plans; and

WHEREAS, because the reissued permit constituted a new permit for vesting purposes, the Board could consider only work performed after the reissued permit was obtained; and

WHEREAS, in the instant case, DOB states that the revocation of the permit on February 14, 2006 was made erroneously and did not affect the underlying validity of the Permit; and

WHEREAS, further, the revocation of the Permit in the instant case was subsequently rescinded; and

WHEREAS, the Board notes that the rescission by DOB renders the prior revocation a nullity because a rescission ‘restores the parties to their original rights in regard to the subject matter’ (see <http://legal-dictionary.thefreedictionary.com/rescission>) and, therefore, the Permit would be valid as issued; and

WHEREAS, it is a well-settled principle of law that an agency may not be estopped from correcting its errors (see Parkview Assoc. v. City of New York, 525 N.Y.2d 274, 282(1988)); and

WHEREAS, the Board therefore finds it ironic that the Opposition has applied this principle to DOB’s reversal of its vesting determination, stating in a submission that that action was “entirely correct” because “they were entitled to reverse decisions made in error,” but nonetheless contends that DOB cannot rescind a revocation of the Permit made in error, and

WHEREAS, DOB further states that the objections raised by its audits have been cured and on November 21, 2008 the agency rescinded the January 16, 2008 letter of intent to revoke; 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, in reliance upon DOB’s review of the Permit and the subsequent successful resolution of all

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# MINUTES

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objections, the Board concludes that the terms and general provisions of ZR §11-31(a) are satisfied and a decision may be rendered provided the other findings are met; 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

WHEREAS, the applicant states that excavation began on January 11, 2006 and was completed January 13, 2006, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, as to excavation, the Opposition asserts that it was not complete since photographs of the site indicated that a mound of earth remained on the Enactment Date that had not been cleared; and

WHEREAS, an affidavit of the on-site engineer states that the entire site was excavated to permit construction of the footings around the entire perimeter of the site but that soil was retained for use as a ramp for access to the site by heavy machinery and to provide a source for clean fill between the shoring and perimeter foundation wall on the three sites of the excavation where a gap existed; and

WHEREAS, accordingly, the Board finds that the retention of soil for a ramp and for foundation fill does not preclude a determination that the excavation was complete; and

WHEREAS, the Board further notes that photographs of the site show rebar below the loose soil, indicating that foundation work had been completed and was subsequently covered by earth; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation for the Building is in the spirit of the requirement that excavation be complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundation was approximately 74 percent complete as of the Enactment Date; and

WHEREAS, in support of the contention that concrete for the footings and other foundation components was poured, the applicant has submitted: photographs of the foundations dated from February 3, 2006 through February 15, 2006; affidavits from the contractor, on-site engineer and Building architect; and invoices and canceled checks evidencing payment for the performance of foundation work; and

WHEREAS, further, the applicant submitted a foundation survey showing the completed work, illustrating that foundation walls on all four Building sides have been completed, as well as several footings; and

WHEREAS, an affidavit of the on-site engineer shows that as of February 15, 2006, the date of issuance of the stop work order, concrete was poured for the four footings at the perimeters of the walls, the cross-footing at the north end of the lot, the north wall and for two ten-foot long wings running

south from the north wall; and

WHEREAS, according to an affirmation of the Building's architect, the concrete poured prior to issuance of the stop work order represented 48.5 percent of the total needed for completion of the foundation; and

WHEREAS, the Building's architect further states that the inclusion of the south wall which was poured under the supervision of DOB inspectors raises the quantity of concrete poured to 59 percent of the total needed and the inclusion of the eastern and western walls, also poured under DOB supervision, would further raise the total completed to 74 percent; and

WHEREAS, in order to complete the foundation, the applicant states that the owner must construct the remaining footings, comprising 23.9 percent of the concrete to be poured; and

WHEREAS, the applicant states that the work remaining on the foundation would take three weeks to complete, largely due to the time necessary to mobilize the crew; and

WHEREAS, the Opposition asserts that photographs taken on February 11, 2006, while the SWO was in effect, indicate that excavation was not complete and the west and east foundation walls had not been poured; and

WHEREAS, the Opposition contends that the SWO permitted work only on the south wall of the foundation, to protect the property of an adjacent neighbor which had been damaged, but that the applicant impermissibly continued construction on the east and west walls which were not necessary to make the site safe; and

WHEREAS, the applicant states that the concrete poured for the west and east foundation walls was necessary to create a safe support wall that would retain loose soil and stabilize the adjacent property; and

WHEREAS, a submission by DOB states that inspectors who visited the site between February 13, 2006 and February 15, 2006 reported that the poured foundation was necessary to create a safe wall to support the adjacent property and that such work was not in violation of the SWO; and

WHEREAS, the applicant represents that even if work performed while the SWO was in effect were discounted, the amount of work performed prior to its issuance would be sufficient under the law to vest the Permit; and

WHEREAS, at hearing, the Board asked the applicant to provide a breakdown of the amount of concrete poured prior to the issuance of the stop work order; and

WHEREAS, the applicant states that it is unable to provide the concrete pour tickets documenting the dates that concrete was poured because the foundation contractor is no longer in business and four possible suppliers of the concrete poured at the site who were contacted were either unwilling or unable to provide records documenting the work performed; and

WHEREAS, the Opposition contends that the lack of pour tickets calls into question the credibility of the applicant; and

WHEREAS, the Board finds that the foundation work can be sufficiently established by the evidence submitted by

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# MINUTES

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the applicant consisting of photographs of the foundation, cancelled checks and affidavits of the project engineer and architect; and

WHEREAS, additionally, the Board notes that, based on a visual inspection of the site, substantial work comparable to the amount performed in other vested rights cases has been performed; and

WHEREAS, the Opposition argues that substantial progress on the foundations, as required by ZR § 11-331 was not completed because the east and south walls are not permitted foundation walls, but instead are temporary shoring walls that would need to be replaced; and

WHEREAS, an affidavit of the on-site engineer states that all four walls were poured pursuant to the approved DOB plans as permanent foundation walls and that the wood lagging and soldier beams of the shoring system are evident because they were used as forms to allow the concrete to be poured as a “one-face” single continuous foundation wall; and

WHEREAS, DOB submitted a report (the “DOB Report”), based on a site inspection conducted on October 6, 2008 at the direction of the Board, stating that the east and the south foundation walls have been completed; and

WHEREAS, the DOB Report also states that that soldier piles are maintained in concrete in the south foundation wall and are maintained and attached to concrete in the east foundation wall; and

WHEREAS, the Opposition contends that the fact that soldier piles are encased or attached to the concrete of the foundation is evidence that the east and south walls are not built according to the approved plan; and

WHEREAS, the applicant submitted an affidavit by an independent structural engineer stating that the east and south walls were constructed in accordance with accepted engineering practice and that the embedding of the soldier beams in the south wall is shown on the shoring plan; and

WHEREAS, the Opposition additionally asserts that “spalling concrete and voids” noted in the DOB Report further support the conclusion that the south wall is not a permanent wall; and

WHEREAS, the affidavit of the structural engineer states that the voids observed in the south wall are minor, can be repaired and do not affect or reflect adversely on the structural integrity of the wall; and

WHEREAS, the DOB Report notes that the thickness of the south wall foundation ranges between 14” and 17” and the thickness of the east foundation wall ranges from 11” to 12”; photographs accompanying the report corroborate the findings; and

WHEREAS, in his affidavit, the consulting engineer states that the variation in the thickness of the east and south walls is not a cause for concern provided that the necessary rebars for those walls were installed; and

WHEREAS, the Board notes that photographs submitted by the applicant show rebar installations on the east and south walls ongoing after footings were poured; and

WHEREAS, the Opposition further contends that

“substantial progress” cannot be established because the location of the Building’s foundations and footings do not conform to the lot lines of the property and therefore fail to comply with the approved plans; and

WHEREAS, in response to a request by the Board for clarification of the relationship between the foundation footings and walls and the lot line, a submission by the applicant states that the dimensions of the foundation as installed are consistent with the foundation survey submitted by the applicant, which shows the foundation lying with the property lines, as well as with the structural drawings and the sheeting and shoring plan approved by DOB; and

WHEREAS, the Board notes that the DOB Report confirmed that the position of the north, south, east and west foundation walls was consistent with the survey plan and with the Building plan; and

WHEREAS, the applicant states that the only inconsistency between the proposed and the as-built conditions arises from the engineer’s decision to erect soldier piles and lagging for the western wall outside the western wall; and

WHEREAS, an affidavit of the engineer stated that the adjustment of the location was required by field conditions; and

WHEREAS, the Opposition additionally argues that the foundation construction is not “lawful in other respects” pursuant to ZR § 11-331 because the applicant cannot produce batch records for controlled inspection testing to certify that concrete core samples at the time of installation met required compression standards; and

WHEREAS, the applicant contends that the failure to retain batch records is a violation of the Building Code and therefore no foundation construction should count toward the “substantial progress” threshold required to vest the permit; and

WHEREAS, at hearing the Board requested the batch and controlled inspection reports for the construction, which the applicant failed to provide; and

WHEREAS, the applicant states, however, that Building Code § 27-598 permits core sampling and testing of hardened concrete, even without batch information, to develop the information necessary to file a controlled inspection report; and

WHEREAS, at hearing, the Board asked a DOB representative whether the agency requires the submission of a certification by a responsible professional that controlled inspections and tests for the foundation work were successfully completed (a “TR form”) for the purpose of allowing construction work to continue pursuant to ZR § 11-331; and

WHEREAS, at hearing, the DOB was also asked whether the production of batch and controlled inspection reports is required at the time that such a project vests pursuant to § 11-331 under the agency’s authority; and

WHEREAS, a response by DOB states that the certification of the adequacy of the concrete is established only at the time of final sign-off of the permits by the project



# MINUTES

architect or engineer, prior to the issuance of the certificate of occupancy; and

WHEREAS, DOB further states that a permit would not be rendered invalid in the event that the controlled inspections and tests ultimately revealed that a concrete foundation was inadequate, nor by a failure to submit the certified TR form; and

WHEREAS, the Board notes that DOB had previously vested the Permit, albeit erroneously, without production of batch and controlled inspection reports; and

WHEREAS, the Board further notes that the lack of controlled test inspections, without more, cannot be construed as evidence that such foundation walls fail to meet Building Code standards; and

WHEREAS, because the location of the foundation walls conforms to the approved drawings, and the sufficiency of the concrete is only established at the time of permit sign-off and, further, that the lack of a procedure does not mean that such foundation walls fail to meet the standards of the Building Code, the Board therefore finds that the work performed does not constitute construction that is not "lawful in other respects;" and

WHEREAS, the Opposition has also asserted that the applicant's alleged violation of the federal Occupational Safety and Health Act, work hour and worker safety rules during its construction at the site and its construction outside of business hours also constitutes conduct that is not "lawful in other respects" under ZR § 11-331; and

WHEREAS, the Board notes that regulation of health and safety during construction is not within its purview and, further, that no evidence documenting the alleged violations has been produced; and

WHEREAS, as to allegations of after-hours work, the applicant notes, and the Board agrees, that stamped dates and times of photographs submitted by the Opposition as evidence cannot be relied upon and that the testimony alleging illegal work is vague and conclusory and

WHEREAS, the Board further notes that the Opposition has specifically identified only one day when allegedly illegal after-hours work was performed, on Sunday, December 18, 2005; and

WHEREAS, in response, the applicant states that because of the site's location adjacent to a school which would be closed, asbestos removal was performed that day at the request of the State Department of Environmental Conservation, and was therefore permissible; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, while the Board is not swayed by many of the Opposition's arguments, it nevertheless understands that the community residents and elected officials worked diligently on the Homecrest Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, however, if the owner has met the test for a vested rights determination pursuant to ZR § 11-331, 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 ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

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. 302054568-01-NB 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 June 9, 2009 this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 266-07-A.

Adopted by the Board of Standards and Appeals, December 9, 2008.

## 34-08-A

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth ("NAG") and People's Firehouse, Inc. ("PFI").

OWNER: North Seven Associates LLC.

SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR §23-142 and ZR §12-10 which fails to provide adequate open space on the zoning lot to support the Building's floor area.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Kevin Christopher Shea.

For Opposition: Howard Hornstein and Peter Geis.

**ACTION OF THE BOARD** – Appeal denied.

**THE VOTE TO GRANT** –

Affirmative: .....0

Negative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Recused: Commissioner Hinkson.....1

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# MINUTES

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## THE RESOLUTION:1

WHEREAS, the instant appeal comes before the Board in response to a determination of the Brooklyn Borough Commissioner, dated January 24, 2008, to uphold the approval of New Building Permit No. 301784399 permitting the construction of a 16-story mixed-use multiple dwelling; and

WHEREAS, the Final Determination reads, in pertinent part:

“[t]his responds to the e-mail dated November 27, 2007 for a final determination regarding the validity of the permit issued to 144 N. 8th Street, Brooklyn. Specifically, you raise the issue that approval of the application for a 16-story building requires access to open space, but that the rooftops at 133 North 8th Street, 115 Berry Street and 133-41 North 7th Street are not available to the residents of 144 N. 8th Street for open space. Based on the lack of access to the rooftops, you contend that the application fails to meet the open space requirements of the Zoning Resolution of the City of New York and request that we advise the Board of Standards and Appeals that the issued permit was not valid. . . .

“The permit is valid as it was issued based on approved plans that reflect access to open space on the same zoning lot. While we understand that you are claiming that the residents will not have access to the rooftop spaces, the applicants believed that they did have a right to such access. Upon learning that owners of these rooftops were taking the position that they would not grant access, the Department issued a Stop Work order that limits work beyond the 10th story. If after all the court appeals are concluded the applicant can not guarantee access to the rooftops, the applicant may file a Post Approval Amendment to amend the plans to ten stories, a height that will not need access to the rooftops for purposes of compliance with the open space requirements, or the permit will be revoked.

“This is a final determination that may be appealed to the Board of Standards and Appeals;” and

WHEREAS, a public hearing was held on this appeal on July 29, 2008, after due notice by publication in the *City Record*, with continued hearing on October 7, 2008, and November 18, 2008, and then to decision on December 9, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez and Commissioner Ottley-Brown; and

## PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by Mary

Bartosiewicz, Sandra Cheng, Philip Dray, Philip DePaolo, Joseph Greco, and Sal Perovic, residents of the area surrounding the subject site, and Neighbors Allied for Good Growth, a nonprofit organization with many local members (collectively, the “appellants”); and

WHEREAS, the appeal concerns a development proposed by North Seven Associates, Five M, LLC, and principal Mendel Brach (collectively, the “developer”), and

WHEREAS, the appellants, the Department of Buildings (“DOB”) and the developer have been represented by counsel throughout this proceeding; and

WHEREAS, Assemblyman Joseph R. Lentol provided testimony in support of this appeal; and

WHEREAS, Council Member Tony Avella provided testimony in support of this appeal; and

WHEREAS, representatives of Neighbors Allied for Good Growth, the New York Community Council, and the Greenwich Village Society for Historic Preservation also provided written and oral testimony in support of this appeal; and

## THE SITE

WHEREAS, the subject site is located on the south side of North 8th Street, 100 feet east of Berry Street and has a total lot area of 23,620 sq. ft.; and

WHEREAS, the subject site at 144 North 8<sup>th</sup> Street is proposed to be occupied by a 16-story mixed-use multiple dwelling (alternately, the “Building” and the “subject building”) with approximately 77,000 sq. ft. of floor area, including approximately 57,160 sq. ft. of residential floor area and 18,863 sq. ft. of open space; and

WHEREAS, the subject Zoning Lot is also occupied by two existing one-story buildings located at 115 Berry Street and 138 North 8<sup>th</sup> Street, respectively; and

WHEREAS, the Zoning Lot comprises Tax Lot 11 and Tax Lot 31; and

WHEREAS, Tax Lot 11 is occupied by the Building and Tax Lot 31 is occupied by the two existing buildings located at 115 Berry Street and 138 North 8<sup>th</sup> Street; and

WHEREAS, prior to 2004, Iqbal, LLC and affiliated entities held full title to the subject site; and

WHEREAS, on January 27, 2004, Iqbal, LLC executed a zoning lot development agreement (a “ZLDA”) and a declaration of easements with two affiliated entities (“two affiliated entities”) thereby effecting a zoning lot merger of Tax Lot 31 and Tax Lot 11 and the transfer of excess development rights from Lot 31 to Lot 11; and

WHEREAS, on February 1, 2004, Iqbal LLC and its affiliated entities entered into a contract with the developer under which the developer would ultimately succeed to the interest of the two affiliated entities with respect to Tax Lot 11 and would purchase Tax Lot 31 (February 2004 contract”); and

WHEREAS, on November 30, 2004, pursuant to its professional certification program, DOB issued New Building Permit No. 301784399 (the “Permit”) permitting construction of the Building; and

WHEREAS, in December 2004, the property transaction

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1 Headings are utilized only in the interests of clarity and organization.

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# MINUTES

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contemplated by the February 2004 contract closed, and the developer acquired fee title to Tax Lot 11, as well as the right to all unused floor area from Tax Lot 31; Iqbal LLC and affiliated entities (hereinafter, "Tax Lot 31 owner") held the remaining interest in Tax Lot 31; and

WHEREAS, at the time the Permit was issued, the Building was located in an R6 zoning district; and

## PROCEDURAL HISTORY

WHEREAS, as discussed above, the instant appeal concerns the issuance by DOB of New Building Permit No. 301784399 on November 30, 2004 permitting development of a 16-story mixed-use building at the subject site; and

WHEREAS, DOB conducted a special audit review of the Permit and requested certain modifications to the plans; subsequently, on April 22, 2005 DOB re-approved the plans; and

WHEREAS, on May 11, 2005, the City Council adopted the Greenpoint-Williamsburg Rezoning which changed the zoning district of the subject site to R6B; and

WHEREAS, in November 2005, the Tax Lot 31 owner brought suit in Kings County Supreme Court (Iqbal, LLC v. Five M, LLC et al, Sup. Ct., Kings Cty, Index No. 35400/05) against the developer, claiming inter alia that it had not authorized the use of the existing buildings to provide open space for the subject building (the "owner's lawsuit"); and

WHEREAS, the developer filed a counterclaim for a declaratory judgment that it has a right of access to the contested rooftops; and

WHEREAS, on December 30, 2005, DOB issued a Letter of Intent to revoke the permit; the Letter of Intent requested an easement agreement granting access to the open space, in addition to raising other issues; and

WHEREAS, on January 19, 2006, DOB issued a stop work order halting construction of the Building, based on the December 30, 2005 Letter of Intent; and

WHEREAS, the developer submitted a revised zoning analysis excluding floor area that would not be permitted if the disputed open space were unavailable; and

WHEREAS, based on the above, on February 26, 2006, DOB partially lifted 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, on December 11, 2007, under BSA Cal. No. 147-07-BZY, the Board approved an application under ZR § 11-332 to extend the time to complete construction under the previous zoning and obtain a certificate of occupancy for the Building; and

WHEREAS, on January 24, 2008, the Brooklyn Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on February 20, 2008, the appellants filed the instant appeal at the BSA; and

## ISSUES PRESENTED

WHEREAS, the appellants contend that the Building violates the open space requirements of the Zoning Resolution, as set forth in ZR §§ 23-142 and 12-10 and, therefore, that the Permit should be revoked; and

WHEREAS, the appellants make the following primary arguments in support of their position that the proposed Building violates the Zoning Resolution: (i) the open space will not be usable and accessible to the occupants of the subject building; (ii) the occupants of the Building have no legal right of access to the proposed open space; and (iii) physical limitations preclude the use of the proposed open space; and

WHEREAS, these three arguments are addressed below; and

WHEREAS, the appellants contend that DOB failed to ensure that open space sufficient to support the Building's floor area that is usable and accessible to the occupants, as required by the Zoning Resolution, is provided on the Zoning Lot and therefore, the Permit should be revoked; and

WHEREAS, ZR § 23-142 provides that the permissible floor area of a building is dependent on the amount of open space provided on its zoning lot and imposes a minimum open space ratio of 33.0 for the proposed residential development in an R6 zoning district; and

WHEREAS, the Building is proposed to provide 57,160 sq. ft. of residential floor area, thereby requiring 18,863 sq. ft. of open space on the Zoning Lot; and

WHEREAS, it is undisputed that the square footage of the proposed open space complies with the requirements of ZR § 23-142; and

WHEREAS, ZR § 12-10(b) provides that open space must be "accessible to and usable by all persons occupying a dwelling unit . . . on the zoning lot," and

WHEREAS, the appellants contend that issuance of the Permit violates ZR § 12-10(b) because DOB failed to ensure that the open space on the subject site will be accessible to the Building occupants; and

WHEREAS, according to the plans approved in connection with the Permit, a substantial portion of the required open space is located on the adjoining rooftops of 115 Berry Street and 138 North 8<sup>th</sup> Street; and

WHEREAS, the appellants argue that where open space is provided on an adjoining tax lot in separate ownership, a recorded easement or restrictive declaration ensuring access to the space is required before a permit can be issued and that without such a document, open space will not be maintained that is usable and accessible to the occupants of the Building, and the permit would be invalid; and

WHEREAS, to determine compliance with open space requirements, DOB relies on an applicant's floor area calculations and drawings; and

WHEREAS, DOB asserts that the Permit is valid because the Building application demonstrates the required amount of open space on the Zoning Lot and compliance with the open space requirements of ZR §§ 23-142 and 12-10; and

WHEREAS, DOB further asserts that the reference in ZR § 12-10(b) to 'accessible and usable space' is satisfied by a design and layout, as reflected in the drawings, showing the physical means of gaining entry to the space, and by the documents establishing that the zoning lot was created in accordance with ZR § 12-10(d); and

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# MINUTES

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WHEREAS, the appellants contend that, since no legal document was provided to DOB ensuring that the proposed open space on the two existing buildings will be maintained as usable and accessible to the occupants of the Building, the Permit must be revoked; and

WHEREAS, DOB states that satisfying the requirement that open space be accessible and usable is not dependent on a demonstration of a legal right of entry, and therefore does not require submission of a recorded easement or restrictive declaration prior to the issuance of a permit; and

WHEREAS, DOB further states that neither the Zoning Resolution nor agency practice requires an applicant to provide an additional guarantee that open space will always be made available to occupancy; and

WHEREAS, DOB notes, for example, that the Zoning Resolution does not require an applicant to ensure the public's right of access to public plazas as a precondition to the issuance of a permit on a zoning lot with multiple buildings; and

WHEREAS, the Board notes that confirmation by a DOB inspector of compliance with open space requirements is a precondition to the issuance of a certificate of occupancy after construction; and

WHEREAS, at hearing, the appellants conceded that ZR § 12-10 does not require submission of an easement agreement; and

WHEREAS, the appellants nonetheless contend that the lack of a written easement evidencing access to the open space violates DOB's Legal Policy and Procedure Notice ("LPPN") 1/042; and

WHEREAS, LPPN 1/04 sets forth procedures and requirements for the filing, review, approval and documentation of proposed easement agreements and restrictive declarations which provide for alternate means of compliance with code requirements; and

WHEREAS, the Board notes that, by its terms, LPPN 1/04 applies only to restrictive declarations that are required "for alternate means of compliance with code requirements;" and that the Permit application did not propose an alternate means of compliance with open space requirements; and

WHEREAS, because the proposed Building Plans did not call for an alternate means of compliance, LPPN 1/04 would therefore not apply to the instant case; and

WHEREAS, the appellants also argue that because DOB had requested a recorded easement granting access to the open space in its December 30, 2005 Letter of Intent, that such an easement was therefore required to demonstrate compliance with the open space requirements of the Zoning Resolution; and

WHEREAS, DOB states that although the agency had requested an easement agreement, it subsequently determined that an easement was not required to demonstrate compliance;

and

WHEREAS, the Board notes that no legislative mandate may be imputed from DOB's request, absent a specific requirement in the Zoning Resolution; and

WHEREAS, the appellants additionally contend that DOB should have required execution of a restrictive declaration prior to issuing a permit that relies on open space located on the rooftop of another building on the same Zoning Lot, citing the recent decision in Matter of 9<sup>th</sup> and 10<sup>th</sup> St. LLC v. Bd. of Stds. and Appeals (10 N.Y. 3d 264 (2008); 2008 NY Slip Op. 02678 (upholding DOB's denial of a building permit for a proposed dormitory that lacked an established connection to a school based on reasonable doubt that the building would be used lawfully)); and

WHEREAS, in 9<sup>th</sup> and 10<sup>th</sup> Street, DOB required a restrictive declaration prior to the issuance of a permit because a non-complying residential use could not be distinguished from the permitted dormitory use on the approved plans and, in the absence of a proven institutional nexus, DOB could not establish compliance with the Zoning Resolution; and

WHEREAS, the denial of a permit by DOB in the latter case was upheld based on the applicant's failure to proffer evidence establishing an intent to use the building in a manner consistent with the permitted dormitory use; and

WHEREAS, DOB states that a restrictive declaration is unnecessary in the instant case because the approved plans alone clearly establish compliance with the open space requirements of the Zoning Resolution; and

WHEREAS, the Board finds that the Appellant's reliance on 9<sup>th</sup> and 10<sup>th</sup> St. LLC is therefore misplaced because the holding was limited to the specific facts of that case; the Court set forth no general rule requiring similar documentation with respect to compliance with other Zoning Resolution requirements that would be applicable to the instant case; and

WHEREAS, the Board notes that the type and form of information provided to DOB in connection with the Permit application is consistent with DOB practice with respect to similar developments; and

WHEREAS, the Board further notes that the appellants have identified no other instances in which an easement or restrictive declaration was required prior to the issuance of a building permit; and

WHEREAS, the appellants argue that the Board should require the execution of a restrictive declaration or easement ensuring access to the open space to ensure that it remains accessible to Building occupants; and

WHEREAS, it is not a legislative body, the Board does not have the power to, in effect, amend or modify the Zoning Resolution to condition the validity of the Permit on the execution of a restrictive declaration when such a requirement is not expressly or impliedly authorized by the Zoning Resolution or other statute (see Vit-Al Bldg. Corp. v. Eccleston, 7 A.D.2d 737 (2d Dept' 1958); Pearson v. Shoemaker, 25 Misc.2d 591 (Sup. Ct. 1960)); and

WHEREAS, the Board further notes that implicit in the

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2 Although appellants refer to LPPN 1/04, and this resolution therefore addresses the claims pertaining to such document, this DOB directive has been superseded by LPPN 1/05.

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# MINUTES

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Appellant's argument is the notion that the Permit ought to be revoked based on the purported future non-compliance of the Building; and

WHEREAS, DOB is prohibited from denying a permit based on a speculative future illegal use (see Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep't 1989) ("[t]he standard to be applied herein is the actual use of the building in question, not its possible future use")); and

WHEREAS, the appellants additionally contend that the Tax Lot 31 owner has not authorized use of its property as open space and, therefore it is not accessible and usable by residents of the subject building in violation of ZR § 12-10; and

WHEREAS, the appellants argue that the owner's objection to access to the rooftops of the existing buildings invalidates the Permit, citing Bun & Burger of Rockefeller Plaza, Inc. v. New York City Dept. of Bldgs., (111 A.D.2d 140 (1<sup>st</sup> Dep't 1985) ("Bun & Burger")); and

WHEREAS, the Board notes that Bun & Burger, which concerns the inability of DOB to issue a permit to a lessee based on a permit application that is unauthorized by an owner, is inapplicable to the issue of access to open space presented by the instant case; and

WHEREAS, furthermore, at hearing DOB testified that the Tax Lot 31 owner did not contest the authorization of the Permit; and

WHEREAS, the appellants further assert that a right of access to the rooftops of the existing buildings is among the issues currently being litigated by the developer and the Tax Lot 31 owner and, absent a judicial resolution in favor of the developer, Building residents have no right to access to the proposed open space; and

WHEREAS, the appellants argue that because compliance with the open space requirements of ZR §§ 23-142 and 12-10 cannot be established until the owner's lawsuit is resolved, the Permit is therefore invalid; and

WHEREAS, appellants further argue that, in the event the parties settle the owner's lawsuit by signing an agreement to allow access, the Permit will have contained a defect at the time of its issuance because its validation by the litigation means that it was therefore invalid when issued; and

WHEREAS, the Board notes that, as the lawfulness of the Permit is dependent on the compliance of the Building plans with the requirements of the Zoning Resolution at the time of its issuance, the outcome of subsequent litigation is therefore irrelevant; and

WHEREAS, the appellants also argue that DOB had no right or authority to issue a partial lift to the SWO allowing construction to proceed up to ten stories and 40,539 sq. ft.; and

WHEREAS, litigation is ongoing as to the rights provided by the ZLDA and purchase agreement, DOB considered it prudent to limit development to the height which would be permissible absent the open space component provided by the two contested rooftops; and

WHEREAS, because the issue before the Board concerns only the lawfulness of the issuance of the Permit, the

propriety of DOB's actions subsequent to its issuance are not properly before it; and

WHEREAS, notwithstanding the foregoing, the Board notes that the New York City Charter and Administrative Code invest DOB with broad enforcement powers providing the necessary authority to partially lift the stop work order on the Building; and

WHEREAS, the Board further notes that neither the imposition of the stop work order nor its partial lift necessarily implicate the validity of the Permit at the time of its issuance; and

WHEREAS, the Board finds that the Building plans and recorded zoning lot declaration are sufficient to establish compliance with the open space requirements under the Zoning Resolution and that submission to DOB of a recorded easement agreement or restrictive declaration ensuring access to the rooftops of the existing buildings prior to the issuance of the Permit is not required; and

WHEREAS, the appellants also argue that physical limitations of the rooftops of the existing buildings preclude their use as open space and, therefore, that the approved Building plans cannot establish compliance with the open space requirements; and

WHEREAS, the appellants contend that the Building plans are defective because portions of the proposed open space are presently encumbered with parapet walls, mechanical equipment and skylights; and

WHEREAS, the appellants further contend that the Building plans propose a roof terrace that is infeasible and fail to show guardrails and other architectural features necessary to maintain the safety of open space users; and

WHEREAS, the developer states that DOB-approved plans represent future conditions and while the rooftops of the existing buildings may not presently comport with open space requirements, they must be in compliance before a certificate of occupancy can be issued; and

WHEREAS, the developer further states that building plans often contain requirements pertaining to parking, rooftop recreation space and plantings that rarely exist at the time of plan approval; and

WHEREAS, DOB testified at hearing that prior to the issuance of a certificate of occupancy, an inspector will verify that the open space is accessible to and usable by the occupants of the Building; and

WHEREAS, the Board therefore finds that existing physical conditions of the rooftops of the existing buildings do not establish non-compliance with the open space requirements of the Zoning Resolution; and

WHEREAS, the appellants also contend that the Zoning Lot was not properly formed and therefore cannot establish a right of access to the rooftops of the existing buildings; and

WHEREAS, at hearing the Board asked DOB to confirm that the Zoning Lot had been properly formed; and

WHEREAS, a submission by DOB confirms that the applicant has submitted all documents required to establish that the Zoning Lot was created in accordance with ZR §12-10(d), including a recorded zoning lot declaration executed by

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# MINUTES

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the fee owners of the lots as named in a title insurance company certification; and

WHEREAS, the appellants argue that these documents do nothing more than establish the existence of a zoning lot merger, and that DOB has an affirmative obligation to analyze the documents to ensure that their terms do not interfere with access to open space; and

WHEREAS, DOB states, and the Board agrees, that when a fully formed zoning lot is presented as part of a development application, the agency has a duty to confirm that the proposed floor area is consistent with the requirements of the zoning for the district, but is not required to analyze the underlying contractual agreement between the owners of the tax lots comprising the Zoning Lot; and

WHEREAS, in their final submission, Appellants raise additional concerns regarding (i) a purported failure to require a separate application for Tax Lot 31; (ii) issues with authorization of a different permit on the Zoning Lot; (iii) questions regarding the necessity to amend the certificates of occupancy for the two existing buildings; and (iv) discrepancies with the floor plans; and

WHEREAS, appellants fail to explain the relevance of these issues to the question presented by the appeal; these issues are therefore not addressed herein; and

WHEREAS, the Board finds that the instant appeal presents no evidence that DOB violated any law or regulation; and

WHEREAS, the Board concludes that the plans for construction of the subject building under New Building Permit No. 301784399 met the requirements for open space under ZR §§ 23-142 and 12-10 when the Permit was issued; and

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Brooklyn Borough Commissioner, dated January 24, 2008, and a revocation of New Building Permit No. 301784399, is hereby denied.

Adopted by the Board of Standards and Appeals, December 9, 2008.

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## 211-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Trish & Thomas Ecock, lessee.

SUBJECT – Application August 15, 2008 – Proposed reconstruction and enlargement of existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing legal non conforming private disposal system in the bed of the mapped street and Service road. R4 Zoning District.

PREMISES AFFECTED – 434 Oceanside Avenue, north side Avenue at the intersection of mapped Beach 211<sup>th</sup> Street, 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, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410121522, reads in pertinent part:

“A1- 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.

A2- 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 December 9, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated September 2, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 4, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410121522, 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 15, 2008” – 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

# MINUTES

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 9, 2008.

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## 231-08-A

APPLICANT – Gerard E. Meyer, for Breezy Point Cooperative Inc., owner; Stephen D’Antonio, lessee.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning

PREMISES AFFECTED – 118 Beach 221<sup>st</sup> Street, southwest side of Beach 221<sup>st</sup> Street, 320’ southeast of 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 GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 11, 2008, acting on Department of Buildings Application No. 410124887, reads in pertinent part:

“A1- The street giving access to the existing building to be altered 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 as altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space, contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is contrary to Department of Buildings policy;” and

WHEREAS, a public hearing was held on this application on December 9, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 1, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this

approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 11, 2008, acting on Department of Buildings Application No. 410124887, 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 9, 2008” – 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 9, 2008.

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## 115-07-A & 116-07-A

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application May 10, 2007 – Proposed construction of four one family homes located within the bed of a mapped street (Ramona Avenue ) contrary to Section 35 of the General City Law. R3-X SSRD Zoning District.

PREMISES AFFECTED – 310 & 335 Ramona Avenue, Ramona Avenue and Huguenot Avenue, Block 6836, Lot 63 (tent 55 & 59), 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008 at 10 A.M., for decision, hearing closed.

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## 56-08-A & 57-08-A

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application March 14, 2008 – Proposed construction of four single family detached homes located

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# MINUTES

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within the bed of a mapped street contrary to General City Law Section 35. R3X- SSRD, SGMD Zoning Districts.

PREMISES AFFECTED – 322 & 328 Ramona Avenue, south side of Ramona Avenue 140’ west of Huguenot Avenue, Block 6836, Lot 63 (tent 57), 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 16, 2008 at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 11:00: A.M.



# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, DECEMBER 9, 2008  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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**ZONING CALENDAR**

**178-08-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Igor Yanovsky, owner.

**SUBJECT** – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.

**PREMISES AFFECTED** – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**APPEARANCES** –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 9, 2008, acting on Department of Buildings Application No. 310142002, reads in pertinent part:

- “1. ZR 23-141(b) – The proposed total floor area exceeded the permitted [floor area]
2. ZR 23-141(b) – The proposed lot coverage exceeded the permitted [lot coverage]
3. ZR 23-141(b) – The proposed open space is inadequate
4. ZR 23-461 – The proposed side yards are contrary to those permitted;”

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 floor area, lot coverage, open space and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008 and November 25, 2008, and then to decision on December 9, 2008; 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, residents of the Manhattan Beach community provided testimony in opposition to the proposal; and

WHEREAS, the subject site is located on the east side of Norfolk Street, between Shore Boulevard and Oriental Boulevard; and

WHEREAS, the subject site has a total lot area of approximately 2,500 sq. ft., and is occupied by a single-family home with a floor area of approximately 950 sq. ft. (0.37 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from approximately 950 sq. ft. (0.37 FAR) to approximately 2,190 sq. ft. (0.87 FAR); the maximum floor area permitted is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides lot coverage of 37 percent (a maximum of 35 percent is permitted) and open space of 63 percent (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement maintains an existing non-complying side yard with a width of 4’-4¾” along the northern lot line and an existing non-complying side yard with a width of 1’-2” along the southern lot line (two side yards with a minimum width of 5’-0” each are required); and

WHEREAS, at hearing, the Board raised concerns regarding the amount of the existing building that would be retained as part of the proposed enlargement; and

WHEREAS, specifically, the Board questioned whether: (i) the existing one-story building would be able to support the proposed enlargement; (ii) the applicant’s proposal to raise the existing floor was necessary; and (iii) a cellar could be provided without removing the existing floor at grade; and

WHEREAS, in response, the applicant submitted photographs and an affidavit from the architect indicating that the existing home was a reinforced concrete structure that would be able to support the proposed enlargement; and

WHEREAS, in addition, the applicant states that the first floor must be elevated in order to provide a cellar with adequate head room and avoid building below the water table; and

WHEREAS, in support of its assertion, the applicant submitted boring testings indicating a water table at a depth of 6’-6” for the subject site; 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

# MINUTES

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 floor area, FAR, lot coverage, open space, 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 October 14, 2008" – (11) sheets and "November 10, 2008" – (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of approximately 2,190 sq. ft. (0.87 FAR); a lot coverage of 37 percent; an open space of 63 percent; a side yard of 4'-4 ¾" along the northern lot line and a side yard of 1'-2" along the southern lot line, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 9, 2008.

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## 199-08-BZ

### CEQR #09-BSA-013X

APPLICANT – Rizzo Group, LLP, for Acadia PA East Fordham Acqstns, LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 28, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the third floor in an existing 14-story

mixed-use building. The proposal is contrary to ZR §32-10. C4-4 district.

PREMISES AFFECTED – 400 East Fordham Road (aka 2506-2526 Webster Avenue/4747-4763 Park Avenue). Block 3033, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #6BX

APPEARANCES – None

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, a decision of the Bronx Deputy Borough Commissioner, dated July 15, 2008, acting on Department of Buildings Application No. 200999571, reads in pertinent part; and

“Respectfully request a reconsideration to create a physical culture establishment pursuant to ZR § 32-30 uses permitted by special permit;”

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4 zoning district, the establishment of a physical culture establishment (PCE) on the third floor of a 14-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 9, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, the subject site occupies a through lot located on the east side of Webster Avenue and the west side of Park Avenue between East 189<sup>th</sup> Street and East Fordham Street; and

WHEREAS, the site is occupied by a 14-story mixed-use building; and

WHEREAS, the PCE will occupy a total of 28,416 sq. ft. of floor area on the third floor; and

WHEREAS, the PCE will be operated by 24 Hour Fitness USA, Inc.; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the PCE will operate 24 hours per day; 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

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# MINUTES

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performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA013X, dated July 3, 2008; 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 the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4 zoning district, the establishment of a physical culture establishment on the third floor of a 14-story mixed-use building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 6, 2008"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on December 9, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York

State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT 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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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, December 9, 2008.

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## **119-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§42-10), rear yard (§43-26) and parking (§44-21). M1-2 district.

PREMISES AFFECTED – 443 39<sup>th</sup> Street, northern side of 39<sup>th</sup> Street, midblock between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, Block 705, Lot 59, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 27, 2009 at 10 A.M., for decision, hearing closed.

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## **134-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

# MINUTES

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for an adjourned hearing.

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## 135-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 71-52 172<sup>nd</sup> Street, northwest corner of the intersection of 73<sup>rd</sup> Avenue and 172<sup>nd</sup> Street, Block 6959, Lot 1, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009 at 10 A.M., for decision, hearing closed.

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## 170-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.

SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.

PREMISES AFFECTED – 411-431 East 69<sup>th</sup> Street, block bounded by East 69<sup>th</sup> and East 70<sup>th</sup> Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary T. Tarnoff, Samuel Lindenbaum and James Power.

For Opposition: Jerry Andreozzi and William Spitz.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009 at 10 A.M., for decision, hearing closed.

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## 224-08-BZ

APPLICANT – Omnipoint Communications Inc., for Remzija Suljovic, Rizo Muratovic, Brahim Muratovic, owners; Omnipoint Communications Inc., lessee.

SUBJECT – Application August 29, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower, to mount nine small panel antennas and related equipment cabinets on the rooftop.

PREMISES AFFECTED – 47-10 Laurel Hill Boulevard, south side of Laurel Hill Boulevard, bounded by 47<sup>th</sup> Street, to the west and 48<sup>th</sup> Street to the east, Block 2305, Lot 22, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Robert Gardioso.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009 at 10 A.M., for decision, hearing closed.

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## 45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application February 29, 2008 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil L. Rampulla, Henry Salmon, John Vokral, Deborah Ippolito, Joyce Gilberti and Raymond Masucci.

**ACTION OF THE BOARD** – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

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## 201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X district.

PREMISES AFFECTED – 40-38 216<sup>th</sup> Street, between 215<sup>th</sup> Place and 216<sup>th</sup> Street, 200' south of 40<sup>th</sup> Avenue, Block 6290, Lot 70, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam W. Rothkrug and Richard F.

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# MINUTES

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Alexander.

For Opposition: Councilmember Tony Avella, Gerda Soria, Tom Buscher and Kathleen Cronin.

**ACTION OF THE BOARD** – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

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## 223-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.

SUBJECT – Application August 29, 2008 – Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142' south of the intersection with Kreischer Street, Block 7596, Lot 250, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17<sup>th</sup> Street, Block 7462, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam W. Rothkrug

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 244-08-BZ

APPLICANT – Rizzo Group, for BP/CGCenter II, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application October 1, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar level and first floor in a 59-story building. The proposal is contrary to ZR §32-10. C6-6 district.

PREMISES AFFECTED – 139-153 East 53<sup>rd</sup> Street; 140-16 East 54<sup>th</sup> Street; 601-635 Lexington Avenue; 884-892 3<sup>rd</sup> Avenue, north side of 53<sup>rd</sup> Street, between 3<sup>rd</sup> and Lexington Avenues, Block 1308, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Kenneth Barbino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 13, 2009 at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 93, Nos. 49-51

December 25, 2008

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

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**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**Margaret P. Stix, *Counsel***

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| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
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### CONTENTS

|                                     |     |
|-------------------------------------|-----|
| DOCKET .....                        | 859 |
| <b>CALENDAR</b> of January 27, 2009 |     |
| Morning .....                       | 860 |
| Afternoon .....                     | 861 |

# CONTENTS

**MINUTES of Regular Meetings,  
Tuesday, December 16, 2008**

Morning Calendar .....862

**Affecting Calendar Numbers:**

|                           |   |
|---------------------------|---|
| 736-45-BZ                 | 3740 Broadway, Manhattan  |
| 863-48-BZ                 | 259-16 Union Turnpike, Queens   |
| 719-56-BZ                 | 2525 Victory Boulevard, Staten Island                                 |
| 337-90-BZ                 | 1415/17 East 92 <sup>nd</sup> Street, Brooklyn                        |
| 239-97-BZ                 | 1499 Bruckner Boulevard, Bronx  |
| 115-07-A &<br>116-07-A    | 310 & 335 Ramona Avenue, Staten Island                                |
| 251-07-A thru<br>254-07-A | 63/65 Houston Street and 104/106 Willowbrook Road, Staten Island      |
| 200-08-A                  | 171 Bayside Drive, Queens   |
| 204-08-A                  | 26 Roosevelt Walk, Queens   |
| 205-08-A                  | 32 Tioga Walk, Queens   |
| 232-08-A                  | 50 Tioga Walk, Queens   |
| 233-08-A                  | 56 Hillside Avenue, Queens  |
| 240-08-A                  | 167 Bayside Drive, Queens   |
| 70-08-A thru<br>72-08-A   | 215C, 215B, 215A Van Name Avenue, Staten Island                       |
| 73-08-A thru<br>75-08-A   | 354 Van Name Avenue, Staten Island                                    |
| 103-08-BZY                | 208 Grand Street, Brooklyn  |
| 120-08-A                  | 186 Grand Street, Brooklyn  |
| 149-08-A                  | 808 Columbus Avenue, Manhattan  |
| 168-08-A                  | 63 Brighton 2 <sup>nd</sup> Place, Brooklyn                           |
| 261-08-BZY &<br>262-08-A  | 140-75 Ash Avenue, Queens   |
| 263-08-BZY &<br>294-08-A  | 29-23 40 <sup>th</sup> Road and 30-02 40 <sup>th</sup> Avenue, Queens |

Afternoon Calendar .....874

**Affecting Calendar Numbers:**

|           |   |
|-----------|---|
| 205-07-BZ | 53-20 72 <sup>nd</sup> Place, Queens            |
| 51-08-BZ  | 511 Avenue R, Brooklyn                          |
| 175-08-BZ | 141 Allen Street, Manhattan                     |
| 195-08-BZ | 1350 East 27 <sup>th</sup> Street, Brooklyn     |
| 225-08-BZ | 1155 East 24 <sup>th</sup> Street, Brooklyn     |
| 203-07-BZ | 137-35 Elder Avenue, Queens                     |
| 20-08-BZ  | 53-55 Beach Street, Manhattan                   |
| 46-08-BZ  | 491 Bedford Avenue, 142 Clymer Street, Brooklyn |
| 155-08-BZ | 282 Beaumont Street, Brooklyn                   |
| 159-08-BZ | 68-70 Spring Street, Manhattan                  |
| 162-08-BZ | 150 East 93 <sup>rd</sup> Street, Manhattan     |
| 198-08-BZ | 268 Park Avenue, Manhattan                      |
| 206-08-BZ | 737 Elvira Avenue, Queens                       |
| 226-08-BZ | 172 Empire Boulevard, Brooklyn                  |
| 230-08-BZ | 1019 East 23 <sup>rd</sup> Street, Brooklyn     |
| 250-08-BZ | 1925 East 5 <sup>th</sup> Street, Brooklyn      |
| 251-08-BZ | 2153 Ocean Parkway, Brooklyn                    |

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# DOCKETS

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New Case Filed Up to December 16, 2008  
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**301-08-BZ**

2717 Quentin Road, Quentin Road between East 27 and East 28 Street (approximately 50' west of East 28th), Block 6790, Lot(s) 32, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (23-141), side yard (23-461), perimeter wall height (23-631(b)) and less than the minimum rear yard (23-47) in an R3-2 zoning district.  
-----

**302-08-BZ**

4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue., Block 5047, Lot(s) 12, Borough of **Bronx, Community Board: 12**. Variance to allow a three-story, three family building, contrary to use and bulk regulations.  
-----

**303-08-BZ**

34-67 Francis Lewis Boulevard, Northeast corner of 35th Avenue, Block 6077, Lot(s) 43, Borough of **Queens, Community Board: 11**. Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.  
-----

**304-08-BZ**

312-318 East 95th Street, South side of 95th Street, 215 ft. east of Second Avenue, 350 ft. west of First Avenue., Block 1557, Lot(s) 41, Borough of **Manhattan, Community Board: 8**. Variance pursuant to 72-21 and Special Permit pursuant to 73-19 to allow a school in a C8-4 district contrary to bulk regulations (33-123, 33-451, 33-453, 33-454, 33-26). C8-4 District.  
-----

**305-08-A**

East River Waterfront Esplanade, East side of South Street, 24' south of Maiden Lane., Block 36, Lot(s) 25 & 30, Borough of **Manhattan, Community Board: 1**. Application seeking a variance of the Flood Plain regulations under Section G 107 of Appendix G of the NYC Building Code.  
-----

**306-08-BZ**

969 Third Avenue, Southeast corner of the intersection formed by Third Avenue and East 58th Street., Block 1331, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR Section 32-10. C5-2 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.**



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# CALENDAR

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**JANUARY 27, 2009, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 27, 2009, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **241-47-BZ**

APPLICANT – Sheldon Lobel, P.C., for Marin Vajanc, owner.

SUBJECT – Application July 24, 2008 – Extension of Term and Amendment filed pursuant to §§11-411 & 11-413 requesting an extension of the variance previously granted by the Board of Standards and Appeals which expired on January 29, 2004. The application seeks a change in use from knitting mill (Use Group 17) to a contractor's establishment (Use Group 17). The site is located in an R5B zoning district.

PREMISES AFFECTED – 16-23/25 Hancock Street, West side of Hancock Street approximately 245' north of Wycoff Street, Block 3548, Lot 97 Borough of Queens.

**COMMUNITY BOARD #5Q**

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### **889-55-BZ**

APPLICANT – J & H Management Corporation, owner.

SUBJECT – Application October 22, 2008 – Application filed pursuant to § 11-411 to extend the term of Automotive Repair Facility for 10 years which expired on May 1, 2008. The application seeks a Waiver of the Rules of Practice and Procedure for an Extension of Time to obtain a Certificate of Occupancy. The subject site is located in a C1-2/R3-2 zoning district.

PREMISES AFFECTED – 69-15 164<sup>th</sup> Street, Block 9631, Lot 38, Borough of Queens.

**COMMUNITY BOARD #8Q**

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### **885-78-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 120 West 25th Realty Company, LLC, owner.

SUBJECT – Application November 25, 2008 – Amendment to a previously granted Variance (§72-21) to allow the transfer of development rights from the subject site (Lot 53) to an adjoining site (Lot 49) in an M1-6 zoning district.

PREMISES AFFECTED – 120 West 25<sup>th</sup> Street, south side of West 25<sup>th</sup> Street, between Sixth and Seventh Avenues, Block 800, Lot 53, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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### **124-99-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for

BLDG Management Company, Incorporated; New York Sports Club, lessee.

SUBJECT – Application November 8, 2008 – Extension of the term of a previously granted special permit allowing the operation of a physical culture establishment health club in portions of the cellar and first floor of an existing twenty story commercial building located in a C6-6 (Mid) zoning district.

PREMISES AFFECTED – 1372 Broadway, Easterly side of Broadway between West 37<sup>th</sup> and West 38<sup>th</sup> Streets, Block 813, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **51-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the operation of a PCE in a portion of the cellar and the legalization of a dance studio in the cellar and first floor of an existing commercial building, in an C1-2/R2 zoning district, which expired on December 12, 2008.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike between 188<sup>th</sup> and 189<sup>th</sup> Street, Block 7266, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

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## **APPEALS CALENDAR**

### **153-08-A & 154-08-A**

APPLICANT – Philip L. Rampulla, for Richard Salomone, owner.

SUBJECT – Application May 30, 2008 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District

PREMISES AFFECTED – 156 & 150 Forest Road, northwest of Dalemere Road, Block 869, Lots 50, 63 (Tent. 54,52), Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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# CALENDAR

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**JANUARY 27, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 27, 2009, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **284-07-BZ**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for K.S. Realty, Inc., owner; AGT Crunch New York, LLC, lessee. SUBJECT – Application December 19, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment (Crunch Fitness) on portions of the cellar, and first floor, second floor, and the third floor of a mixed-use building. The proposal is contrary to section 32-10. C6-1 district.

PREMISES AFFECTED – 52-54 East 13<sup>th</sup> Street, south side of East 13<sup>th</sup> between Broadway and University Place, Block 564, Lot 11, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### **161-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **215-08-BZ**

APPLICANT – Davidoff Malito & Hatcher, LLP by Howard S. Weiss, for SoBRO Development Corp., owners.

SUBJECT – Application August 20, 2008 – Variance (§72-21) to allow a new ten (10) story mixed-use building containing ninety eight (98) dwelling units and ground floor retail use; contrary to use regulations (§32-00). C8-3 district.

PREMISES AFFECTED – 1778-1800 Southern Boulevard, intersection of East 174<sup>th</sup> Street, Boston Post Road and Southern Boulevard, Block 2984, Lots 1 & 7, Borough of Bronx.

**COMMUNITY BOARD #3BX**

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### **227-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to allow a 39,922 square foot enlargement to an existing non-profit hospital (UG 4); contrary to bulk regulations (§24-11, §23-633, §122-30). R8 District / Special Grand Concourse Preservation District.

PREMISES AFFECTED – Grand Concourse, East 173<sup>rd</sup> Street, Selwyn Avenue, Mt. Eden Parkway, Block 2823, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 16, 2008  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**736-45-BZ**

APPLICANT – Walter T. Gorman, P.E., for Midel Property Associates, LLC, owner; Exxon Mobil Corporation, lessee.  
SUBJECT – Application June 3, 2008 – Extension of Term/waiver for a previously granted variance for the operation of a gasoline service station (Mobil), in a C2-4/R8 zoning district, which expired on March 17, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 8, 2000.

PREMISES AFFECTED – 3740 Broadway, northeast corner of West 155<sup>th</sup> Street, Block 2114, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #12M**

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a gasoline service station with accessory uses, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on October 7, 2008 after due notice by publication in *The City Record*, with a continued hearing on November 25, 2008, and then to decision on December 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the northeast corner of the intersection at Broadway and 155<sup>th</sup> Street, within an R7 (C2-4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 25, 1949 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station, lubricatorium, auto laundry, and office; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, the grant was extended on May 8, 1990 for a term of ten years from the expiration of the prior grant; and

WHEREAS, the term expired on March 17, 1999; the applicant states that the gasoline service station has operated continuously since the expiration of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks to amend the grant to legalize site conditions that fail to conform to the previously approved plans, to reflect: (i) the conversion of the southwest portion of the service building to an accessory convenience store; and (ii) the installation of a handicap access ramp in front of the convenience store; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the convenience store is contained within a completely enclosed building; and (ii) the convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store located within the enclosed building has a retail selling space of less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, at hearing the Board asked the applicant to clarify who owned the two public pay telephones located at the subject site, whether they were located on the City sidewalk or on the owner's property, and whether they were properly licensed; and

WHEREAS, in response, the applicant submitted a letter from the Department of Information Technology & Telecommunications ("DOITT") indicating that the telephones are located on the City sidewalk and are owned by TCC-Teleplex, which has a franchise with the City to operate the telephones; and

WHEREAS, the Board notes that the New York State Department of Environmental Conservation ("DEC") recorded an active spill at this site, identified as Spill No. 8910288; DEC has issued a separate spill number for 3750 Broadway, identified as Spill No. 0109628, which is an apartment building affected by the release at 3740 Broadway; and

WHEREAS, in response, the applicant represents that a vapor abatement system has been operating at 3750 Broadway since 2002 to remove hydrocarbon vapors in the basement of the apartment building and will remain in operation until DEC determines that Spill Nos. 8910299 and 0109628 can be closed out; and

# MINUTES

WHEREAS, additionally, the applicant represents that a new remediation system will begin in the first quarter of 2009; and

WHEREAS, based upon its review of the record, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 25, 1949, so that as amended this portion of the resolution shall read: "to extend the term for an additional ten years from March 17, 1999, to expire on March 17, 2009, and to permit the noted site modifications; *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 3, 2008"--(6) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 17, 2009;

THAT all signage shall comply with C2 zoning district regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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. 110116650)

Adopted by the Board of Standards and Appeals December 16, 2008.

## 863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.

SUBJECT – Application September 25, 2008 – Extension of Term of a previously granted variance for a (UG16A) auto repair establishment, in an R-2 zoning district, which will expire on November 25, 2008.

PREMISES AFFECTED – 259-16 Union Turnpike, south east corner of 259<sup>th</sup> Street, Block 8678, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January

13, 2009, at 10 A.M., for decision, hearing closed.

## 719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 10 A.M., for continued hearing.

## 337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92<sup>nd</sup> Street, northeast corner of East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

## 239-97-BZ

APPLICANT – Kenneth H. Koons, for B.W. Partners Incorporated, owner.

SUBJECT – Application September 3, 2008 – Extension of Term for a UG16 automotive service station and UG8 parking lot, in an R-6 zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1499 Bruckner Boulevard, north west corner of Wheeler Avenue, Block 3712, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: K. H. Koons.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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# MINUTES

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Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 115-07-A & 116-07-A

#### 56-08-A/57-08-A

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application May 10, 2007 – Proposed construction of four one family homes located within the bed of a mapped street (Ramona Avenue ) contrary to Section 35 of the General City Law. R3-X SSRD Zoning District.

PREMISES AFFECTED – 310 & 335 Ramona Avenue, Ramona Avenue and Huguenot Avenue, Block 6836, Lot 63 (tent 55 & 59), Borough of Staten Island.

#### COMMUNITY BOARD #3SI

#### APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD** – Appeals granted.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

#### THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 4, 2008, acting on Department of Buildings Application Nos. 510030324, 510030333, 510030342, and 510030351, reads in pertinent part:

“The proposed construction of a single family detached building (Use Group 1) in an R3X Zoning District within the bed of a mapped street is contrary to General City Law 35 and therefore referred to the Board of Standards and Appeals (BSA) for approval;” and

WHEREAS, a public hearing was held on this application on December 9, 2008 after due notice by publication in the *City Record*, and then to decision on December 16, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, by letter dated May 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 10, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and advises the Board that

there is an existing 10-inch diameter sanitary sewer, a 12-inch diameter storm sewer and an 8-inch diameter City water main in Ramona Avenue between Huguenot Avenue and Ellsworth Avenue, and there is a 10-inch diameter sanitary sewer, a 21-inch diameter storm sewer, a 20-inch diameter City water main, and an 8-inch diameter City water main in Huguenot Avenue between Rathbun Avenue and Lamont Avenue; and

WHEREAS, DEP also notes that Amended Drainage Plan No. D-11 calls for a future 10-inch diameter sanitary sewer and a 12-inch diameter storm sewer in the bed of Ramona Avenue between Huguenot Avenue and Ellsworth Avenue, and for a 10-inch diameter sanitary sewer and a 21-inch to 24-inch diameter storm sewer in the bed of Huguenot Avenue between Rathbun Avenue and Lamont Avenue; and

WHEREAS, DEP requested the applicant to provide a survey showing: (i) the width of Huguenot Avenue between Rathbun Avenue and Lamont Avenue, and the width of widening portion of the street; (ii) the distance between the existing sewers, City water main, widening line, and the proposed development between Rathbun Avenue and Lamont Avenue; and (iii) a copy of Corporation Counsel Opinion dated August 15, 2002; and

WHEREAS, in response, the applicant submitted a survey showing an 80-foot total width of the mapped Huguenot Avenue between Rathbun Avenue and Lamont Avenue, of which approximately 38.7 feet will be available for the installation, maintenance, and/or reconstruction of the existing 10-inch diameter sanitary sewer, 21-inch diameter storm sewer, 20-inch diameter and 8-inch diameter City water main, and for the future 10-inch diameter sanitary sewer and 21-inch to 24-inch diameter storm sewer; and

WHEREAS, additionally, the applicant submitted a copy of the Corporation Council Opinion dated August 15, 2002; and

WHEREAS, by letter dated July 8, 2008, DEP states that it reviewed the applicant’s survey and requires the applicant to show: (i) the distance between the street lines of Ramona Avenue between Ellsworth Avenue and Huguenot Avenue and the existing sewer and water main in Ramona Avenue; and (ii) the distance from the terminal manhole of the 10-inch diameter sanitary sewer in Ramona Avenue and from the end cap of the 8-inch diameter City water main in Ramona Avenue to the lot line of Tentative Lot 54; and

WHEREAS, in response, the applicant submitted a revised survey showing an 80-foot total width of the mapped Ramona Avenue between the west side of the property line of Tentative Lot 54 and Ellsworth Avenue that will be available for the installation, maintenance and/or reconstruction of the existing 10-inch diameter sanitary sewer and 8-inch diameter City water main, and for the future 10-inch diameter sanitary sewer and 12-inch diameter storm sewer; and

WHEREAS, additionally, the applicant submitted a site plan dated March 25, 2008, showing a proposed irregular roadway width with a minimum of 38-feet on Ramona Avenue which will extend from the west side of the property line of Tentative Lot 54 to Huguenot Avenue and will be available for the installation, maintenance, and/or reconstruction of the

# MINUTES

future 10-inch diameter sanitary sewer and 12-inch diameter storm sewer; and

WHEREAS, by letter dated July 22, 2008, DEP states that it has reviewed the revised survey and site plan and finds them acceptable; and

WHEREAS, by letter dated October 27, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, additionally, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated March 4, 2008, acting on Department of Buildings Application Nos. 510030324, 510030333, 510030342, and 510030351, 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 drawings filed with the application marked "Received December 10, 2008" – (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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT a Builder's Pavement Plan be filed and approved before DOB issues any permits; and

THAT the Department of Buildings must 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 16, 2008.

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## 251-07-A thru 254-07-A

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner.

SUBJECT – Application November 2, 2007 – 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.

PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Appeals granted.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: 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 of a proposed development of four semi-detached three-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 22, 2008 after due notice by publication in *The City Record*, with continued hearings on September 9, 2008, October 7, 2008, October 28, 2008 and November 18, 2008, and then to decision on December 16, 2008; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application; and

WHEREAS, a representative of Council Member Michael E. McMahon testified in opposition to this application; Council Member McMahon also submitted written testimony in opposition; and

WHEREAS, certain members of the community testified in opposition to this application, including members of the Houston Lane Homeowners Association, Inc. (collectively, the "Opposition"); and

WHEREAS, the subject site is located at the southeast corner of Houston Lane and Willowbrook Road; and

WHEREAS, the subject site has a total lot area of 23,023 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise tentative Tax Lot 542 (63 Houston Street), Tax Lot 543 (65 Houston Street), Tax Lot 150 (104 Willowbrook Road) and Tax Lot 151 (106 Willowbrook Road); and

WHEREAS, the applicant proposed to develop each tax lot with a semi-detached three-story three-family dwelling (collectively, the "proposed development"); and

WHEREAS, the subject site is currently located within an R3X zoning district, but was formerly located within an R3-2 zoning district; and

WHEREAS, on December 3, 2003 (the "Rezoning Date"), the City Council adopted a rezoning which changed the zoning of the subject site to R3X; and

WHEREAS, on August 12, 2004, the City Council adopted Lower Density Growth Management Area Text Amendments (LDGMA) and on December 8, 2008, the City Council adopted follow-up text amendments to the LDGMA regulations; and

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# MINUTES

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WHEREAS, the proposed development does not comply with the R3X zoning district parameters as to use and dwelling unit count; and

WHEREAS, specifically, as to use, R3X zoning district regulations permit detached single-family and two-family dwellings; as noted above, the proposed development contemplates semi-detached three-family dwellings; and

WHEREAS, further, the number of dwelling units permitted is determined by a designated dwelling unit factor; under this factor, only four dwelling units would be permitted, rather than the total of twelve proposed; and

WHEREAS, on August 12, 2004, the City Council adopted Lower Density Growth Management Area (LDGMA) Text Amendments and on December 8, 2008, the City Council adopted follow-up text amendments to the LDGMA regulations; and

WHEREAS, the new LDGMA text regulations limit the number of homes that can be built behind other homes, and increase the minimum lot width and the width of required side yards for new developments; and

WHEREAS, the new regulations also restrict parking within the 30'-0" required rear yard; and

WHEREAS, the proposed development does not comply with the LDGMA regulations concerning minimum lot width, side yards, and parking; 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, New Building Permit No. 500629705 and New Building Permit No. 500629723 were issued to the prior owner permitting the construction of the subject homes at 63 Houston Street and 106 Willowbrook Road, (collectively, the "October 2003 Permits") by the Department of Buildings (DOB) on October 31, 2003, prior to the Rezoning Date; and

WHEREAS, New Building Permit No. 500629732 was issued November 3, 2003 and New Building Permit No. 500629714 was issued November 5, 2003 to the prior owner permitting the construction of the subject homes at 104 Willowbrook Road and 65 Houston Street (collectively, the "November 2003 Permits") by DOB, prior to the Rezoning Date; and

WHEREAS, a DOB submission further states that the October 2003 Permits and the November 2003 Permits (collectively, the "Permits") were lawfully issued and were effective until December 3, 2005; and

WHEREAS, on May 2, 2007, the applicant was issued a Stop Work Order, halting construction of the homes located at 63 Houston Street and 65 Houston Street; and

WHEREAS, on September 13, 2007, DOB, revoked the permits for construction of the homes at 65 Houston Street and on September 17, 2007, DOB revoked the permits for construction of the homes at 63 Houston Street; and

WHEREAS, a submission by DOB states that the revocations were made in error and were rescinded on July 18, 2008; and

WHEREAS, on February 6, 2008, due to their lapse by operation of law, DOB issued stop work orders halting

construction of the homes at 104 Willowbrook Road and 106 Willowbrook Road and revoked the permits for the two sites; and

WHEREAS, thus, the Board finds that the Permits were validly issued by DOB to the prior owner of the subject premises and were in effect until their lapse by operation of law on December 3, 2005; and

WHEREAS, a submission by DOB states that the foundations of the proposed development were complete as of the Rezoning Date; and

WHEREAS, because the Permits were vested as of the Rezoning Date under Z.R. § 11-331, the developer would have been eligible to apply for an extension of time to complete construction under Z.R. § 11-332; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 must be filed within 30 days from the date that a permit lapses; and

WHEREAS, the deadline to submit such an application was January 3, 2006; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 was not filed; and

WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that 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, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 lapse of the building permit on December 3, 2005, the previous owner had completed the foundations of the four buildings of the proposed development; and

WHEREAS, a property owner succeeds to all the right, title and interest in the property held by its predecessor-in-interest and transferred to it (see Caponi v. Walsh, 228 A.D.

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# MINUTES

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86 (2d Dep't 1930); see also *Elsinore Prop. Owners Ass'n v. Morwand Homes*; 52 A.D. 1105 (2d Dep't 1955)); and

WHEREAS, DOB has established that the foundations were complete as of the Rezoning Date, the value of that work inheres to the current owner and may be considered in the instant application; and

WHEREAS, the applicant additionally asserts that subsequent to the transfer in ownership in October 2005, exterior construction on the dwellings located at 63 Houston Street and 65 Houston Street was 85 percent complete, including construction of the superstructure and some interior framing; and

WHEREAS, according to the applicant's submissions, the work was performed by the new owner between October 2006 and May 2007; and

WHEREAS, the work was performed pursuant to permits erroneously renewed by DOB until the imposition of the stop work orders on May 7, 2007; and

WHEREAS, however, since the Permits had lapsed by operation of law on December 3, 2005, work performed after that date cannot be considered toward the instant application; and

WHEREAS, the Board notes that the completion of the foundations of the subject site prior to the Rezoning Date is sufficient under New York State case law to support a positive vesting determination; a significant amount of work was performed at the site prior to the lapse of the Permits and said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the applicant states that the owner has expended in excess of \$1.3 million, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately \$2 million budgeted for the proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the applicant's budgeted expenditures include site acquisition and financing costs which, for the purposes of its analysis, the Board must exclude; and

WHEREAS, the applicant also enumerates expenditures and irrevocable financial commitments totaling approximately \$400,950 made after the lapse of the Permits, which the Board must also exclude; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the hard costs of the work performed by the previous owner are estimated at \$156,000 which includes the value of the site preparation, excavation, and the installation of the foundations prior to the lapse of the Permits; and

WHEREAS, the Board considers the amount of these expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts

considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that there would be a diminution in income if the unit count limitation of the new zoning were imposed; and

WHEREAS, the applicant states that under the R3X zoning and LDGMA regulations, a complying development could have no more than four units, rather than the 12 proposed; and

WHEREAS, the maximum permitted floor area on the lot is unchanged, consequently, each of the four complying homes would be substantially larger than those of the proposed development; and

WHEREAS, the applicant represents that large homes of such a size are not desirable in the subject area, and therefore that the reduced unit count would lead to financial loss because the sale of four large homes would generate a lesser financial return per square foot than 12 smaller homes; and

WHEREAS, the applicant stated that the reduction by two-thirds in the number of units would result in a net loss of \$613,000 in sales revenue; and

WHEREAS, at hearing, the Board questioned the basis for the applicant's estimates; and

WHEREAS, the applicant provided an appraisal indicating that the sale of the four complying homes would result in a loss of \$603,000; and

WHEREAS, the Board agrees that the significant reduction in the number of units in the proposed development will result in a serious loss; and

WHEREAS, the applicant states that the inability to develop the proposed building would also require the redesign of the proposed development to account for the loss of eight units, further compounding the economic harm to the owner; and

WHEREAS, the Board agrees that the need to redesign and the limitations of any complying development constitute, in the aggregate, 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 proposed development had accrued to the owner of the subject site as of the Rezoning Date; and

WHEREAS, at hearing, the Opposition argued that the instant application must be denied because the owner performed illegal construction while a stop work order was in effect; and

WHEREAS, as noted above, a stop work order was imposed on May 2, 2007, halting construction of the homes at 63 Houston and 65 Houston Street; and

WHEREAS, a submission by DOB states that the stop work order was partially lifted on July 8, 2008 to permit the



# MINUTES

installation of windows and siding necessary to protect the homes from penetration by rain and snow; and

WHEREAS, the applicant states that the work performed on the proposed development pursuant to the partial lift was limited to the installation of windows and siding, and a fence to secure the site; and

WHEREAS, the Opposition and the City Council Member also raised concerns with the compatibility of the proposed development with the character of the surrounding community; 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, 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 reinstatement of the Permits, 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 New Building Permit Nos. 500629714, 500629723, 500629705, and 500629732, 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, and the Board hereby extends the time to complete the proposed development for four years from the date of this resolution, to expire on December 16, 2012.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 200-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Michelle & Robert Bernabo, lessees.

SUBJECT – Application July 29, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of a mapped street and the upgrade of an existing non conforming private disposal system located in the bed of a mapped street contrary to General City Law Section 35.

PREMISES AFFECTED – 171 Bayside Drive, south side Bayside Drive, 138.75' west of Beach 178<sup>th</sup> Street, Block 16340, Lot 50, Borough of Queens.

### COMMUNITY BOARD #14Q

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 Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410119116 which reads in pertinent part:

“A1- 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.

A2- 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 December 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated August 11, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated August 14, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, correspondence from the Department of Transportation states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410119116, 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 29,2008”– 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

# MINUTES

Adopted by the Board of Standards and Appeals,  
December 16, 2008.

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## 204-08-A

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Inc., owner; Kathleen & Ralph Reed, lessees.  
SUBJECT – Application August 5, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 26 Roosevelt Walk, west side Roosevelt Walk, 488.46’ south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 29, 2008, acting on Department of Buildings Application No. 410114638 which reads in pertinent part:

“A1- 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.

A2- 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 December 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated August 18, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 2, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens

Borough Commissioner, dated July 22, 2008 , acting on Department of Buildings Application No. 410114638 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 5, 2008” – 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
December 16, 2008.

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## 205-08-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Domenic Guastadisegni, owner.

SUBJECT – Application August 6, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of mapped street contrary to General City Law Section 35 and not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 32 Tioga Walk, west side of Tioga Walk, north of 6<sup>th</sup> Avenue, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretha Papa.

**ACTION OF THE BOARD** – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410122059, reads in pertinent part:

“A1- The building is partially located in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per

# MINUTES

Article 3, Section 35 of the General City Law, and

- A2- The site and the building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Sect 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon legally mapped street or frontage space and therefore contrary to Section C27-291 of the Administrative Code of the City of New York; and

WHEREAS, a public hearing was held on this application on December 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 28, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 2, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, correspondence from DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410122059, is modified by the power vested in the Board by Section 35/36 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 6, 2008" – 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 232-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary & Steven Maceda, lessees. SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street (B216th) contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 50 Tioga Walk, west side Tioga Walk 126.5' south of 6<sup>th</sup> Avenue, Block 16350, Lot p/o 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 2, 2008, acting on Department of Buildings Application No. 410143599, reads in pertinent part:

"A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.

WHEREAS, a public hearing was held on this application on December 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 1, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, correspondence from DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410143599, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited

# MINUTES

to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 9, 2008" – 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 233-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Elizabeth & Geoffrey Gilmartin, lessees.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Hillside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located within the bed of a mapped street contrary to GCL 35 and the Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 56 Hillside Avenue, south side Hillside Avenue 72.54' west of intersection with Rockaway Point Boulevard, Block, 16340, Lot p/o 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 19, 2008, acting on Department of Buildings Application No. 410135072, reads in pertinent part:

"A1- 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.

A2- 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 December 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 1, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, correspondence from the Department of Transportation states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 19, 2008, acting on Department of Buildings Application No. 410135072, 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 9, 2008" – 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 240-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point

# MINUTES

Cooperative, Inc., owner; Victoria and William Fernandez, lessees.

**SUBJECT** – Application September 25, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street and the upgrade of an existing private disposal system in the bed of the mapped street contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning District.

**PREMISES AFFECTED** – 167 Bayside Drive, south side of Bayside Drive 100’ west of mapped Beach 178<sup>th</sup> Street, Block 16340, Lot p/o 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

**APPEARANCES** –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Appeals granted.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated September 15, 2008, acting on Department of Buildings Application No. 410154773, reads in pertinent part:

“A1- 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.

A2- 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 December 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 24, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, correspondence from DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 15, 2008, acting on Department of Buildings Application No. 410154773, 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 25, 2008”– 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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**70-08-A thru 72-08-A**

**APPLICANT** – Eric Palatnik, P.C., for TOCS Developers, Inc., owner.

**SUBJECT** – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.

**PREMISES AFFECTED** – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**APPEARANCES** –

For Applicant: Eric Palatnik.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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**73-08-A thru 75-08-A**

**APPLICANT** – Eric Palatnik, P.C., for S.B. Holding, owner.

**SUBJECT** – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

**PREMISES AFFECTED** –354 Van Name, northeast of the

# MINUTES

corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, Borough of Staten Island.

## COMMUNITY BOARD #1SI

### APPEARANCES –

For Applicant: Eric Palatnik.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## 103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

### APPEARANCES –

For Applicant: Lyra Altman.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

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## 120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.

SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.

PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

### APPEARANCES –

For Applicant: Lyra Altman and Harry Georgeson.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

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## 149-08-A

APPLICANT – Jack Lester, for Neighbors, et al, owner.  
SUBJECT – Application May 29, 2008 – Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 808 Columbus Avenue, 97<sup>th</sup> and 100<sup>th</sup> Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.

## COMMUNITY BOARD #7M

### APPEARANCES –

For Applicant: Jack Lester.

For Opposition: Lisa Orrantia, Albert Frederis, Brian Cut, Shane Seger and Jean Green Dorsey.

**ACTION OF THE BOARD** – Laid over to February 3, 2009, at 10 A.M., for postponed hearing.

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## 168-08-A

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110’ north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

## COMMUNITY BOARD #13BK

### APPEARANCES –

For Applicant: Peter Geis.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 10 A.M., for continued hearing.

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## 261-08-BZY & 262-08-A

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.  
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for continued hearing.

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## 263-08-BZY & 264-08-A

# MINUTES

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

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 R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 29-23 40<sup>th</sup> Road and 30-02 40<sup>th</sup> Avenue, Block 402, Lots 12 & 35, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stuart Beckerman, Michael Potel and David E. Gross.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, DECEMBER 16, 2008 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.

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## ZONING CALENDAR

### 205-07-BZ

#### CEQR #08- BSA-015Q

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 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

#### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Robert Gardioso.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 20, 2008, acting on Department of Buildings Application No. 402456454, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to ZR § 22-00 and therefore not allowable within R4-1 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 R4-1 zoning district, the proposed construction of a telecommunications pole (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 29, 2008, after due notice by publication in *The City Record*, with continued hearings on April 15, 2008, June 17, 2008, August 19, 2008, and November 18, 2008, and then to decision on December 16, 2008; and

WHEREAS, Community Board 5, Queens, recommends

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# MINUTES

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disapproval of this application; and

WHEREAS, certain elected officials, including Congressman Joseph Crowley, Council Member Dennis Gallagher, State Senator Serphin Maltese, Assembly Member Margaret Markey, and Queens Borough President Helen Marshall provided testimony in opposition to this application; and

WHEREAS, the Middle Village Maspeth Civic Association and the Juniper Park Civic Association also provided testimony in opposition to this application; and

WHEREAS, a number of local residents testified in opposition to this application, citing concerns with aesthetics and health; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the proposed telecommunications pole will be located on a site with an existing two-story building; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 13'-0" high monopole mounted on the roof of the existing building, resulting in a maximum height above ground level of 42'-6"; and

WHEREAS, the proposed telecommunications pole includes six small panel antennas located inside that are completely hidden from view and equipment cabinets located at its base; and

WHEREAS, the applicant states that the base of the telecommunications pole and the related equipment cabinets will be surrounded by a screened wall which is finished to match the existing building; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, at hearing, the Board asked the applicant to respond to a "call test" conducted by a number of community residents, from which they concluded that there is adequate cellular reception in the subject area and that the telecommunications pole is therefore unnecessary; and

WHEREAS, in response, the applicant cited *AT&T Wireless Serv. of Cal. LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1155-56 (S.D. Cal. 2003), and *Nextel Comm. of the Mid-Atlantic, Inc. v. Town of Sudbury*, 2003 WL 543383 (D. Mass. Feb. 26, 2003), and submitted an affidavit from a radio frequency engineer, standing for the proposition that community residents' anecdotal call tests are not construed to be a valid assessment of wireless network coverage and cannot be utilized to assess the true state of the wireless network; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications pole, 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 further represents that the height of the pole is the minimum necessary to provide the required wireless coverage; and

WHEREAS, the applicant initially sought to install a 25-foot high telecommunications pole, resulting in a maximum height above ground level of 54'-6", with a base diameter of 36 inches; and

WHEREAS, in addition, the proposed telecommunications facility was initially designed to resemble a flagpole, with an American flag that would be illuminated at night; and

WHEREAS, in response to concerns raised by the community, at hearing the Board requested that the applicant reduce the height and width of the proposed telecommunications pole and eliminate the flag and the proposed lighting; and

WHEREAS, in response, the applicant submitted revised plans reflecting a reduction in the height of the telecommunications pole from 25 feet to 13 feet, a reduction in the base diameter from 36 inches to 32 inches, and the elimination of the flag and the proposed lighting; 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. 08-BSA-015Q, dated August 20, 2007; and

WHEREAS, the EAS documents show that the project



# MINUTES

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 R4-1 zoning district, the proposed construction of a 13'-0" telecommunications pole (non-accessory radio tower) for public utility wireless communications, to be mounted onto the roof of an existing two-story building for a maximum height of 42'-6" above ground level, and a base diameter of 32 inches, 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 December 2, 2008"-(4) 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

## 51-08-BZ

### CEQR #08-BSA-065K

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR §24-11 (lot coverage, FAR, & open space), §24-382 (required rear yard equivalent), §24-522 and §23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway

and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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 Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 8, 2008, acting on Department of Buildings Application No. 310090950, reads in pertinent part:

1. Lot coverage exceeds the maximum lot coverage permitted (60%, ZR 24-11)
2. Floor Area Ratio exceeds the maximum permitted FAR (3.0, ZR 24-11)
3. Required rear yard equivalent is not provided (ZR 24-382)
4. Building height exceeds the maximum height permitted (70', ZR 24-522, 23-633)
5. Required front setback is not provided (ZR 24-522, 23-633)
6. Minimum required open space does not comply (40%, ZR 24-11);" and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R6A zoning district, within the Special Ocean Parkway District, a six-story and mezzanine synagogue (Use Group 4), which does not comply with lot coverage, floor area ratio, required rear yard equivalent, height, front setback, and open space, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-633; and

WHEREAS, a public hearing was held on this application on July 29, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 9, 2008, after which the application was set for decision on October 28, 2008; on October 28, 2008, the decision was deferred until December 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of the Sephardic Institute, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the north side of Avenue R between Kings Highway and Ocean Parkway, and

WHEREAS, the site has a total lot area of 4,288 sq. ft. and is located within an R6A zoning district within the Special Ocean Parkway District; and

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# MINUTES

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WHEREAS, the site is occupied by a three-story synagogue (Use Group 4); and

WHEREAS, the site has been under the jurisdiction of the Board since March 3, 1981 when, under BSA Cal. No. 1254-80-BZ, the Board granted a variance pursuant to ZR § 72-21 permitting a one-story enlargement of an existing two-story synagogue and private school; and

WHEREAS, the applicant represents that the existing building, as enlarged, is no longer adequate to meet the Synagogue's programmatic needs; and

WHEREAS, the proposed building provides for a six-story and mezzanine synagogue with the following parameters: an FAR of 4.85 (the maximum permitted FAR is 3.0); a street wall height of 78'-0" (the maximum street wall height permitted is 60'-0"); and a total height of 95'-6" (the maximum total height permitted is 70'-0"); and

WHEREAS, additionally, the building will maintain the following existing non-compliances: a lot coverage of 99.7 percent (a maximum of 60 percent is permitted); an open space of 0.3 percent (a minimum of 40 percent is required); no rear yard equivalent (a minimum rear yard equivalent of 60'-0" is required); and no front yard setback (a minimum front yard setback of 10'-0" is required); 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 620 members; and (2) to provide space for services and programs other than worship services; and

WHEREAS, the applicant states that the existing building, which has three sanctuary spaces, is occupied beyond legal capacity for Sabbath and holiday services; and

WHEREAS, the applicant further states that the existing building lacks elevators, air conditioning units, and adequate bathrooms for the size of the congregation; and

WHEREAS, the applicant represents that the large amount of space taken up by the elevator core, mechanical space, and bathrooms in the proposed building leaves only 44 percent of gross floor area for program space; and

WHEREAS, the proposed building has the following program: (1) administrative offices, bathrooms, storage, and mechanical space on the cellar floor; (2) a lobby, a meeting room, and a sanctuary for the male congregants on the first floor; (3) the primary worship space on the second floor; (4) a balcony from which the female congregants can observe the main sanctuary on the third floor; (5) a multi-purpose room, a warming kitchen, and a mezzanine for mechanical space on the fourth floor; (6) a family sanctuary and a mezzanine for mechanical space on the fifth floor; and (7) mechanical space on the sixth floor; and

WHEREAS, the applicant further states that a complying building would be inadequate to accommodate the size of the congregation and would not permit the creation of a women's balcony on the third floor; and

WHEREAS, the applicant represents that the requested variance is necessary to provide adequate space for worship services, associated programs, and mechanical space; and

WHEREAS, additionally, the applicant represents that

the requested variance enables the Synagogue to have the third floor women's balcony; and

WHEREAS, the applicant states that worship space which separates men and women is critical to its religious practice, thus necessitating the requested waivers; 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, however, the applicant also presents the following site conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: the site's irregular trapezoidal shape and high water table; and

WHEREAS, as to the shape of the lot, the length of the northern property line is approximately 49 feet, the eastern property line is approximately 121 feet, the southern property line is approximately 40 feet, and the western property line is approximately 93 feet; and

WHEREAS, the applicant states that an as-of-right development on this zoning lot would result in floor plates which 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 represents that the required floor area cannot be accommodated within the as-of-right lot coverage, height, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, as to the site's water conditions, the applicant states that soil borings indicate that the underground water table was measured to a depth of 16 feet; and

WHEREAS, the applicant states that due to the site's high water table, the height of the building cannot be lowered to accommodate more floor area below grade; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Synagogue, create 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)

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# MINUTES

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does not have to be made in order to grant the variance requested in this application; 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 since 1966; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the subject building is consistent with buildings in the surrounding neighborhood; and

WHEREAS, the applicant notes that the lots located immediately to the east and west of the subject building are occupied by six-story residential buildings; these are the only three buildings located on the block; and

WHEREAS, the applicant further notes that several other community facility buildings are located in the surrounding community, including a four-story Yeshiva and a two-story synagogue on the east side of Ocean Parkway, within 400 feet of the subject building; and

WHEREAS, at hearing, the Board raised concerns about the height of the proposed building; and

WHEREAS, in response, the applicant submitted revised plans indicating that 1,243 sq. ft. of the roof level and the associated parapet on the south end of the building, along with the ceiling heights in the family sanctuary below the roof, have been reduced by 3'-6"; 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 applicant represents that the height of the subject building was reduced to the minimum necessary to accommodate the Synagogue's current and projected programmatic needs; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the applicant 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. 08BSA065K, dated March 6, 2008; 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 ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the applicant: (1) a March 2008 Environmental Assessment Statement; (2) a January 2007 Phase I Environmental Site Assessment; (3) a September 2008 Site Investigation Report; (4) an October 2008 Remedial Action Plan ("RAP"); and (5) a Construction Health and Safety Plan (CHASP); and

WHEREAS, the applicant has agreed to implement any hazardous materials remediation required by a revised RAP, pursuant to a Restrictive Declaration executed and recorded against the subject property on December 9, 2008; 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, 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 R6A zoning district, within the Special Ocean Parkway District, a six-story and mezzanine synagogue (Use Group 4), which does not comply with lot coverage, floor area ratio, required rear yard equivalent, height, front setback, and open space, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-633, *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 18, 2008"-(2) sheets and "Received August 26, 2008"-(15) sheets; and *on further condition*:

THAT the building parameters shall include an FAR of 4.85, a street wall height of 78'-0", a total height of 95'-6", a lot coverage of 99.7 percent, an open space of 0.3 percent, no rear yard equivalent, and no front yard setback;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

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

# MINUTES

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 construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 175-08-BZ

### CEQR #09-BSA-002M

APPLICANT – Eric Palatnik, P.C., for Mama Spa Corporation, owner.

SUBJECT – Application July 3, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment at the cellar, first and second floors of an existing five-story building. The proposal is contrary to ZR §32-10. C6-1 district.

PREMISES AFFECTED – 141 Allen Street, between Rivington Street and Delancy Street, Block 415, Lot 24, Borough of Manhattan.

### COMMUNITY BOARD #3M

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 Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, a decision of the Manhattan Borough Commissioner, dated September 23, 2008, acting on Department of Buildings Application No. 110110175, reads in pertinent part:

- “1. ZR 32-10. Proposed ‘Physical Culture Establishment’ is not permitted in ZD C6-1.
2. ZR 73-36. BSA Special Permit Required;”  
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 cellar, first, and second floors of an existing five-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with a continued hearing on November 25, 2008, and then to decision on December 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Allen Street, between Rivington Street and Delancey Street; and

WHEREAS, the site is occupied by a five-story mixed-use building; and

WHEREAS, the PCE will occupy a total of 2,000 sq. ft. of floor area on the first and second floors; and

WHEREAS, the PCE will be operated by Mama Spa Corp.; and

WHEREAS, the applicant represents that the services at the PCE will include the practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, the hours of operation for the PCE will be: Monday through Sunday, from 10:00 a.m. to 11:00 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, by letter dated September 30, 2008, the Fire Department states that it has reviewed the application and advises the Board that an approved Interior Fire Alarm System (IFA) should be installed, which includes: (i) area smoke detectors installed throughout the areas occupied by the PCE; (ii) manual pull stations to be installed at each required exit; (iii) local audible and visible alarms; (iv) interconnection of the IFA to the existing sprinkler system; and (iv) connection of the IFA to an FDNY-approved central station; and

WHEREAS, additionally, the Fire Department advises the Board that the PCE local alarm should be activated when any sprinkler in the building is triggered; and

WHEREAS, in response, the applicant submitted revised plans indicating that an approved interior fire alarm system shall be installed throughout the entire PCE space; and

WHEREAS, at hearing, the Board requested the

# MINUTES

applicant to establish whether the wheelchair lift located at the subject site is permitted and whether it encroaches onto the public sidewalk; and

WHEREAS, in response, the applicant submitted a Department of Buildings (DOB) Inspection Certificate, indicating that the wheelchair lift is in full compliance with the NYC Building Code; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA002M, dated September 29, 2008; 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 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 cellar, first, and second floors of a five-story mixed-use building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 2, 2008"–(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 16, 2018;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT 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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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, December 16, 2008.

## 195-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Aron Bistrizky, owner.

SUBJECT – Application July 16, 2008 – 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 required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1350 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue N and Avenue M, Block 7662, Lot 72, 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 Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 13, 2008, acting on Department of Buildings Application No. 310152134, reads in pertinent part:

1. Proposed floor area exceeds the maximum permitted pursuant to ZR Section 23-141
2. Proposed open space ratio is less than the minimum required pursuant to ZR Section 23-141
3. Proposed side yard is less than the minimum required pursuant to ZR Section 23-461
4. Proposed rear yard is less than the minimum required pursuant to ZR Section 23-47;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the

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# MINUTES

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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 and 23-47; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, with a continued hearing on November 25, 2008, and then to decision on December 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, at hearing, certain neighbors testified in opposition to the application, citing concerns about compatibility with neighborhood character; and

WHEREAS, the subject site is located on the west side of East 27<sup>th</sup> Street, between Avenue M and Avenue N; and

WHEREAS, the subject site has a total lot area of 8,000 sq. ft., and is occupied by a single-family home with a floor area of 2,103 sq. ft. (0.26 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from 2,103 sq. ft. (0.26 FAR) to 7,984 sq. ft. (0.99 FAR); the maximum floor area permitted is 4,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 50 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 4'-5" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement provides a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the Board requested the applicant to establish that the floor area of the proposed home is consistent with the character of the neighborhood; and

WHEREAS, in response, the applicant submitted property information and photographs for a sampling of six homes within a three-block radius of the subject site with floor areas comparable to that of the proposed 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, 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, 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 12, 2008"–(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 7,984 sq. ft. (0.99 FAR); an open space ratio of 50 percent; one side yard with a width of 4'-5" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must 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 16, 2008.

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**225-08-BZ**

APPLICANT – Lewis E. Garfinkel, R.A., for Lewis Sternlicht, owner.

SUBJECT – Application September 2, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1155 East 24<sup>th</sup> Street, between Avenue K and Avenue L, Block 7624, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

# MINUTES

## 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 Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 22, 2008, acting on Department of Buildings Application No. 310160946, 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 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 an existing two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for FAR, 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 November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 16, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, at hearing, certain neighbors testified in opposition to the application; and

WHEREAS, the subject site is located on the east side of East 24<sup>th</sup> Street, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a two-family residence with floor area of 2,575 sq. ft. (0.69 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from 2,575 sq. ft. (0.69 FAR) to 3,744 sq. ft. (1.0 FAR); the maximum floor area permitted is 1,875 sq. ft.

(0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 51 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the southern lot line with a width of 4’-2” (a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement provides a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); 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 two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for FAR, 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 December 2, 2008”–(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,744 sq. ft. (1.0 FAR); an open space ratio of 51 percent; one side yard with a width of 4’-2” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

# 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 the plan(s)/configuration(s) not related to the relief granted”.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 20-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner.

SUBJECT – Application January 30, 2008 – Special Permit (§75-53) to permit a 2,900 square foot vertical enlargement to an existing warehouse (UG 17); M1-5 District/Special Tribeca Mixed Use District.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, 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 Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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## 46-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.

SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility

building. The proposals contrary to § 24-11 (Floor area ratio and lot coverage) and §24-522 (front wall height, setback, sky exposure plane and number of stories). R6 district.

PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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## 155-08-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Scott Kurland, Susan Klapper, Zoe Tatkov and Samuel Falack.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

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## 159-08-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.



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# MINUTES

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## COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for deferred decision.

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## 162-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93<sup>rd</sup> Street Corporation, owner.

SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.

PREMISES AFFECTED – 150 East 93<sup>rd</sup> Street, southeast corner of East 93<sup>rd</sup> Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Lo Van der Valk, Susan Kathryn Hefti and Omar Rodriqus.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 198-08-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (aka 268-276 Park Avenue South) west side of Park Avenue South at East 21<sup>st</sup> Street, Block 850, Lot 39, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for continued hearing.

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## 206-08-BZ

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.

SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.

PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Annapolis Street, Block 15578, Lot 8, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik, Lewis Gardinkel and Marc Feder.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 226-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district.

PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Silvia Y. Lavalas, Fay B. Fraser and Paul B. Martin.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 230-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.

SUBJECT – Application September 5, 2008 – 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); and less than minimum rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1019 East 23<sup>rd</sup> Street, East side of 23<sup>rd</sup> Street between Avenue J and Avenue K, Block 7605, Lot 36, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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## 250-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5<sup>th</sup> Street, east side of East 5<sup>th</sup> Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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# MINUTES

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APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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**251-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Cynthia Esses, owner.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing one family residence. This application seeks to vary side yards (§23-48) and less than the required rear yard (§23-47) in an R5 (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 2153 Ocean Parkway, east side of Ocean Parkway between Avenue U and Avenue V, Block 7133, Lot 50, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*