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DIRECTORY

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313-06-BZ
304 Columbia Street, Northwest corner of Columbia Street and Woodhull Street., Block 357, Lot(s) 40 Borough of **Brooklyn, Community Board: 6**. Under 72-21-To permit the construction of three 2 unit dwellings, on a vacant lot.

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

CALENDAR

JANUARY 9, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 9, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

733-56-BZ
APPLICANT – Cozen O'Connor Attorneys, for S & B Bronx Realty Associates, owner.
SUBJECT – Application October 26, 2006 – Extension of Term and a waiver of the rules to a previously granted variance to allow a parking lot (UG8) in an R7-1 residential zoning district which expired on December 6, 1997.
PREMISES AFFECTED – 283 East 164th Street, northwest corner of East 164th Street, and College Avenue, Block 2432, Lot 19, Borough of The Bronx.
COMMUNITY BOARD #4BX

230-98-BZ
APPLICANT – Agusta & Ross, for John and Gaetano Iacono, owners.
SUBJECT – Application October 16, 2006 – Extension of Time to obtain a Certificate of Occupancy which expired on April 30, 2003 for an automotive repair shop and the sale of used cars (2) in an R5 zoning district.
PREMISES AFFECTED – 5810-5824 Bay Parkway, northeasterly corner of Bay Parkway and 59th Street, Block 5508, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD #12BK

244-01-BZ
APPLICANT– Sheldon Lobel, P.C., for Gregory Pasternak, owner.
SUBJECT – Application October 24, 2006 – Extension of Time to complete construction which expired on September 24, 2006 for the legalization of residential units in an existing building located in an M1-2/R6A zoning district.
PREMISES AFFECTED – 325 South 1st Street, a/k/a 398/404 Rodney Street, northeast corner of intersection formed by Rodney Street and South First Street, Block 2398, Lot 28, Borough of Brooklyn.
COMMUNITY BOARD #1BK

300-05-A
APPLICANT – Zygmunt Staszewski, P.E., for Breezy Point Cooperative, Inc., owner; Ed Keisel, lessee.
SUBJECT – Application July 6, 2006 – Reconstruct and enlarge an existing one family dwelling which lies within the bed of a mapped street (B209th Street) contrary to Section 35 of the General City Law. R4 Zoning District.
PREMISES AFFECTED – 995 Bayside, east of Bayside, north of West Market Street, Block 16350, Lot 300, Borough of Queens.
COMMUNITY BOARD #14Q

APPEALS CALENDAR

239-06-A
APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Hugh Ferguson, lessee.
SUBJECT – Application September 13, 2006 – Reconstruction and enlargement of an existing one- family dwelling not fronting a mapped street, contrary to Article 3, Section 36 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 8 Suffolk Walk, west side 110.3' south of Oceanside Avenue, Block 16350, Lots p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

255-06-A thru 257-06-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bell Building Corp., owner.
SUBJECT – Application September 19, 2006 – Application to permit the construction of a one family dwelling not fronting on mapped street, contrary to General City Law Section 36. R3A zoning district.
PREMISES AFFECTED – 76, 74, 72 Bell Street (a/k/a Wall Street) east side of Bell Street, south of intersection with Fletcher Street, Block 2987, Lots 20, 21, 22, Borough of Staten Island.
COMMUNITY BOARD #1SI

277-06-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Dennis & Judy Dunne, owners.
SUBJECT – Application October 16, 2006 – Reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law and the upgrade of an existing disposal system in the bed of a private service road contrary to Department of Buildings Policy. R4 zoning district.
PREMISES AFFECTED – 27 Roosevelt Walk, east side Roosevelt Walk 193.04' south of West End Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

CALENDAR

JANUARY 9, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 9, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

87-05-BZ
APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.
SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).
PREMISES AFFECTED – 216 26th Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn
COMMUNITY BOARD #7BK

330-05-BZ
APPLICANT– Vito J. Fossella, P.E., for Frank Bennett, owner.
SUBJECT – Application November 16, 2005 – Special permit (§73-36). In a C2-2/R3-2 district, on a lot consisting of 5,670 SF, and improved with two one-story commercial buildings, permission sought to allow a physical culture establishment in the cellar of one existing building in 350 New Dorp Lane and in the enlarged cellar of an existing adjacent retail building at 346 New Dorp Lane.
PREMISES AFFECTED – 350 New Dorp Lane, Block 4221, Lot 53, Borough of Staten Island.
COMMUNITY BOARD #2SI

79-06-BZ
APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.
SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1zoning district. The proposal is contrary to Section 42-00.
PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.
COMMUNITY BOARD #8BK

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.
SUBJECT – Application September 26, 2006 – Special Permit (73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area 23-141(a) in an R2 zoning district.
PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.
COMMUNITY BOARD # 14BK

267-06-BZ
APPLICANT– Stadtmauer Bailkin, LLP, for Philip Zerillo and Peter Zuccarello, owners.
SUBJECT – Application September 29, 2006 – Variance (§72-21). On a lot consisting of 5,902 SF, and located in an R2 district, permission sought to construct a two-story plus cellar commercial building. The structure will contain 3,431 SF (FAR .58), and will have five accessory parking spaces. The uses therein will be UG6 professional offices. Currently the site is improved with a 1,507 SF two-story, one-family vacant residential structure with a detached garage.
DOB Objection: Sections 22-00: Proposed use is contrary to district use regulations.
PREMISES AFFECTED – 148-29 Cross Island Parkway, Block 4486, Lots 34, 35, Borough of Queens.
COMMUNITY BOARD #7Q

274-06-BZ
APPLICANT– Stadtmauer Bailkin, LLP, for Rockaway Homes, Inc., owner.
SUBJECT – Application October 11, 2006 – Variance (§72-21) for the construction of a two-story one family residence on a vacant lot which seeks to vary the required front yards (23-45) and minimum lot width (23-32) in an R3-2 zoning district.
PREMISES AFFECTED – 116-07 132nd Street, vacant triangular lot with Lincoln Street to the east 132nd Street to the west and 116th Avenue to the north, Block 11688, Lot 1, Borough of Queens.
COMMUNITY BOARD #10Q

Jeff Mulligan, Executive Director

263-06-BZ

REGULAR MEETING
TUESDAY MORNING, DECEMBER 5, 2006
10:00 A.M.

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, September 19, 2006 as printed in the bulletin of September 28, 2006, Vol. 91, No. 37. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

181-38-BZ
APPLICANT – Michael Cosentino, for Michael Innella, owner.
SUBJECT – Application June 28, 2006 – Pursuant to ZR §11-411 for an extension of term to a gasoline service station (Sunoco) for a ten year term which expired on June 3, 2005, and Amendment to covert the existing service repair bays to a convenience store and a waiver to file the application more than 30 days after the expiration of term. The premise is located in an R-3A(CD) zoning district.
PREMISES AFFECTED – 410-412 City Island Avenue, corner of Ditmars Street, Block 5645, Lot 6, Borough of The Bronx.
COMMUNITY BOARD #10BX
APPEARANCES – None.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....
0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to the approved plans, and an extension of term for a previously granted variance for a gasoline service station, which expired on June 3, 2005; and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in *The City Record*, with continued hearings on November 14, 2006 and then to decision on December 5, 2006; and

WHEREAS, Community Board, 10, Bronx, recommends approval of this application on condition that there be landscaping with flowering plants, decorative fencing, less intense lighting during the hours of midnight to 5 a.m., and enhanced security; and

WHEREAS, the site is located on the northeast corner of City Island Avenue and Ditmars Street; and

WHEREAS, the site is located in an R3A zoning district within the Special City Island District and is improved upon with a gasoline service station with automotive repairs and a small sales area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 24, 1938 when, under the subject calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

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

WHEREAS, most recently, on November 21, 1995, the grant was extended for a term of ten years from the expiration of the prior grant; and

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

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

WHEREAS, additionally, the applicant proposes to convert the portion of the building occupied by the carwash, lubritorium, automotive repair shop, and storage space to a convenience store; and

WHEREAS, the applicant also proposes to upgrade the restroom facilities and add storage space; and

WHEREAS, in response to the Community Board's request, the applicant modified the plans to reflect the noted landscaping, decorative fencing, and lighting conditions; and

WHEREAS, the plans also reflect that two security cameras will be installed outside the building; and

WHEREAS, at hearing, the Board asked the applicant about the storage sheds located onsite; and

WHEREAS, the applicant responded that the storage sheds would be removed and their removal is reflected on the revised plans; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and 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, as adopted on May 24, 1938, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 3, 2005 to expire on June 3, 2015, and to legalize the conversion of a portion of the building to an accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 27, 2006'–(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 3, 2015;

THAT the exterior lighting shall be dimmed to half the daytime illumination between the hours of 12 a.m. and 5 a.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 landscaping shall be planted and maintained as per the approved plans;

THAT fencing shall be installed and maintained as per the approved plans;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 201049659)

Adopted by the Board of Standards and Appeals, December 5, 2006.

938-82-BZ

APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty, Inc., owner; Eugene Khavenson, lessee.

SUBJECT – Application August 4, 2006 – to re-open the previous BSA resolution granted on May 17, 1983 to extend the term of the variance for twenty (20) years. The application also seeks a waiver of the BSA Rules of Practice and Procedure as the subject renewal request is beyond the permitted filing period. Prior grant allowed a one-story commercial office building (UG 6) in an R4 district; contrary to ZR §22-10.

PREMISES AFFECTED – 2470 East 16th Street, northwest corner of Avenue Y, block 7417, Lot 36, 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 and Commissioner Hinkson.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a one-story commercial office building, which expired on May 17, 2003; and

WHEREAS, a public hearing was held on this application on October 17, 2006 after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

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

WHEREAS, the site is located on the northwest corner of East 16th Street and Avenue Y; and

WHEREAS, the site is located within an R4 zoning district and is improved upon with a one-story commercial office building with accessory parking for seven vehicles; and

WHEREAS, on May 17, 1983, the Board granted an application to permit the construction of this one-story office building (UG 6) with accessory parking for a term of 20 years; and

WHEREAS, the applicant represents that there have not been any changes since the prior approval; and

WHEREAS, the applicant now requests a 20-year 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 May 17, 1983, so that as amended this portion of the resolution shall read: "to grant an extension of term for an additional term of 20 years from the expiration of the prior grant, to expire on May 17, 2023; *on condition*:

THAT the site shall be kept clear of graffiti;

THAT there shall be a maximum of seven on-site parking spaces;

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."

(NB 362/1982)

Adopted by the Board of Standards and Appeals, December 5, 2006.

757-89-BZ

APPLICANT – Cozen O'Connor, Barbara Hair, Esq., for 401 Commercial, L.P., owner; Bally Sports Club, Inc., lessee.

SUBJECT – Application October 5, 2006 – Extension of Term and waiver of the rules for a Special Permit (§73-36) to allow a Physical Cultural Establishment in a C6-4.5 zoning district within the Midtown Special District.

PREMISES AFFECTED – 401 Seventh Avenue, a/k/a 139 West 32nd Street, Block 808, Lots 7501, 40, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on

January 15, 2006; and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

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

WHEREAS, the subject premises is a through-lot, with frontage on West 32nd Street and West 33rd Street; and

WHEREAS, the site is occupied by a 23-story hotel and a 12-story mixed shopping mall/commercial office building, located in a C6-4.5 zoning district within the Special Midtown District; and

WHEREAS, the PCE operates in a portion of two adjoining buildings in separate ownership – the Hotel Pennsylvania (aka Penta Hotel) (lot 7501) and the Manhattan Mall (lot 40); and

WHEREAS, the PCE is operated as a Bally Sports Club and occupies space on the first floor, cellar, first subcellar, and second subcellar of the Penta Hotel, and the third subcellar of the Manhattan Mall; and

WHEREAS, on October 28, 1986, under BSA Cal. No. 302-86-BZ, the Board granted a special permit, pursuant to ZR § 73-36, to permit the operation of the PCE in the Penta Hotel; and

WHEREAS, on January 15, 1991, under the subject calendar number, the special permit was amended to permit an extension of the PCE into the adjoining building (Manhattan Mall); and

WHEREAS, most recently, on June 15, 1999, the special permit was amended to extend the term for ten years from the expiration of the prior grant; and

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

WHEREAS, the applicant represents that there have been a few minor interior modifications since the prior approval, including the installation of new turnstiles in the reception area, the reconfiguration of the towel desk in the first subcellar, and the relocation of a small office to the second subcellar; and

WHEREAS, at hearing, the Board asked the applicant to address the outstanding DOB and ECB violations at the site; and

WHEREAS, the applicant responded that the violations did not appear to apply to the PCE, but that any relevant violations would be resolved prior to issuance of the new certificate of occupancy; 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 January 15, 1991, 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 January 15, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received November 6, 2006'–(5) sheets; and *on condition*:

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

THAT this grant shall be limited to a term of ten years from January 15, 2006, expiring January 15, 2016;

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

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

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

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

(DOB Application Nos. 104538047 & 104538038)

Adopted by the Board of Standards and Appeals, December 5, 2006.

70-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Tenth City, LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 11, 2006 – Extension of Term of a Special Permit (§73-36) to allow a Physical Culture Establishment (New York Sports Club) in a C6-6 and Cl-4.5(MID) zoning district which expired on November 1, 2006 and an amendment to legalize the increase of 1,500 square feet on the second floor.

PREMISES AFFECTED – 576 Lexington Avenue, northeast corner of Lexington Avenue and East 51st Street, Block 1306, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an amendment to legalize an increase in floor area, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on November 1, 2006; and

WHEREAS, a public hearing was held on this application on November 14, 2006 after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

WHEREAS, the subject premises is located on the northeast corner of Lexington Avenue and East 51st Street; and

WHEREAS, the site is occupied by a 34-story commercial building, located in C6-6 and C6-4.5 zoning districts within the Special Midtown District; and

WHEREAS, the PCE is operated as New York Sports Club and occupies 280 sq. ft. of floor area on the first floor and 24,700 sq. ft. of floor area on the second floor of the subject building; and

WHEREAS, on December 16, 1997, the Board granted a special permit, pursuant to ZR § 73-36, to permit the continued operation of the PCE in the subject building; and

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

WHEREAS, additionally, the applicant proposes to legalize a 1,500 sq. ft. increase in floor area on the second floor; the approved floor area on the second floor is currently 23,200 sq. ft.; and

WHEREAS, the applicant states that the additional space is located adjacent to the space originally occupied by the PCE, as reflected on the approved plans, and is used for additional fitness-related equipment and activities; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 16, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant to expire on November 1, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received September 11, 2006'–(3) sheets; and *on further condition*:

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

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

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

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

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

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

(DOB Application No. 101417273)

Adopted by the Board of Standards and Appeals, December 5, 2006.

330-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Katz, owner; Anthony Gaudio, lessee.

SUBJECT – Application May 25, 2006 – requesting an extension of term/waiver and an amendment of a Physical Cultural Establishment located within a C1-6A zoning district in the Special Transit Land Use District, commencing on February 16, 1995 and expiring on February 16, 2005. The amendment sought includes a change in operating control and proposed minor physical alterations to the establishment.

PREMISES AFFECTED – 242 East 14th Street, south side of 14th Street, Block 469, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ron Mandell.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to the approved plans, approval of a change in operator, and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on February 16, 2005; and

WHEREAS, a public hearing was held on this application on November 14, 2006 after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

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

WHEREAS, Community Board, 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the southwest corner of East 14th Street and Second Avenue; and

WHEREAS, the site is occupied by a seven-story residential building located in a C1-6A zoning district within the Special Transit Land Use District; and

WHEREAS, the PCE will be operated as City Fitness and currently occupies 187 sq. ft. of floor space on the first floor and 7,900 sq. ft. in the cellar for a total of 8,087 sq. ft. in the subject building; and

WHEREAS, the applicant notes that the approved floor space (on the first floor and cellar level) was previously miscalculated as 7,100 sq. ft.; and

WHEREAS, the applicant represents that this error was discovered recently when the space was re-measured; and

WHEREAS, the applicant represents that the space occupied by the PCE in the cellar will remain the same as on the previously-approved plans and that the first floor space will be enlarged as noted below; and

WHEREAS, on May 16, 2000, the Board granted a special permit pursuant to ZR § 73-36, to permit the continued operation of a PCE in the subject building for a term of ten years commencing on February 16, 1995 and expiring on February 16, 2005; and

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

WHEREAS, the instant application seeks to extend the

term of the special permit for an additional ten years; and

WHEREAS, additionally, the applicant notes that the operating control of the PCE has changed and now seeks permission to change control of the PCE; 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, further, the applicant proposes to enlarge the space occupied by the PCE for a total gross floor area (including the cellar level) of 9,287 sq. ft.; and

WHEREAS, specifically, the applicant proposes to occupy 1,387 sq. ft. of floor area on the first floor, to be occupied by an enlarged storefront along East 14th Street, a classroom, and a juice bar; the cellar space will be modified, but not enlarged; and

WHEREAS, at hearing, the Board asked the applicant to address a stop work order that had been issued against the PCE; and

WHEREAS, the applicant responded that a stop work order had been issued when equipment was being removed from the building in anticipation of the renovation and that this work has stopped; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 16, 2000, 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; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received November 6, 2006'–(2) sheets; and *on condition*:

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

THAT this grant shall be limited to a term of ten years from February 16, 2005, expiring February 16, 2015;

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

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

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

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

(DOB Application No. 101444304)

Adopted by the Board of Standards and Appeals, December 5, 2006.

112-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Doris Laufer, owner.

SUBJECT – Application May 15, 2006 – Pursuant to ZR §72-01 and §72-21 for an Extension of Time to obtain a Certificate of Occupancy which expired on November 20, 2003 for a Community Use Facility-Use Group 4 (Congregation Noam Emimelech) and an Amendment that seeks to modify §24-11, front wall height-ZR §24-521, front yard-ZR §24-31, side yard-24-35, lot coverage-ZR §24-11 and ZR §23-141(b) and off-street parking requirement for dwelling units-ZR §25-22.

PREMISES AFFECTED – 1402 and 1406 59th Street, Block 5713, Lots 8 &10, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a waiver of the Rules of Practice and Procedure, a reopening, amendments to the site plan, and an extension of time to obtain a certificate of occupancy, all related to a prior grant that permitted the enlargement of an existing synagogue, which expired on November 20, 2003; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on August 8, 2006, September 26, 2006 and October 31, 2006, and then to decision on December 5, 2006; and

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

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

WHEREAS, one adjacent neighbor and two other neighbors on the block submitted letters in support of this application; and

WHEREAS, the subject zoning lot is located on the southwest corner of 14th Avenue and 59th Street; and

WHEREAS, the site is located in an R5 zoning district; and

WHEREAS, the site comprises two lots; lot 8 is occupied by an existing three-story with cellar synagogue facility and lot 10 is vacant; and

WHEREAS, the site has a combined lot width of 60'-0", a depth of 100'-2", and a total lot area of 6,010 sq. ft.; and

WHEREAS, this application was brought on behalf of the Congregation Noam Emimelech (the "Synagogue"); and

WHEREAS, on November 20, 2001, under the subject calendar number, the Board granted a variance, pursuant to ZR §

72-21, to permit in an R5 zoning district, an enlargement of the synagogue located on lot 8; and

WHEREAS, the BSA-approved plans for this grant included the demolition of a two-story two-family home on lot 10 and the construction of a new three-story synagogue with sexton's apartment, to be combined with the existing building on lot 8 in order to create a single Synagogue facility; and

WHEREAS, the plans provided for 10,480 sq. ft. of floor area, an FAR of 1.74, a height of 32'-0", a 18'-2" front yard along 59th Street, a 10'-0" front yard along 14th Avenue, no side yard at the easternmost lot line, and a 10'-0" side yard at the southernmost lot line; and

WHEREAS, the 2001 proposal required waivers for the absence of an eastern side yard and for off street parking; and

WHEREAS, subsequently, the two-story building on lot 10 was demolished but the new building was never constructed; and

WHEREAS, the applicant now proposes to modify the previously-approved plans in an effort to better integrate the interior space as well as improve the outward appearance of the Synagogue's building; and

WHEREAS, thus, the applicant now proposes to build a modified version of the three-story building with the following additions: (1) a two-story and cellar extension at the front of the lot 8 building along the 59th Street frontage, (2) a two-story and cellar extension at the front of the lot 10 building along the 59th Street frontage to match the proposed two-story extension to the lot 8 building, and (3) a two-story extension in the southern side yard behind the lot 10 building; and

WHEREAS, the proposed enlargement will add approximately 5,416 sq. ft. of floor area to the existing 6,480 sq. ft. of floor area currently on lot 8, for a total floor area of 11,896 sq. ft.; and

WHEREAS, the total proposed floor area of 11,896 sq. ft. and FAR of 1.98 will comply with R5 zoning district regulations; and

WHEREAS, the changes noted above require new waivers for height, front yard, side yard, sky exposure plane, and lot coverage; and

WHEREAS, specifically, the proposed changes to the approved plans which require waivers include: an increase in height from 32'-0" to 37'-4" (35'-0" is the maximum permitted), and a decrease in the front yard depth along 59th Street from 18'-2" to 8'-0" on lots 8 and 10 (10'-0" is the minimum permitted); and

WHEREAS, additionally, the southern side yard on lot 10 will be occupied by a two-story enlargement which extends 5'-0" into the yard; the two-story front and side yard extensions encroach into the sky exposure plane; and

WHEREAS, the proposed changes also result in 70.016 percent total lot coverage for the combined building (60 percent is the maximum permitted); and

WHEREAS, in an earlier iteration of the revised plans, the applicant sought an increase in floor area to 12,324 sq. ft., an increase in FAR to 2.05, a larger two- and three-story enlargement within the 59th Street front yard, and a three-story enlargement within the southern side yard on lot 10; and

WHEREAS, the applicant represents that the proposed modifications will help accommodate the Synagogue's congregation and will include a kollel, which is a religious educational facility for married Jewish adults in which *Torah* and Jewish traditions are taught; and

WHEREAS, the applicant represents that the existing kollel space is overcrowded; and

WHEREAS, the applicant also represents that the enlargement will accommodate additional facilities for the growing number of women attending the Synagogue; and

WHEREAS, additionally, the applicant represents that the proposed enlargement is designed to better serve the existing congregation and to accommodate a minor increase in attendance; and

WHEREAS, at hearing, while noting the needs of the synagogue, the Board expressed concern about the diminished size of the front yard and asked the applicant to provide a front yard that was more in context with the block along 59th Street; and

WHEREAS, in response to the Board's concern about the front yard along 59th Street, the applicant increased the front yard from 6'-0" to 8'-0"; and

WHEREAS, additionally, the Board asked if the size of the rabbi's apartment could be decreased so as to reduce the amount of the encroachment into the front yard above the first floor and into the sky exposure plane; and

WHEREAS, the applicant responded that it was necessary to provide additional space to meet the Synagogue's programmatic needs, which include space for the rabbi to meet congregants in the rabbi's apartment; and

WHEREAS, nevertheless, the applicant reduced the size of the rabbi's apartment and increased the depth of the southern side yard to 10'-0" on the third floor; and

WHEREAS, further, the Board asked the applicant to reduce the front yard encroachment along 59th Street at the third floor; the Board noted that this space was occupied by a dressing room, which could be eliminated; and

WHEREAS, in response, the applicant removed the dressing room and the third floor encroachment into the front yard; and

WHEREAS, these changes resulted in a reduction of the floor area to a complying 11,896 sq. ft. and a reduction in the total proposed FAR to a complying 1.98; and

WHEREAS, the Board notes that the elimination of the encroachments above the second floor increases the depth of the 59th Street front yard, providing a more compatible design; and

WHEREAS, as to the progress of construction at the site, the applicant represents that after the demolition of the two-story building on lot 10, the Synagogue did not commence construction because it determined that a redesign was necessary to make more efficient use of the combined buildings; and

WHEREAS, based on the above, the Board finds that the proposed amendments and an extension of time to complete construction and obtain a certificate of occupancy are appropriate.

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 November 20, 2001 so that as amended this portion of the

resolution shall read: "to permit the proposed modifications to the approved plans for a three-story and two-story enlargement to the existing synagogue building and to permit an extension of time to complete construction and obtain a certificate of occupancy *on condition* that all work and site conditions shall comply with drawings marked 'Received October 18, 2006'– (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 11,896 sq. ft. (1.98 FAR), a height of 37'-4", an 8'-0" front yard along 59th Street, a 10'-0" front yard along 14th Avenue, a 10'-0" side yard along the southern lot line on lot 8, a 5'-0" side yard along the southern lot line on lot 10, and a lot coverage of 70.016 percent, all as illustrated on the BSA-approved plans;

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

THAT a certificate of occupancy shall be obtained within two years of the date of this grant;

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

(DOB Application No. 301109066)

Adopted by the Board of Standards and Appeals, December 5, 2006.

23-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.

SUBJECT – Application July 19, 2006 – Pursuant to ZR §73-11 and §73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq. ft.). The proposed plans are contrary to ZR §23-141(a) -floor area, open space; §23-48 minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted special permit for the enlargement of a single-family home; and

WHEREAS, a public hearing was held on this application on September 12, 2006 after due notice by publication in the *City Record*, with a continued hearing on November 14, 2006 and then to decision on December 5, 2006; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the west side of East 23rd Street, between Avenue K and Avenue L and is within an R2 zoning district; and

WHEREAS, the zoning lot is currently improved with a two-story single-family home; and

WHEREAS, on June 8, 2004, the Board granted a special permit, pursuant to ZR § 73-622, for the enlargement of this existing single-family home; and

WHEREAS, the proposed 2004 enlargement was never built; and

WHEREAS, the applicant now proposes to modify the approved plans; and

WHEREAS, specifically, the applicant proposes to add an attic and to further enlarge the second floor; and

WHEREAS, the changes to the plans include the following: 1) an increase in the overall height from 27'-4" to 35'-6"; 2) an increase in the total floor area from 1,865.71 sq. ft. (0.62 FAR) to 3,007.31 sq. ft. (1.002 FAR); 3) a decrease in the open space ratio from 103 percent to 63.75 percent; and 4) the addition of an attic with 926.25 sq. ft. of floor area; and

WHEREAS, the applicant represents that all of the proposed yard dimensions are consistent with those reflected on the approved plans; and

WHEREAS, the applicant represents that no new waivers are required; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the special permit; and

WHEREAS, accordingly, 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 8, 2004, so that as amended this portion of the resolution shall read: "to permit modifications to the BSA-approved plans including: an increase in height and floor area, a decrease in the open space ratio, the addition of an attic, and all other associated modifications *on condition* that all work and site conditions shall comply with drawings marked 'Received July 19, 2006'– (6) sheets and 'October 5, 2006'-(3) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 926.25 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the parameters of the building: a total floor area of 3,007.31 sq. ft. (1.002 FAR), a total height of 35'-6", a front yard of 24'-10 ½", one side yard of 7'-2", one side yard of 2'-10", a rear yard of 20'-0", and an open space ratio of 63.75 percent, all as illustrated on the BSA-approved plans;

THAT any 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.

(DOB Application No. 301693852)

Adopted by the Board of Standards and Appeals, December 5, 2006.

308-79-BZ

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

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

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

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Madeline Fletcher.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

619-83-BZ

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

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

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 & R8B zoning district.

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

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

133-94-BZ

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

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

44-06-BZ, Vol. II

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

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

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for continued hearing.

APPEALS CALENDAR

331-05-A
APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Rock Development Corp., owner.
SUBJECT – Application November 17, 2005 – to permit the construction of the one family dwelling within the bed of mapped street, 153rd Place, contrary to General City Law Section 35. Premises is located in an R3-1 Zoning District.
PREMISES AFFECTED – 15-59 Clintonville Street a/k/a 15-45 153rd Place, east side of Clintonville Street, bed of mapped 153rd Place, Block 4722, Lot (tentative 19), Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Adam Rothkrug.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....
0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 19, 2005, acting on Department of Buildings Application No. 402071048, reads in pertinent part:

"Construction of dwelling within the bed of a mapped street is contrary to Section 35 of the General City Law."; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, the subject property is located in an R3-1 zoning district; and

WHEREAS, the subject property consists of three tax lots with a total width of 70 feet and a total depth of 187 feet; and

WHEREAS, the applicant proposes to build three two-story dwellings; the dwelling on at 15-59 Clintonville will be located within the bed of a mapped street (153rd Place); and

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

WHEREAS, by letter dated February 27, 2006, 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. 37A(5), 37C(1), and 37F.S(2), which calls for a future 12-inch diameter combined sewer to be installed in 153rd Place, between Cross Island Parkway and Clintonville Street; and

WHEREAS, therefore, DEP asked that the applicant provide a 31-ft. wide sewer corridor for the purpose of the future installation, maintenance, and/or reconstruction of the drainage plan; a 12-inch combined sewer; ingress and egress for lots 15, 19, 21, and 24; and establish a Home Owner's Association; and

WHEREAS, in response to DEP's request, the applicant proposes a 25 ft., 7 in. wide sewer corridor for the installation, maintenance, and/or reconstruction of the future sewers; and

WHEREAS, by letter dated August 3, 2006, DEP states that it has reviewed this proposal and finds it acceptable; and

WHEREAS, by letter dated May 25, 2006, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that the proposal does not reflect any provisions for an emergency vehicle access/turnaround such as a cul-de-sac at the dead end of 153rd Place; and

WHEREAS, by letter dated June 2, 2006, the applicant represents that a cul–de-sac would eliminate the possibility of construction on the subject premises; and

WHEREAS, by letter dated October 3, 2006, the Fire Department states that it has reviewed the application and has no objections to the plan, which does not reflect a cul-de-sac; and

WHEREAS, furthermore, a representative of the Fire Department stated at hearing that the proposal provided sufficient access for emergency vehicle turnaround and did not present a fire safety issue; and

WHEREAS, since the Fire Department, the municipal agency that obviously has the most expertise in evaluating a site plan in order to determine if it poses a problem in terms of emergency vehicle access and turnaround, has refuted DOT's contention, the Board views DOT's concerns as unfounded; and

WHEREAS, finally, the Board notes that DOT concedes that the subject property is not presently included in DOT's Capital Improvement Program; and

WHEREAS, based on the above, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 19, 2005, acting on Department of Buildings Application Nos. 402071048 is modified by powers 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 September 26, 2006"- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

63-06-A & 81-06-A
APPLICANT – Sheldon Lobel, P.C.,

OWNERS: Kevin and Alix O'Mara
SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Jay Segal.
ACTION OF THE BOARD – Appeal denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown…….3
THE RESOLUTION: 1

WHEREAS, the instant appeals are brought by two property owners, the homes of which are adjacent to the subject premises; and

WHEREAS, the first appellant ("Appellant 1") is the owner of the property located at 158 East 83rd Street, and the second appellant ("Appellant 2") is the owner of the property located at 156 East 83rd Street (collectively, "Appellants"); and

WHEREAS, in the interest of convenience, and with the consent of each Appellant, the Department of Buildings ("DOB") and the owner of the premises (the "Owner"), the Board heard the two appeals concurrently, and the record is the same for both; and

WHEREAS, the appeals challenge two almost identical DOB final determinations, signed by then-Manhattan Borough Commissioner Laura Osorio, RA, one dated April 7, 2006 and issued to Appellant 1, and the other dated April 24, 2006 and issued to Appellant 2 (collectively, the "Final Determinations"); and

WHEREAS, as reflected in the Final Determinations, DOB refused to revoke a permit (No. 10153229; hereinafter the "Permit") issued to the Owner for an enlargement of an existing townhouse located at the premises (the "Enlargement); and

WHEREAS, the Final Determination reads in pertinent part:

"This responds to your letters … wherein you object to the permit issued in connection with the referenced application at 160 East 83rd Street and request that the permit be revoked.
Specifically, you claim that the approval violates the Department's memorandum dated May 13, 1982 (the "1982 Memo") as you contend that it requires applicant to provide a rear yard along the rear lot line that abuts your property. Moreover, you object to the Department permitting the building without the proper frontage requirements, as set forth in Section 27-291 of the Administrative Code.
This affirms Deputy Commissioner Fatma Amer's reconsideration dated January 24, 2006 wherein she accepted the proposed reconstruction of a one-story building without a set back along the rear lot line of your premises, based on the zoning lot having existed as a "pre-1961 zoning lot" and provided "a 30 foot rear yard" is maintained along the 55'9" rear lot line, as per Section 23-47 ZR. In addition she noted that an existing one-story building was located in the questionable area and she requested the plan examiner to verify "proof of existing lot and one story portion to be reconstructed."
The subject lot has a rear yard along the entire width of the rear yard and therefore satisfies ZR 23-47, which provides "one rear yard with a depth of not less than 30 feet shall be provided on any zoning lot." However, you contend that the permit is contrary to the Department's requirements as set forth in a memorandum dated May 28, 1982 (the "1982 Memo"). The 1982 Memo applies to a building constructed on a flag pole-shaped lot where a significant portion of the building does not front the street, but rather is behind an adjoining lot. In such case, the 1982 Memo proposes that an additional yard must be provided along the adjoining lot's rear lot line, in addition to providing a rear yard along the remote lot line of the zoning lot. The 1982 Memo further provides different dimensions for required yards depending on whether the building frontage meets the requirements of Section 27-291 (formerly C26-401.1) of the Administrative Code. The sketch that accompanies the 1982 Memo, a copy of which is attached hereto, clarifies that the area of the yard in question is the dimension in front of the proposed building, and is written to ensure that the building has adequate frontage. Therefore, the 1982 Memo is about providing yards to satisfy the Code's street frontage requirements and not about the zoning rear yard requirements. This is the only proper explanation of the 1982 Memo, as a Department memorandum may not impose zoning requirements that are not set forth in the Zoning Resolution.
The proposed construction satisfies the requirements of the 1982 Memo. The 1982 Memo provides that if there is inadequate building frontage to satisfy

1 Headings are utilized only in the interest of clarity and organization.

Administrative Code §27-291, an additional yard must be provided along the adjoining lot's rear lot line to address the frontage concern. Administrative Code § 27-291 is about providing the Fire Department with sufficient access to the building in the event of a fire. In the instant matter, a yard in such location would not help these concerns since there is an existing building along the street frontage that would prevent access to that area behind the adjoining lot. Therefore, the reconsideration dated November 1, 2005, that required that the building be sprinklered, was the proper method for ensuring compliance with Administrative Code § 27-291. Moreover, failure to follow the 1982 Memo has no bearing on its application to the Zoning Resolution's rear yard requirements.

Notwithstanding that the purpose of the 1982 Memo is to address street frontage, the Department has applied the memorandum to help interpret the Zoning Resolution's rear yard requirements where an irregular shaped lot is created to avoid compliance with zoning or to otherwise undermine the intent of the Zoning Resolution. That is not the case here where the subject premises was a lot of record well before December 15, 1961, as evidenced by the 1935 certificate of occupancy and 1949 deed, and a rear yard is provided along the entire width of a zoning lot, to satisfy ZR 23-47.

This also affirms Deputy Commissioner Amer's reconsideration dated November 1, 2005 wherein she accepted the 18'-5" frontage "as complying with Section 27-291 of the Administrative Code, provided the first and second floors and any additional level that may be created to exceed the current footprint of the building [are] sprinklered."

The commissioner's authority to waive provisions of the administrative code is set forth in Section 645(b)(2) of the Charter of the City of New York and Section 27-107 of the Administrative Code.

The Department has discussed this matter with the Department of City Planning who supports our determination. This is a final determination that may be appealed to the Board of Standards and Appeals"; and

HEARINGS

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in *The City Record*, on which date a decision was set for September 26, 2006; and

WHEREAS, on September 26, the matter was re-opened and a continued hearing was conducted; a further continued hearing was held on October 17, 2006, on which date the hearing was again closed; a decision was subsequently set for December 5, 2006; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, Appellant 1, the Owner, and DOB were represented by counsel in this proceeding; and

WHEREAS, Appellant 2 appeared on his own behalf; and

WHEREAS, Appellants also offered testimony from zoning and building law practitioners; and

WHEREAS, although each Appellant made separate submissions and focused on particular arguments (described below), each adopted the arguments of the other; and

WHEREAS, the following elected officials support the appeals: Borough President Stringer, Council Members Lappin and Garodnick, Assembly Members Glick and Bing, State Senator Krueger, and Congressperson Maloney; and

WHEREAS, Community Board 8, Manhattan, also supports the appeal; and

WHEREAS, several civic and neighborhood associations and area residents testified or made submissions in support of the appeal; and

WHEREAS, representatives of the City's Fire Department ("FDNY") provided testimony and submitted a letter; and

WHEREAS, finally, counsel to the Department of City Planning ("DCP") submitted a letter supporting the position of DOB; and

THE LOTS

WHEREAS, the subject premises is an "L"-shaped flag lot, with 18'-5" of frontage on East 83rd Street (hereinafter, the "Owner's Lot"); and

WHEREAS, all parties agree that it is an interior lot, as defined by the City's Zoning Resolution ("ZR"); and

WHEREAS, the Owner's Lot and Appellants' lots are within an R8B zoning district; and

WHEREAS, the Owner's Lot is occupied by a three and four-story townhouse, which extends 77'-0" from the front lot line; and

WHEREAS, at a depth of 77'-0", the flag portion of the Owner's Lot begins; the flag portion is 45'-2" deep and 55'-9" wide at the far rear lot line (located at the south end of the premises), which coincides with the rear lot lines of properties that front on East 82nd Street; and

WHEREAS, in addition to the far rear lot line, the Owner's Lot has a near rear lot line, which coincides with the rear lot lines of Appellants' lots for 37'-4"; and

WHEREAS, Appellant 1's lot is adjacent to the west of the Owner's Lot, and is 18'-5" wide and 77'-0" deep; and

WHEREAS, Appellant 1's lot is occupied by a four-story townhouse, and has a non-complying rear yard of 25'-2" (in an R8B zoning district, a rear yard must be 30'-0"); and

WHEREAS, Appellant 2's lot is adjacent to the west of Appellant 1's lot, and is 18'-11" wide and 77'-0" deep; and

WHEREAS, Appellant 2's lot is occupied by a two and four-story townhouse, and has a non-complying rear yard of 3'-6"; and

WHEREAS, the three lots have existed in their present configuration since prior to December 15, 1961, the date on which the current version of the ZR took effect; and

PRE-BOARD PROCEDURAL HISTORY

WHEREAS, On June 27, 2005, the Owner applied to DOB to enlarge the existing townhouse under DOB Application No. 10153229; the Enlargement was then proposed to be a three-story addition extending into the flag portion of the Owner's Lot; and

WHEREAS, the northernmost wall of the Enlargement was proposed to be located directly on the common lot line between the Owner's Lot and the Appellants' lots (the near rear lot line of the Owner's Lot); and

WHEREAS, the application for the Permit was reviewed by a plan examiner; and

WHEREAS, at some juncture, Appellant 1 contacted DOB, protesting the Permit application for the reasons reflected in the Final Determinations; and

WHEREAS, the record indicates that this resulted in significant internal discussion at DOB, involving senior DOB technical officials; and

WHEREAS, the record contains the official product of this internal discussion, including correspondence between DOB and the parties; and

WHEREAS, on March 8, 2006, DOB issued the Permit; and

WHEREAS, on March 23, 2006, Appellant 1 then filed his appeal at the BSA (Cal. No. 63-06-A); and

WHEREAS, on April 24, 2006, Appellant 1 commenced an action in Supreme Court, New York County, seeking to enjoin construction; this action was subsequently dismissed on May 3, 2006; and

WHEREAS, on May 2, 2006, Appellant 2 filed his appeal (Cal. No. 81-06-A); and

WHEREAS, during the hearing process, Appellants suggested that the Final Determinations are predicated on unsubstantiated assertions as to the previously existing conditions on the Owner's Lot and that DOB's internal process prior to the issuance of the Permit was flawed; and

WHEREAS, specifically, Appellants allege that the Final Determinations appear to be predicated in part on the assumption that there used to be a structure in the same area on the Owner's Lot where the Enlargement is proposed to be located; and

WHEREAS, however, in its initial submission, DOB refutes the contention that the Final Determinations rely upon the prior existence of a structure at this location; and

WHEREAS, further, while the record indicates that there may have been some initial uncertainty at DOB as to how to approach the Permit application and as to the importance of the prior improvements on the Owner's Lot, the Board notes it has no authority to review DOB's internal, pre-determination process under City Charter § 666(6)(a); and

WHEREAS, this Charter section specifically provides that the Board may review only a determination of DOB's Commissioner or one of the Borough Commissioners; and

WHEREAS, accordingly, considerations of internal discussion at DOB are irrelevant to the Board's review of the Final Determinations; and

ISSUES PRESENTED

WHEREAS, Appellants make two primary arguments in support of their position that DOB should revoke the Permit: (1) DOB erred in not requiring that a second 30'-0" rear yard be provided on the near rear lot line of the Owner's Lot; (2) DOB erred in waiving compliance with Building Code § 27-291, which concerns the required amount of street frontage; and

WHEREAS, these two arguments will be addressed below; and

WHEREAS, additionally, the Board will examine a prior BSA decision made on similar facts (BSA Cal. No. 388-78-A, adopted on July 18, 1978; hereinafter the "Prior Decision") and the May 28, 1982 DOB memorandum referenced in the Final Determinations (the "1982 Memo"), given that Appellants make certain ancillary arguments based upon them; and

WHEREAS, finally, the Board will examine a particular aspect of the Final Determinations regarding DOB's distinction between pre and post-1961 lots, which, while not dispositive of the appeals, demands attention; and

SECTION 23-47 OF THE ZONING RESOLUTION

WHEREAS, as noted above, one of Appellants' primary contentions is that ZR § 23-47 requires that a rear yard be provided along all rear lot lines of any interior zoning lot; and

WHEREAS, ZR § 23-47 (hereinafter, "23-47"), which is listed under the heading "Basic Regulations – Rear Yards" reads in pertinent part: "In all districts [R1 through R10] . . . one rear yard with a depth of not less than 30 feet shall be provided on any zoning lot except a corner lot and except as otherwise provided in Sections 23-52 (Special Provisions for Shallow Interior Lots), 23-53 (Special Provisions for Through Lots), or 23-54 (Other Provisions for Rear Yards)."; and

WHEREAS, it is undisputed that the Owner's Lot is subject to this provision, as it is not a corner lot nor is it subject to the other provisions; and

WHEREAS, DOB and the Owner state that this provision requires that one rear yard be provided on an interior zoning lot, regardless of whether it is a flag lot and regardless of the number of rear lot lines; and

WHEREAS, DOB and the Owner observe that a 30 ft. rear yard will be provided along the full length of the far rear lot line; and

WHEREAS, Appellants contend that DOB erred in applying 23-47 for the following reasons: (1) DOB's reading ignores the fact that certain italicized terms or words in 23-47 are defined in ZR § 12-10, which must be inserted into 23-47 in order to properly apply the provision's plain language; and (2) when this provision is viewed in context of the ZR's rear yard scheme as reflected in other provisions and in context of the legislative history of the ZR, it is clear that the framers of the ZR intended that a rear yard be provided along all rear lot lines of an interior lot, not just one; and

WHEREAS, as to the first reason, Appellants state that if the definitions of the italicized defined terms are inserted into 23-47, then it is clear that a rear yard is required along every rear lot line of an interior lot; and

WHEREAS, in a submission dated September 12, 2006, Appellants provide further explication of this argument, noting that the italicized term "rear yard" is defined as a "a yard extending for the full length of a rear lot line"; and

WHEREAS, Appellants then explain that a "rear lot line" is defined as "any lot line of a zoning lot except a front lot line, which is parallel or within 45 degrees of being

parallel to, and does not intersect, any street line bounding such zoning lot."; and

WHEREAS, Appellants assert that it follows that a rear yard is required at any rear lot line of a zoning lot; and

WHEREAS, the Board is aware that it should refrain from strained constructions that ignore the plain language of the provision; and

WHEREAS, the Board is also aware that it must presume that the framers of the ZR deliberately placed a word in a provision with a specific purpose and that each word must be given meaning if possible; and

WHEREAS, Appellants' construction of 23-47 fails on both accounts; and

WHEREAS, first, Appellants diverge into a detailed examination of the word "any" – as used in the phrase "any lot line" in the "rear lot line" definition – in an effort to convince the Board that it must be read to mean "every", and that consequently "every" rear lot line of a zoning lot must have a separate rear yard; and

WHEREAS, this examination considers dictionary definitions of the word "any" and citations to case law that address the word "any", and relies upon complicated arguments as to why "any" must be read to mean "every" in the context of the ZR § 12-10 definition of "rear lot line"; and

WHEREAS, the Board finds this examination both strained and irrelevant; and

WHEREAS, the Board also finds that it verges into interpretation, as opposed to application of plain language; and

WHEREAS, further, as noted by the Owner, the word "any" is used in the definition of "rear lot line" to ensure that lot lines are appropriately defined as rear lot lines if they meet the definition; the word "any" requires that all such lot lines must be defined as "rear lot lines"; and

WHEREAS, the Owner argues, and the Board agrees, that Appellants impermissibly change the function of the word "any" into a requirement that rear yards be provided along all rear lot lines, when the word "any" is not used to impose a requirement, but to help define and categorize the various lot lines of zoning lot; and

WHEREAS, second, Appellants' reading completely and impermissibly ignores the use of the word "one" in 23-47; and

WHEREAS, as noted by DOB, had the framers desired to require that each and every rear lot line on an interior zoning lot be provided a rear yard, this would have been clearly reflected, in either this provision or a separate one; and

WHEREAS, instead, the framers chose to use the word "one" when establishing how many rear yards had to be provided on an interior zoning lot; and

WHEREAS, further, the Board observes that 23-47 is not an example of a provision that uses a particular word in a superfluous way such that it can be appropriately ignored; and

WHEREAS, the Board notes that the word "one" has a specific quantitative meaning that is very important in the context of 23-47; and

WHEREAS, as used in 23-47, the word "one" functions as a numerical adjective, and connotes singularity, not multiplicity; and

WHEREAS, here, it is possible for the word "one" to be given its obvious quantitative meaning, since the Owner's Lot can and does provide one rear yard; and

WHEREAS, Appellants' counter-argument relies upon ZR § 12-01(d), which provides in pertinent part "words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary'; and

WHEREAS, Appellants conclude that the use of the word "one" is not controlling unless dictated by the context; and

WHEREAS, Appellants assert that the context here requires that the plural of "one" be used; and

WHEREAS, thus, under Appellants' interpretation of ZR §12-01(d), any time the ZR modifies a zoning requirement with a numerical adjective that specifies a singular or multiple amount, the amount could be modified to the singular or multiple depending on the context; and

WHEREAS, first, the Board notes that when the word "one" is used as adjective rather than a noun, it has no plural form; and

WHEREAS, this fact leads the Board to conclude that ZR § 12-01(d) should not apply to numerical adjectives such as "one", which modify zoning provisions in terms of the amount of what is required; and

WHEREAS, rather, it is clear that ZR § 12-01(d) was meant to apply to non-numerical words or terms; and

WHEREAS, finally, the Board disagrees that there is any context present in 23-47 that would require that the word "one" be read to mean "two" or some other numerical adjective; and

WHEREAS, as noted above, the use of the word "one" creates the opposite context, since its meaning specifically refers to the singular when it modifies another word or term; and

WHEREAS, thus, the Board finds this counter-argument to be without merit; and

WHEREAS, in sum, the Board agrees with DOB that the plain language of 23-47 does not allow for an application that would ignore the word "one"; and

WHEREAS, consequently, the Board finds that the part of the Final Determinations that rejects Appellants' contention that 23-47 requires more than one rear yard on an interior flag lot is reasonable and must be upheld, based upon the plain language of the provision; and

WHEREAS, in addition to its strained plain language argument, Appellants contend that the Board should look past the plain language and examine the entire ZR and its legislative history in order to determine the intent of the framers as to 23-47; and

WHEREAS, the Board notes that such interpretation and examination of extrinsic evidence is not required if the plain language of the provision in question is clear; and

WHEREAS, nevertheless, even assuming *arguendo* that the Board was required to look beyond the plain language, it

would still find that DOB appropriately applied 23-47; and

WHEREAS, Appellants argue that the intent of the ZR's rear yard scheme is to provide a rear yard along all rear lot lines of an interior zoning lot, notwithstanding the plain language of 23-47; and

WHEREAS, Appellants, in support of this argument, direct the Board's attention to the legislative history of the ZR, and to another rear yard provision, ZR § 23-543 "For portions of through lots" (hereinafter, "23-543"); and

WHEREAS, as to legislative history, Appellants cite to a study prepared in advance of the enactment of the 1961 ZR known as the Voorhees Report; and

WHEREAS, all parties agree that one of the goals of a 30'-0" rear yard requirement, at least as reflected by some language in the Voorhees Report, is the provision of a 60'-0" separation between the buildings of two lots adjoining each other "back-to-back", with each building having its own frontage on a separate street; and

WHEREAS, in fact, in many residentially zoned blocks within the City, that is exactly the condition that exists; and

WHEREAS, the open space on such blocks is commonly referred to as the "donut", since the open area surrounded by buildings resembles the hole of a donut; and

WHEREAS, Appellants contend that the general goal of protecting light and air as evidenced in the Voorhees Report requires that a rear yard also be provided along the near rear lot line of the Owner's Lot in order to protect light and air to Appellants' lots; and

WHEREAS, however, both DOB and the Owner argue that the intent of the framers of the ZR is not so general, and that the true intent is limited to the preservation of the donut; and

WHEREAS, DOB and the Owner note that the Owner's Lot still contributes to the donut to the extent contemplated by the framers, through the provision of the 30'-0" rear yard at the far rear lot line; and

WHEREAS, the Board agrees that through the provision of a rear yard at the far rear lot line, the rear yard scheme as apparently contemplated by the framers is preserved; and

WHEREAS, additionally, Appellants have not shown that the Voorhees Report contains any indication that lots outside the donut, such as Appellants' lots, were specifically considered for additional or special protection if they abutted a flag portion of another interior lot; and

WHEREAS, nor do other yard provisions in the ZR support Appellants' position; and

WHEREAS, the Board observes that the ZR's yard regulations cover not only interior lots, but also corner and through lots, and also provide when such basic regulations may be modified given a particular circumstance; and

WHEREAS, for instance, yard requirements are reduced when a lot is shallow; and

WHEREAS, however, in spite of this well-considered range of explicit provisions for different lot types and configurations, the ZR does not contain any provision that modifies 23-47 if the interior lot in question is flag-shaped; and

WHEREAS, the Board concludes that the absence of any provision in the ZR specifically addressing flag-shaped interior lots as opposed to regularly-shaped interior lots evidences a lack of intent to regulate flag-shaped interior lots any differently; and

WHEREAS, nonetheless, Appellants suggest that an examination of 23-543 supports the contention that the framers did intend to protect lots such as those owned by Appellants; and

WHEREAS, 23-543 reads "In all districts, as indicated, along any rear lot line of a portion of a through lot which coincides with a rear lot line of an adjoining zoning lot, a rear yard shall be required as if such portion were an interior lot"; and

WHEREAS, pursuant to ZR § 12-10, a "through lot" is "any zoning lot, not a corner lot, which adjoins two street lines opposite to each other and parallel or within 45 degrees of being parallel to each other"; and

WHEREAS, the typical through lot is one that has frontages on two parallel streets; and

WHEREAS, 23-543 governs situations where through lots have a flag-shaped appendage, and provides that rear yards must be provided on such appendages as if they were interior lots; and

WHEREAS, Appellants concede that the Owner's Lot is not a through lot; and

WHEREAS, however, Appellants argue that it does not make sense to require a rear yard on a flag portion of a through lot to protect property owners on both sides of the flag, but not on a flag portion of an interior lot where there are also adjacent property owners; and

WHEREAS, DOB responds that through lot provisions are unique in that they allow a building to be constructed in the middle of the block; and

WHEREAS, DOB views 23-543 as a provision that ensures that an open yard will still be provided in the middle of a block in instances where a rear lot line of a through lot appendage abuts adjoining properties; and

WHEREAS, DOB notes that on the subject block, the Owner's Lot is still contributing to the open area in the middle of the block since a 30'-0" rear yard is provided along the far rear lot line; and

WHEREAS, thus, DOB concludes that its application of 23-47 is consistent with what is achieved on through lot appendages by 23-543; and

WHEREAS, the Owner agrees, and observes that if the Owner's Lot was in fact a through lot that extended to East 82nd Street, then a full height building could have been constructed in the center of the lot, with a small structure in the flag portion, which would greatly obstruct the block's donut; and

WHEREAS, further, the Owner notes that through lots are accorded much different treatment than interior lots throughout the ZR; and

WHEREAS, given this disparate treatment, the Owner concludes that it is inappropriate to apply a through lot provision to an interior lot; and

WHEREAS, for the reasons stated, the Board agrees

with DOB and the Owner that 23-543 does not conclusively indicate an intent on the part of the framers to treat flag-shaped interior lots in the same way as through lots with appendages; and

WHEREAS, Appellants also contend that the failure to provide a rear yard along the near rear lot line of the Owner's Lot results in the absurd consequence of Appellants' rear yards directly abutting the northern wall of the Enlargement, diminishing the degree of light and air that Appellants previously enjoyed; and

WHEREAS, Appellants argue that leaving aside any argument predicated on legislative history, rules of statutory construction prevent DOB and the Board from applying 23-47 if an absurd consequence would result; and

WHEREAS, however, the Board does not consider this result to be absurd; and

WHEREAS, the Board is aware of certain circumstances under which a building or portion thereof may be constructed directly upon a lot line, thereby enclosing an adjacent property owner's rear yard; and

WHEREAS, for instance, as noted by the Owner, a community facility could be constructed on the Owner's Lot within the flag to a height of 23 feet without the provision of a rear yard at either rear lot line; and

WHEREAS, further, a property owner's rear lot line could be an adjacent property owner's side lot line, and in a district where no side yards are required, a building could be built on this lot line, enclosing the rear yard; and

WHEREAS, the Board notes that these two examples do not represent all of the situations whereby as of right development could potentially diminish the light and air of adjacent properties; and

WHEREAS, the Board acknowledges that the Enlargement as proposed is objectionable to Appellants; and

WHEREAS, Appellants understandably have enjoyed the vacancy or near-vacancy of the flag portion of the Owner's Lot, since this condition affords them the benefit of more light and air than their non-complying rear yards could provide on their own, and without the corresponding burden of contributing to the block's donut ; and

WHEREAS, however, the Board finds that a preference to enjoy the benefit of the vacancy of someone else's property is not the equivalent of an absurd result; and

WHEREAS, finally, Appellants cite to certain excerpts of a 1959 zoning handbook, which indicate in a general way that yard requirements were established to provide light and air between buildings and to prevent one building from blocking light, air and sun from another; and

WHEREAS, however, as discussed above, it is plain from a review of all of the provisions actually enacted in 1961 and later, present in the existing ZR, that there are certain circumstances in which construction of buildings that block light and air to adjacent neighbors is permitted; and

WHEREAS, thus, the Board finds that the general statements reflected in the 1959 handbook should not be construed as support for the proposition that ZR rear yard provisions must be applied in such a way that maximum light and air to all of the adjacent properties is provided, notwithstanding the plain language of a particular provision; and

WHEREAS, the Board notes that the plain language of 23-47 – which is the best indication of the intent of the framers as to interior lots – clearly specifies that one rear yard must be provided; and

WHEREAS, since one rear yard is provided along the far rear lot line, between the Owner's building as enlarged and the buildings to the rear, the goal of this particular yard regulation is achieved, and the larger goal of preventing the blockage of light and air is furthered to the extent the framers thought necessary for an interior lot; and

WHEREAS, in sum, even if the Board were required to look at legislative intent, other provisions of the ZR, or the possibility of absurd results, it would nevertheless reach the same result; and

WHEREAS, in addition to arguing that DOB's application of 23-47 leads to absurd results, Appellants argue that DOB has been inconsistent in its application of rear yard requirements, and has engaged in some interpretation of this provision; and

WHEREAS, in various submissions, Appellants cite to lot configurations and other permit approvals or applications in an effort to illustrate that DOB engages in interpretation of 23-47 contrary to the application of the provision as to the Enlargement and the Permit; and

WHEREAS, DOB states, and the Board agrees, that all such examples are distinguishable; and

WHEREAS, DOB notes that the examples are either of lots where different rear yard provisions than 23-47 would apply or where the application of 23-47 would actually lead to absurd results; and

WHEREAS, for instance, DOB explains that when it reviews a lot with a "segmented" rear lot line, where the rear lot line is at different depths, it requires a rear yard along each portion of the segment, lest a permit applicant avoid the provision of a reasonable rear yard by only applying one on the shortest of the segments; and

WHEREAS, DOB explains that it views a segmented rear lot line as a single rear lot line that extends across the width of the lot; and

WHEREAS, the Board agrees that DOB may appropriately determine when strict application of 23-47 as to a particular lot would lead to an absurd result, but, as noted above, the instant facts do not give rise to such a conclusion; and

WHEREAS, as to interpretation of 23-47 generally, DOB concedes that it must interpret 23-47 to the extent that the provision does not provide any guidance as to which rear lot line the rear yard must be provided along when there is more than one; and

WHEREAS, DOB states that consistent with the approach it takes on segmented rear lot lines, it requires that the rear yard be provided along the rear lot line that extends across the greatest portion of the zoning lot, in order to create a meaningful single rear yard; and

WHEREAS, DOB takes this approach because it avoids the possibility of developers failing to provide a meaningful

rear yard on a zoning lot, which DOB deems absurd; and

WHEREAS, the Board observes that while 23-47 is silent as to where the rear yard must be applied on an interior lot with more than one rear lot line, it is explicit as to the number of yards that must be provided; and

WHEREAS, the Board notes that even though a zoning provision may require occasional interpretation if it is silent as to one aspect of how it should be applied, a plain language application may still be indicated as to other aspects; and

WHEREAS, thus, the Board concludes that DOB is entitled to interpret certain aspects of 23-47 where required even where it is bound by the plain meaning of the word "one"; and

WHEREAS, in sum, the Board finds that DOB appropriately applied 23-47 to the Permit application; and

THE PRIOR DECISION

WHEREAS, as noted above, the Prior Decision also presented the Board with an occasion to consider the application of 23-47 to an interior flag lot; and

WHEREAS, that case concerns an interior flag lot located at 47 Burgher Avenue in Staten Island, which has a shape very similar to the Owner's Lot; and

WHEREAS, the owner of this flag lot applied to DOB for a permit to develop it with a two-family dwelling, which was to be located in the interior flag portion; and

WHEREAS, a 30'-0" rear yard was required pursuant to the underlying zoning district regulations; and

WHEREAS, the submitted plans did not reflect a 30'-0" rear yard on the near rear lot line, though one was reflected on the far rear lot line; and

WHEREAS, at the near rear lot line, the plans reflected a 16 ft. open area, extending from this lot line to the front wall of the proposed dwelling; and

WHEREAS, the permit was issued but later revoked; upon further review, DOB claimed that a full 30'-0" rear yard was required on the near rear lot line as well; and

WHEREAS, the owner's architect asked for a reconsideration of the revocation, arguing that the applicable rear yard provision – 23-47 – did not require a second rear yard; and

WHEREAS, as reflected above, 23-47 reads in pertinent part: "one rear yard with a depth of not less than 30 feet shall be provided on any zoning lot"; and

WHEREAS, in sum and substance, as evidenced by the record for this matter, the architect argued that 23-47 did not require that a rear yard be provided along all rear lot lines; rather, because of the use of the word "one", only one rear yard was required; and

WHEREAS, the DOB Staten Island Borough Commissioner at the time did not grant the reconsideration, and the owner appealed the decision to the Board, requesting that it reinstate the permit; and

WHEREAS, the Board granted the appeal, modified the DOB determination and reinstated the permit, without requiring the provision of a 30'-0" rear yard along the near rear lot line; and

WHEREAS, in its resolution, the Board stated that it made this decision on the basis "that the portion of the building facing Burgher Avenue constitutes more than 10% of the perimeter of the building and that the area in front of the dwelling is considered a front yard"; and

WHEREAS, Appellants argue that DOB's position as reflected in the record for the Prior Decision is evidence that prior to the instant appeals, DOB always required a rear yard along each and every rear lot line of a lot; and

WHEREAS, Appellants also argue that other DOB determinations reflected in the record further support the claim that DOB has always required a rear yard along all rear lot lines of an interior lot; and

WHEREAS, Appellants conclude that DOB may not now change its allegedly consistent interpretation that 23-47 provides for a rear yard along all rear lot lines of an interior flag lot; and

WHEREAS, Appellants cite to In the matter of Charles A Field Delivery Service, 66 N.Y.S.2d 516 (1985) in support of this argument; and

WHEREAS, in that case, the Court of Appeals examined the actions of the State's Unemployment Insurance Appeals Board (the "UIAB"); and

WHEREAS, specifically, the Court reviewed the contention of a vendor that the UIAB rendered a determination as to it that was contrary to prior determinations, even though the facts present in the cases were identical; and

WHEREAS, the Court held that "absent an explanation by the agency, an administrative agency decision which, on essentially the same facts as underlaid a prior agency determination, reaches a conclusion contrary to the prior determination is arbitrary and capricious"; and

WHEREAS, Appellants argue that Field Delivery binds DOB, and that it should withdraw the Final Determinations and revoke the Permit; and

WHEREAS, Appellants' reliance on Field Delivery is misplaced for two reasons; and

WHEREAS, first, the facts of Field Delivery are distinguishable from the facts here; and

WHEREAS, the Board observes that the Prior Decision, as evidenced by the outcome, constitutes a rejection of DOB's position that a rear yard was required on both rear lot lines of an interior flag lot; and

WHEREAS, specifically, the Board modified the DOB final determination and granted the property owner's appeal, reinstating a permit based on plans that did not reflect a complying rear yard at both rear lot lines; and

WHEREAS, the Prior Decision was binding upon DOB; and

WHEREAS, even if, as Appellants allege, DOB has consistently asked for a rear yard along every rear lot line of a flag-shaped lot, this would be contrary to the Prior Decision; and

WHEREAS, Appellants' application of Field Delivery would therefore require DOB to once again ignore the Board and make a decision that is contrary to the Board's guidance (and to zoning law, as established above) merely because it may have made a similar incorrect decision in other instances; and

WHEREAS, the Board disagrees that Field Delivery should be applied in this manner, since that case did not present a similar fact pattern: there is no indicate that UIAB ignore binding precedent when it made its initial decisions; and

WHEREAS, further, Appellants application would eviscerate the Board's Charter-conferred authority to ensure that its past decisions are followed and to correct DOB errors that are contrary to zoning in the future; and

WHEREAS, the second reason why the Board finds that Appellants' reliance on Field Delivery is misplaced is because there is a scarcity of evidence that DOB has in fact consistently read 23-47 to require a rear yard on all rear lot lines of a interior lot; and

WHEREAS, while Appellants are adamant that DOB has consistently taken this position, the record reveals that this is not the case; and

WHEREAS, for instance, the Owner cites to development projects at 330 East 57th Street, Manhattan and 100 West Kingsbridge Road, Brooklyn, which involved lots with more than one rear lot line; and

WHEREAS, in neither instance did DOB determine that a rear yard was required along all rear lot lines; and

WHEREAS, accordingly, the Board finds that Appellants have not conclusively established that DOB has engaged in a consistent interpretation of 23-47 that is inconsistent with its position as reflected in the Final Determinations; and

WHEREAS, while the Board concludes that Field Delivery does not bind DOB to make a decision contrary to law, it does find that the case has some relevance to the instant appeals; and

WHEREAS, in fact, the Board observes that Field Delivery has more effect on the Board's decision as to the appeals than it does on DOB's determinations below; and

WHEREAS, in its opinion, the Court expressed its concern that the underlying facts of the UIAB determinations in question were very similar to the case at hand and thus held that "Comparison of the facts on the basis of which [the prior decisions] were decided with the facts of the instant case . . . makes evident, if not the impossibility of distinguishing this case from [the prior decisions], at least the existence of sufficient factual similarity between those cases and this to require explanation by the Board of why it reached a different result in this case; and

WHEREAS, the Board notes that the facts presented in the instant appeals are very similar to those presented in the Prior Decision: both cases concern an interior flag lot, and both require that the Board determine whether 23-47 requires a rear yard along all rear lot lines if there is development proposed in the flag portion of the lot; and

WHEREAS, given that the Board previously repudiated the contention that a rear yard must be provided on every rear lot line of a flag-shaped interior lot in the Prior Decision, Field Delivery suggests that if the Board were to now favor such a contention, an explanation must be provided; and

WHEREAS, since the Board agrees that the Prior Decision was correct insofar that it rejected this contention, such an explanation is not fundamental; and

WHEREAS, nevertheless, while the Board views the Prior Decision as a refutation of the erroneous position that a rear yard is required along each rear lot line, it acknowledges that the resolution poorly expresses the rationale for the outcome; and

WHEREAS, further, the Board disagrees that the area between the front wall of a dwelling and a near rear lot line should be considered a front yard, as indicated by the prior Board, since this is contrary to the definition of "front yard" as set forth at Z.R. § 12-10 (though in passing it notes that even if such area were to be construed as a "front yard", this would not effect the Permit since there is no front yard requirement in an R8B district); and

WHEREAS, accordingly, the current Board finds it sensible to examine the facts at hand and the arguments made by Appellants, and explain in greater detail, as it has, why the outcome should be the same as occurred in the Prior Decision; and

WHEREAS, the Board finds that this comports with the holding of Field Delivery; and

THE 1982 MEMO

WHEREAS, the subject of the 1982 Memo is "Yards in Irregular Lots", and it attaches a sketch of a flag lot as an example; the goal of the 1982 Memo is to guide DOB's Borough Commissioners in reviewing such lots under particular circumstances; and

WHEREAS, DOB states, as reflected in the Final Determinations, that the 1982 Memo addresses circumstances where there is both adequate and inadequate building frontage, and directs the Borough Commissioners as to what yard regulations might apply to such lots; and

WHEREAS, DOB views the 1982 Memo as applying to buildings constructed on a flag-shaped lot where a significant portion of the building does not front on the street, but rather is behind an adjoining lot; and

WHEREAS, the sketch attached to the 1982 Memo confirms that this is the type of lot contemplated; and

WHEREAS, DOB states that in such cases, the 1982 Memo proposes that an additional yard must be provided along the near rear lot line, in addition to providing a rear yard along the far rear lot line of the zoning lot; and

WHEREAS, however, DOB, for the reasons stated in the Final Determinations, determined that the 1982 Memo does not apply to the Owner's Lot; and

WHEREAS, DOB also notes that it has relied upon the 1982 Memo to help interpret the ZR's rear yard requirements where an irregularly shaped lot is created to avoid compliance with zoning or to otherwise undermine the intent of the ZR; and

WHEREAS, Appellants claim that the 1982 Memo reflects an attempt by DOB to provide some guidance to the filing community and its staff as to how to apply the Prior Decision to interior lots with more than one rear lot line; and

WHEREAS, while Appellants have provided an affidavit from the author of the 1982 Memo in support of this claim, the Board finds that whether this is accurate or not is irrelevant; and

WHEREAS, the Board observes that whatever the utility DOB has gained from its use of the 1982 Memo in the past, such a memo cannot modify or amend the ZR, a fact which DOB acknowledges; and

WHEREAS, additionally, at the first hearing, Appellants conceded that there was no authority for DOB to modify yard requirements as per the 1982 Memo; and

WHEREAS, in any event, Appellants do not propose that a smaller area be provided at the near rear lot line, as would arguably be indicated if the 1982 Memo applied, but rather propose that another 30'-0" rear yard be provided, in compliance with their interpretation of 23-47; and

WHEREAS, thus, the Board agrees with all parties that the 1982 Memo is not applicable to the Owner's Lot; and

WHEREAS, that being said, the Board observes that as the 1982 Memo illustrates, DOB has struggled to find and maintain a consistent approach to rear yard questions when a zoning lot has more than one rear lot line; and

WHEREAS, accordingly, the Board suggests that DOB consult with DCP to formulate a solution to this problem that respects the ZR and modify the 1982 Memo accordingly or abandon it altogether; and

DISTINCTIONS BETWEEN PRE AND POST-1961 LOTS

WHEREAS, without intending any disrespect towards DOB, the Board is nevertheless troubled by the distinction the agency makes between pre and post-1961 flag-shaped zoning lots, as reflected in the Final Determinations; and

WHEREAS, specifically, as noted above, DOB takes the position that it may apply the reduced yard requirements set forth in the 1982 Memo "where an irregular shaped lot is created to avoid compliance with zoning or to otherwise undermine the intent of the Zoning Resolution"; and

WHEREAS, DOB indicates in the Final Determinations that it would not apply the 1982 Memo to lots with multiple rear lot lines that existed prior to December 15, 1961; and

WHEREAS, while the Board understands the intent behind DOB's application of the 1982 Memo under certain circumstances to post-1961 lots, the Board finds that DOB possesses no authority to ignore 23-47's requirement that only one rear yard is required, even if the policy goal is laudable; and

WHEREAS, thus, the Board again suggests that DOB confer with DCP to formulate a solution that addresses its concern about zoning lot manipulation; and

SECTION 27-291 OF THE BUILDING CODE

WHEREAS, Appellants' second primary argument is that DOB erred in waiving strict compliance with Building Code § 27-291 – "Frontage" (hereinafter "27-291"), which is a provision listed under Title 27, Subchapter 4, Article 2 (Building Access), Subarticle 1 (Fire Department Access); and

WHEREAS, Building Code § 27-291 reads "Every building, exclusive of accessory buildings, shall have at least eight percent of the total perimeter of the building fronting directly upon a street or frontage space. For the purposes of this section, building perimeter shall be measured at that story having the maximum enclosed floor area."; and

WHEREAS, as proposed to be enlarged, the townhouse on the Owner's Lot will violate this provision; and

WHEREAS, the record reveals that the Owner's townhouse, subsequent to the Enlargement, would have at total perimeter of 293'-0", which, pursuant to 27-291, would mean that the townhouse would need to have at least 23'-5" of frontage on East 83rd Street (it only has 18'-5"); and

WHEREAS, DOB issued a reconsideration during its review of the Permit application, which in effect waived strict compliance with 27-291 provided that sprinklering be installed; and

WHEREAS, DOB states that this waiver was proper, citing to its authority to waive Building Code provisions as established by the City Charter and the Building Code; and

WHEREAS, specifically, City Charter § 645(b)(2) (hereinafter, "645") reads, in pertinent part, "where there is a practical difficulty in the way of carrying out the strict letter of any provision of law relating to buildings in respect to the use of prescribed materials, or the installation or alteration of service equipment, or methods of construction and where equally safe and proper materials or forms of construction may be employed in a specific case, he may permit the use of such materials or of such forms of construction, provided that the spirit of the law shall be observed, public safety secured and substantial justice done, but he shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein . . ."; and

WHEREAS, Building Code § 27-107 – Variations (hereinafter, "27-107") reads, in pertinent part "The requirements and standards prescribed in this code shall be subject to variation in specific cases by the commissioner . . . under and pursuant to the provisions of [645] . . ."; and

WHEREAS, Appellants contend that: (1) DOB lacks authority to waive 27-291; and (2) even if DOB does possess authority to waive this provision, no practical difficulties have been proven by the Owner, and public safety has not been secured through the reconsideration; and

WHEREAS, as to the first argument, Appellants contend that DOB's ability to waive Building Code provisions, while provided for by the City Charter and the Building Code, is severely constricted and does not extend to 27-291; and

WHEREAS, more specifically, Appellants claim that only Building Code provisions that contain distinct and separate language noting that the provision may be waived are subject to waiver by DOB; and

WHEREAS, in a submission dated September 22, 2006, Appellants argue that only two provisions of the Building Code provide this separate language by citing specifically to 27-107: Building Code § 27-860, concerning the construction of adjoining chimneys, and Building Code 27-889, concerning the construction of adjoining gas vents; and

WHEREAS, thus, Appellants argue that notwithstanding all of the provisions within the Building Code that concern materials, equipment and forms and methods of construction, only two may be waived by DOB; and

WHEREAS, the Board disagrees, and observes that a review of the applicable City Charter and Administrative Code sections reveals that there is no basis for Appellants' position; and

WHEREAS, first, the Board observes that 27-107 satisfies the requirement in 645 that the laws which DOB can vary must contain an explicit allowance that its provisions may be waived; and

WHEREAS, second, DOB argues, and the Board agrees, that neither the Building Code nor the City Charter require that there be an additional reference to DOB's ability to waive a particular provision within such a provision itself; and

WHEREAS, that this occurs in certain provisions, as pointed out by Appellants, is not an indication that this is required to give DOB authority to issue a variance; rather, this authority comes from the 645 and 27-107; and

WHEREAS, further, the Board notes that the phrase "specific cases" as used in 27-107 refers to instances where a practical difficulty exists in meeting a Building Code provision that concerns materials, equipment or forms or methods of construction, not to specific Building Code provisions; and

WHEREAS, Appellants make the additional argument that 27-291 does not concern "the use of prescribed materials, or the installation or alteration of service equipment, or methods of construction", which covers the scope of what may be waived by DOB pursuant to 645; and

WHEREAS, however, DOB argues that whether a building is constructed in such a way that it complies with the frontage requirement of 27-291 or is fully sprinklered falls squarely under the terms "form of construction" or "method of construction"; and

WHEREAS, the Board notes that Building Code § 27-232 defines the word construction as follows: "Any or all work or operations necessary or incidental to the erection, demolition, assembling, installing, or equipping of buildings, or any alterations and operations incidental thereto. The term 'construction' shall include land clearing, grading, excavating, and filling. It shall also mean the finished product of any such work or operations"; and

WHEREAS, this definition is very broad and can reasonably apply to the amount of building frontage that must be provided during construction or whether sprinklers should be installed instead; and

WHEREAS, while the words "method" and "form" are not defined, Building Code § 27-229 provides, in pertinent part "Where terms are not defined they shall have their ordinarily accepted meanings or such as the context may imply."; and

WHEREAS, thus, DOB is at liberty to apply a reasonable definition of a term, and may take into account the context in which said definition is applied; and

WHEREAS, here, DOB construes the word "method" or "form" to mean how Fire Department access is either provided during construction (i.e. through the provision of required frontage), or a means or mechanism of achieving the same goal through alternate construction (i.e. sprinklering); and

WHEREAS, the Board finds that this is a reasonable approach to the application of the terms "method of construction" or "form of construction", and observes that the frontage requirement does not exist in a vacuum but depends upon a new building being constructed or an existing building being enlarged before it is necessary to apply it; and

WHEREAS, further, the Board notes that DOB has historically proceeded under this approach when reviewing permit applications, and has utilized 645 to frequently waive Building Code requirements related to egress, as well as other provisions that involve methods or forms of construction; and

WHEREAS, accordingly, the Board finds that deference should be accorded to DOB's application of 645 and 27-107, especially since it comports with the plain language of these provisions; and

WHEREAS, for the above reasons, the Board finds that DOB possesses the authority to waive or modify 27-291; and

WHEREAS, as noted above, Appellants argue that even if DOB possesses such authority, the Owner offered no proof of practical difficulties, nor did DOB ensure that public safety is secured in its reconsideration; and

WHEREAS, the Board disagrees: the Owner's Lot is not capable of being widened in order to create more frontage, yet the Lot still generates sufficient floor area such that the Enlargement can be built; and

WHEREAS, absent a waiver of 27-291, the Owner cannot construct the Enlargement in the flag portion of the lot, which is the obvious location to construct the Enlargement, since it a large vacant area that is easily developed; and

WHEREAS, a vertical addition to the existing townhouse utilizing available floor area would greatly increase the building height, resulting in a home that would be out of scale with its neighbors; and

WHEREAS, finally, the Board rejects Appellants' argument that the practical difficulty standard as set forth in 645 must be applied in the same manner as ZR § 72-21; and

WHEREAS, there is no support for the contention that DOB should require that the findings of ZR § 72-21 must be met when issuing a Building Code waiver, or even for the contention that ZR § 72-21 should inform how DOB applies 645; and

WHEREAS, 645 does not require findings related to uniqueness, character of the neighborhood, or minimum variance, and does not impose a self-created hardship caveat; and

WHEREAS, in fact, this Board has previously determined that in the context of Building Code waivers, the personal development goals of the property owner can serve as a component of the practical difficulty claim; and

WHEREAS, specifically, under BSA Cal. No. 174-05-A, an appeal involving the Western Union Building at 60 Hudson Street, Manhattan, the Board found that "unlike a zoning variance, where physical uniqueness related to the parcel of land itself is usually required, the business needs of the owner of the premises and the existing built conditions can properly be considered [for a Building Code waiver], especially where, as here, such needs intersect with pre-existing physical constraints related to the building itself . . . in fact, since a Building Code waiver will almost always relate to a proposed building form, construction method or a proposed occupancy, it is difficult to

envision a practical difficulty that would not in some way relate to the particular needs of the building owner or business occupying the building . . . thus, the Board finds that where compliance involves a practical engineering difficulty and imposes a related financial burden that is unnecessary in light of a sufficiently safe alternative, the Charter and Code provide DOB with authority to waive or modify compliance"; and

WHEREAS, similarly, the Board finds that a Building Code waiver can be predicated on the combination of an otherwise as of right development goal and the physical constraints of the lot; and

WHEREAS, here, the Owner established that its street frontage was constrained by its lot dimensions and could not be enlarged, and that the Enlargement could not be constructed at the rear of the existing townhouse utilizing available floor area without a waiver of 27-291; and

WHEREAS, as to whether safety has been secured, Appellants argue that notwithstanding the sprinklering requirement imposed by DOB, the presence of the Enlargement approximately three and half feet away from the rear of Appellant 2's townhouse poses a fire safety hazard that cannot be mitigated; and

WHEREAS, the Board also finds that this argument is without merit; and

WHEREAS, first, the Board observes that during the course of the hearing process, FDNY reviewed the proposal and performed a site inspection, and determined that so long as the entire building was fully sprinkled, it had no objections; and

WHEREAS, while testimony was provided by Appellants in opposition to this conclusion, the Board defers to the official position of FDNY, the City agency charged with advancing public safety through its fire prevention programs; and

WHEREAS, since the Owner's townhouse, as enlarged, will be fully sprinklered, FDNY could reasonably conclude that its firefighting access concerns are addressed by this additional safety measure and that there would be no danger to adjacent buildings; and

WHEREAS, the Board also observes that the shortfall in required frontage is only approximately five feet; and

WHEREAS, thus, the Board agrees that so long as the entire building shall be fully sprinklered, safety is secured notwithstanding the waiver of 27-291; and

WHEREAS, additionally, the Board notes that it routinely approves the waiver of 27-291 on condition of sprinklering in the context of applications made under the General City Law where the subject property's frontage on a street is deficient or even non-existent, with grants only being made if FDNY approves of the proposal; and

WHEREAS, thus, the decisions made by DOB and FDNY as to the Owner's Lot parallel those made by the Board and FDNY as to numerous other developments across the City, where sprinklering has been found to secure safety in lieu of compliance with 27-291; and

WHEREAS, in sum, the Board finds that DOB possesses the authority to waive 27-291 and that this authority was properly exercised as to the Permit and the Enlargement; and

WHEREAS, accordingly, it rejects Appellants' second primary argument; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by Appellants in light of the entire record and finds that they are without merit; and

WHEREAS, accordingly, it upholds DOB's issuance of the Permit, as conditioned below.

Therefore it is Resolved that the instant appeals, seeking a reversal of the determinations of the Borough Commissioner of the Department of Buildings, dated April 7, 2006 and April 24, 2006, refusing to revoke the issuance of DOB Permit No. 10153229 is hereby denied, on condition that the building proposed to be enlarged under Permit No. 10153229 must be fully sprinklered as per FDNY requirements.

Adopted by the Board of Standards and Appeals, December 5, 2006.

174-06-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for PSCH, owner.

SUBJECT – Application August 11, 2006 – Proposed construction and enlargement of a community facility (PSCH) located within the bed of mapped street (119th Street) is contrary to Section 35 of the General City Law. M1-1 Zoning District

PREMISES AFFECTED – 22-44 119th Street, northwest corner of 23rd Avenue and 119th Street, Block 4194, Lot 20, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2006, acting on Department of Buildings Application No. 401963586, reads in pertinent part:

> "The proposed construction within the bed of a mapped widening is contrary to Article 3, Section 35 of the General City Law and must be referred to the Board of Standards and Appeals."; and

WHEREAS, a public hearing was held on this application on December 5, 2006, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

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

WHEREAS, the subject site is located in an M1-1 zoning district; and

WHEREAS, the applicant proposes to enlarge an existing not-for-profit office use of which, would result in approximately ten feet of the building being located within the mapped widening line of 119th Street; and

WHEREAS, on February 14, 2006, under BSA Cal. No. 386-04-BZ, the Board granted a special permit for a waiver to the required amount of accessory parking; and

WHEREAS, the Board notes that the applicant was then required to seek site plan approval from the City Planning Commission (CPC); and

WHEREAS, the applicant also needed approval from CPC relating to waterfront development, including certification for the proposed public access and waivers of waterfront height and yard regulations; and

WHEREAS, during CPC review, it was discovered that the development also required GCL relief from this Board; thus, the instant application was filed; and

WHEREAS, by letter dated October 23, 2006, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated October 18, 2006, the Department of Transportation states that it has reviewed the application and has no objections; and

WHEREAS, based on the above, 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 13, 2006, acting on Department of Buildings Application Nos. 401963586 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 October 4, 2006"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT no permits shall be issued prior to CPC review and approval of the site plan, and certification relating to waterfront development;

THAT any modifications to the BSA-approved plans, subsequent to CPC review, must be approved by the Board prior to issuance of any 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, December 5, 2006.

273-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Ellen & Joseph Duggan, lessees.

SUBJECT – Application October 11, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law. R-4 zoning district.

PREMISES AFFECTED – 113 Beach 221st Street, east side of Beach 221st Street, 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 29, 2006, acting on Department of Buildings Application No. 4024441853, reads in pertinent part:

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

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on December 5, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated October 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 29, 2006, acting on Department of Buildings Application No. 4024441853 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 11, 2006 – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

337-05-A
APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.
SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district. Premises is located in a R4-A zoning district.
PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.
COMMUNITY BOARD #11BX
APPEARANCES –
For Applicant: Adam Rothkrug.
For Opposition: Michael R. Treanor and Jenice Toledo.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

117-06-A
APPLICANT – Eric Palatnik, P.C., for Esther C. Wallerstein, owner.
SUBJECT – Application June 8, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.
PREMISES AFFECTED – 1373 East 13th Street, between Avenue N and Elm Avenue, Block 6742, Lot 58, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Adam Rothkrug.
For Administration: Amanda Derr, Department of Buildings
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 12, 2006, at 10 A.M., for decision, hearing closed.

154-06-A
APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.
SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.
PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Howard Hornstein and Peter Geis.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown……....3
Abstain: Commissioner Hinkson…….1
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

155-06-A
APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.
SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.
PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Howard Hornstein and Peter Geis.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins and Commissioner Ottley-Brown……....3
Abstain: Commissioner Hinkson…….1
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9, 2007, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 5, 2006
1:30 P.M.

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

ZONING CALENDAR

165-05-BZ
CEQR #06-BSA-004K
APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.
SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.
PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156'-3" East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn.
COMMUNITY BOARD #8BK
APPEARANCES –
For Applicant: Jeffrey Chester.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....
0
THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 21, 2005, acting on Department of Buildings Application No. 301867934, reads in pertinent part:

"A residential use in a M1-1 zoning district is contrary to Section 42-00 ZR and must be referred to the Board of Standards & Appeals."; and

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

WHEREAS, the proposed building will have a total floor area of 20,602 sq. ft. (1.99 FAR), a street wall height of 30'-0" with a 15'-0" setback, a total height of 40'-0" (not including bulkheads), a rear yard of 30'-0", 31 dwelling units, and 15 parking spaces (the "Proposed Building"); and

WHEREAS, the applicant initially proposed to construct a four-story building with 22,609 sq. ft. of floor area (2.2 FAR), a street wall height of 39'-8", and a total height of 66'-0" (including the attic space); and

WHEREAS, the Board expressed concern about this proposal, noting that the inclusion of attics and mezzanines added height and gave the appearance of a seven-story building; and

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

WHEREAS, subsequently, the applicant submitted intermediate proposals, which reflected the elimination of the mezzanines and attics and a reduction in height and floor area; and

WHEREAS, the intermediate proposals also reflected variations on the interior layouts and locations of the bulkhead; one version included the designation of the cellar space as community facility; and

WHEREAS, the Board directed the applicant to eliminate the community facility designation of the cellar as it was actually individual space connected to individual apartments, resulting in additional residential floor area; thus, it could not be characterized appropriately as community facility space; and

WHEREAS, the Board also expressed concern about the significant amount of floor area deductions identified in the plans, including those allegedly allowed due to the provision of Quality Housing features and mechanical space; and

WHEREAS, the applicant responded to the Board's concerns by submitting revised plans, which eliminate reference to the Quality Housing program and which reflect a reasonable amount of mechanical deductions, as well as the elimination of the purported community facility space; and

WHEREAS, while the Board finds the current version acceptable in terms of impact and compatibility with the surrounding context, it will require as a condition of this grant that DOB review the plans and all deductions reflected therein (as well as other zoning and Code requirements) prior to the issuance of any building permit; and

WHEREAS, a public hearing was held on this application on May 16, 2006 after due notice by publication in the *City Record*, to continued hearings on August 15, 2006 and September 26, 2006, and then to decision on December 5, 2006; and

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

WHEREAS, Community Board 8, Brooklyn, recommends approval of the application on condition that a total of four units be reserved for affordable housing and that there be a specific process for selecting tenants for the affordable housing units; and

WHEREAS, the Board notes that the applicant agreed to this condition, but that the agreement between the applicant and the Community Board is beyond the scope of this variance; and

WHEREAS, the subject premises includes four tax lots (Lots 76-69) proposed to be merged (into Tentative Lot 78), has a width of 93'-9", a depth of 110'-0", a total lot area of 10,313 sq. ft., and is located on the north side of Bergen Street between Grand Avenue and Classon Avenue; and

WHEREAS, the site is currently occupied by a parking lot, but was previously occupied by residential uses; and

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

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is located in the midblock along a narrow street; (2) the adjacency of residential use on both sides of the site; and (3) there is a history of residential use at the site; and

WHEREAS, as to the location of the site in the midlbock

along a functionally one-lane street, the applicant noted that the street is 40 feet curb to curb (70 feet wide including sidewalks); and

WHEREAS, further, the applicant notes that the 15 ft. sidewalks on both sides of the street are encroached upon by front yards and other obstructions; and

WHEREAS, the applicant represents that these limitations constrain vehicle access to the site and truck loading for a conforming use; and

WHEREAS, in support of this representation, the applicant submitted a study from Urbitran, which included a graphic analysis of a standard 45-ft. truck turning into the site; the study indicates that the truck would not be able to access the site due to the narrow width of the street and the obstruction of the cars parked on both sides of the street; the study concludes that a 55-ft. truck would have to drive over the curb when exiting the site; and

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

WHEREAS, as to the adjacent uses, the applicant represents that there are residential uses on both sides of the subject site, with a four-story multi-dwelling building to the east and a group of three three-story dwellings to the west; and

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

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

WHEREAS, as to the history of uses at the site, the applicant represents that prior to 1920, all of the subject lots were developed with residential buildings, which were all demolished between 1965 and 1979; and

WHEREAS, the applicant represents that the lots have remained vacant since that time; and

WHEREAS, as to uniqueness, the applicant represents that other sites in the area are more viable for conforming uses or have opportunities to be used or assembled with adjacent conforming uses; and

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

WHEREAS, in support of these representations, the applicant initially submitted a land use study which included all sites within a 400-ft. radius of the site; and

WHEREAS, however, at hearing, the Board asked the applicant to reinforce the argument that the cited conditions were reasonably unique to the subject site, and to review an expanded study area that includes the nearby blocks, six of which are zoned M1-1 and two of which are zoned R6; and

WHEREAS, in response, the applicant studied an expanded area and analyzed other vacant or under-developed lots; this area includes a total of eight blocks bounded by Atlantic Avenue, Classon Avenue, Washington Avenue and St. Marks Avenue, as reflected on the submitted revised land use maps, generated by Urbitran; and

WHEREAS, the Urbitran map illustrates that other conforming uses predominantly occupy larger lots; and

WHEREAS, specifically, there are approximately 11 other vacant or underdeveloped lots in the study area including the subject lot; however, the other lots within the study area either have corner locations with greater access or are not adjacent to residential uses on either side, as the subject site is; and

WHEREAS, the Board notes that even within the 400-ft. radius, the subject site is one of only three lots in the underlying M1-1 zoning district that is of comparable size, located in the midblock and further burdened by adjacency to two residential uses; and

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

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

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

WHEREAS, initially, the applicant submitted a feasibility study analyzing a conforming 10,313 sq. ft. garage building; and

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

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

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

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

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

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

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of 31 dwelling units and 15 accessory parking spaces will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, further, the Board notes that the earlier iterations would not have been contextual with the surrounding neighborhood, which is characterized by three- and four-story residential buildings adjacent to the site, and predominantly three to four-story residential buildings in the immediate area; and

WHEREAS, specifically, at hearing, the Board asked the applicant to remove the initially proposed mezzanines and attic spaces because these spaces increased the floor area significantly and because the building had the appearance of a seven-story building, rather than a four-story building; and

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

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

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

WHEREAS, as noted above, the applicant originally proposed a 22,609 sq. ft. (2.2 FAR) building with a significant amount of deductions; and

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

WHEREAS, the Board notes that the initial feasibility study included a discounted value for the affordable housing units; and

WHEREAS, while the Board notes that the applicant may agree to provide affordable units and it may be a worthy cause, this condition should not be reflected in the feasibility analysis for the proposed project; and

WHEREAS, specifically, the Board notes that the costs associated with affordable units should not be offset by an increase in floor area; and

WHEREAS, the applicant revised the feasibility study to address this concern; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA004K, dated April 7, 2006; and

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

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: the 2005 EAS and the March 2005 Phase I Environmental Site Assessment Report; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on October 30, 2006 and submitted for proof of recording on November 3, 2006 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a four-story and cellar residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 4, 2006" – (8) 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 the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the following are the bulk parameters of the building: four stories, 20,602 sq. ft. of floor area (1.99 FAR), a street wall height of 30'-0" with a 15'-0" setback, a total height

of 40'-0" (not including bulkheads), a rear yard of 30'-0", 31 dwelling units, and 15 parking spaces, all as indicated on the BSA-approved plans;

THAT prior to the issuance of any building permit, DOB shall perform an audit of the BSA-approved plans to confirm compliance with all ZR and Building Code provisions not waived herein, including, but not limited to, floor area deductions, the width and slope of the vehicle ramp, handicapped access, egress, access between the cellar and first floor, parking layout and circulation, bulkheads and rooftop obstruction, light and air, and apartment layout;

THAT any non-compliance identified in this audit must be resolved prior to the issuance of a building permit;

THAT cellar spaces connected to residential units shall not be used for living/sleeping purposes; such spaces shall be used for tenant recreational or storage purposes only;

THAT any handicapped-accessible lift shall be approved by the Mayor's Office for People with Disabilities;

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

363-05-BZ
CEQR #06-BSA-043Q

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. §§23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman and Amy Klet.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 20, 2006, acting on Department of Buildings Application No. 402224838, reads, in pertinent part:

"- 23-141 ZR – Proposed development is exceeding the maximum floor area ratio allowed on this zoning lot.
- 23-141 ZR – Proposed lot coverage is exceeding the maximum allowed.
- 23-141 ZR – Proposed development is not providing the minimum required open space.
- 23-45(a) ZR – Portion of new enlargement is not a permitted obstruction in required front yard.
- 23-462(a) ZR – For proposed development the aggregate width of street walls is greater than 88' therefore two side yards are required. Side yards must be at least 10% of the aggregate width of street walls as per section 23-462(a). Plans submitted indicate that width of side yards provided are not sufficient.
- 23-861 ZR – Proposed development with more than three dwelling units must be provided with legally required windows as per section 23-861 ZR. A minimum dimension of thirty feet must be provided between window and side/rear lot line.
- 25-23 ZR – New development must be provided with the required amount of parking spaces as per section 25-23 ZR."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, two semi-detached three-story three-family residential buildings with three accessory parking spaces, which do not comply with the requirements concerning total maximum floor area ratio (FAR), lot coverage, open space, front yard, side yards, distance between window and lot lines, and parking spaces, contrary to ZR §§ 23-141, 23-45, 23-462, 23-861, and 25-23; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, with continued hearings on September 12, 2006, October 17, 2006, and November 14, 2006, and then to decision on December 5, 2006; and

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

WHEREAS, Community Board 4, Queens, recommends disapproval of the application, citing community members' concerns about permitting new multi-unit dwellings in the area, parking, and potential negative impacts on neighboring homes' access to light and air; and

WHEREAS, the subject premises is located on the southeast corner of 108th Street and Westside Avenue; and

WHEREAS, the lot is an irregularly-shaped and shallow site, with 103'-1" of frontage on 108th Street, 50'-0" of frontage on Westside Avenue, and a total lot area of 3,987 sq. ft.; and

WHEREAS, the site is currently improved upon with a one-story commercial building (proposed to be demolished) and six accessory parking spaces; and

WHEREAS, on October 31, 1961, under BSA Cal. No. 777-61-BZ, the Board, under Section 7e of the pre-1961 zoning code, granted a permit to allow a change in occupancy of an existing one-story building from a three-car garage to a restaurant with six accessory parking spaces; and

WHEREAS, in 1984, under BSA Cal. No. 435-84-BZ, the

Board granted additional floor area for an accessory office to the restaurant; and

WHEREAS, because of the size of the block and the fact that more than 50 percent of the zoning lots therein are developed with buildings, the site is within an area which can be defined as predominantly built-up, per ZR § 12-10 ("Predominantly built-up area"); and

WHEREAS, the applicant now proposes to construct two semi-detached three-story three-family homes with a total residential floor area of 7,304 sq. ft., (6,578 sq. ft. is the maximum permitted), a total FAR of 1.83 (1.65 is the maximum permitted), a lot coverage of 61 percent (55 percent is the maximum permitted), and an open space ratio of 39 percent (45 percent is the minimum required); and

WHEREAS, the proposed building will have no front yards (front yards with a minimum depth of 18'-0" are required), one irregularly-shaped side yard, built to the lot line at points and to a maximum width of 11'-0", and another irregularly-shaped side yard, built to the lot line at points and to a maximum width of 18'-0" (side yards with a total width of 13'-0" and a minimum width of 5'-0" for one yard are the minimum required), and three parking spaces (four parking spaces are required); and

WHEREAS, the applicant notes that the following are unique physical conditions, which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the irregular shape of the lot (2) the shallow depth of the lot, and (3) the large amount of street frontage; and

WHEREAS, as to the irregular shape, the applicant states that the lot has a zigzag shape with many angles; and

WHEREAS, the applicant asserts that the lot shape results in the following consequences: (1) an increase in construction costs, because a complying building would be irregularly shaped; and (2) inefficient floor plates for residential use, and a corresponding decrease in the value of the units; and

WHEREAS, the applicant represents that additional floor area is needed to recover the costs of the construction and to create units that are marketable given the constraints of the site; and

WHEREAS, additionally, the applicant represents that additional floor area is needed to meet code requirements for minimum room size and to make efficient layouts given the irregular shape of the building; and

WHEREAS, this increase in floor area also creates an increase in lot coverage; and

WHEREAS, the applicant represents that if a greater distance were provided between all walls and lot lines, the footprint would be diminished greatly; and

WHEREAS, the applicant also notes that light and ventilation can be accessed from smaller yards for small multi-dwelling buildings such as the ones proposed; and

WHEREAS, as to the uniqueness of the shape of the lot, the applicant submitted a 400-ft. radius diagram, which reflects that there are not any other lots in the area with as many lot lines; and

WHEREAS, the Board reviewed the submitted diagram and agrees that the subject lot is the only one within the radius with such an irregular shape; and

WHEREAS, as to the shallow depth, the applicant states that the lot ranges in depths from 22'-0" to 44'-0" perpendicular to 108th Street; and

WHEREAS, the applicant represents that the shallowness, along with the irregular shape, contributes to the need for additional lot coverage and diminished open space; and

WHEREAS, the applicant also represents that the shallowness, like the shape, contributes to additional construction costs; and

WHEREAS, the Board notes that there are only approximately nine other lots within the radius that are as shallow as the subject lot; and

WHEREAS, as to the street frontage, the applicant asserts that the lot has an unusually large amount of street frontage in relation to the size of the lot; and

WHEREAS, the Board notes that no other lots within the radius diagram have as much street frontage as the subject lot; and

WHEREAS, the applicant represents that the yard requirements associated with the amount of street frontage cannot be accommodated on such a shallow, irregular lot; and

WHEREAS, further, the applicant represents that given the noted site conditions, an additional parking space and more open space are not feasible; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as of right two three-story three-family development with a floor area of 6,376 sq. ft. (1.65 FAR), (2) the proposed two three-story three-family development with a floor area of 7,304 sq. ft. (1.83 FAR), and (3) lesser variance proposal with a complying 1.65 FAR, but with waiver requests for yards and lot coverage; and

WHEREAS, the applicant asserts that the as of right scenario would not provide a sufficient rate of return; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is comprised primarily of two- and three-story residential buildings; and

WHEREAS, the applicant notes that a 5'-0" yard will be provided along the portions of the buildings where legal light and ventilation are accessed; and

WHEREAS, the Board notes that the adjacent building to the east is a three-story multiple-unit dwelling with no windows facing the site; and

WHEREAS, additionally, the Board notes that open space will be provided between the proposed building and the residential buildings at the rear either through an open parking area or the adjacent rear yards; and

WHEREAS, as to the parking, the applicant notes that parking will be provided for half of the dwelling units and that a waiver is only requested for one space; and

WHEREAS, the Board agrees that any adverse impact as a result of the parking request is negligible; and

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

WHEREAS, the applicant represents that the hardship was not created by the owner or a predecessor in title, but that the irregular shape of the lot is the result of the City's street design; and

WHEREAS, specifically, the streets that intersect 108th Street do so at an angle, which has resulted in the irregularly-shaped subject lot; and

WHEREAS, further, the applicant represents that in 1922, the City opened a mapped street across the adjacent lot (Westside Avenue), which created an irregular intersection at the subject site and resulted in another 50'-0" of street frontage; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal is the minimum variance needed to allow for a reasonable and productive use of the site; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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. 06BSA043Q, dated December 16, 2005; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit on a site within an R5 zoning district, two semi-detached three-story three-family residential buildings with three accessory parking spaces, which do not comply with the requirements concerning total maximum FAR, lot coverage, open space, front yard, side yards, distance between window and lot lines, and parking spaces and is contrary to ZR §§ 23-141, 23-45, 23-462, 23-861, 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 June 2, 2006"– (4) sheets, "Received October 31, 2006"–(1) sheet and "Received November 28, 2006"–(2) sheets; and *on further condition*:

THAT the parameters of the development shall be: a total floor area of 7,304 sq. ft. (1.83 FAR), a total height of 30'-0", a lot coverage of 61 percent, an open space ratio of 39 percent, and a minimum of three parking spaces;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

130-06-BZ

APPLICANT – Anderson Kill & Olick, P.C., for Amsterdam Nursing Home Corp., owner.

SUBJECT – Application June 22, 2006 – Variance pursuant to Z.R. §72-21 to permit a one-story addition in the rear yard of an existing nursing home. The Premise is located in R8 and R8/C1-4 zoning districts. The proposal is contrary to Z.R. §24-33(b)(3). The rear yard proposed for the addition is currently vacant.

PREMISES AFFECTED – 1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lots 29, 36, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Robert Cook.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....

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THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 23, 2006, acting on Department of Buildings Application No. 104067670, reads, in pertinent part:

"The proposed nursing home use (on first floor) in a R8 zoning district located more than 100 feet beyond corner of the street is not a permitted obstruction and is contrary to ZR 24-33 b (2) and (3)"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R8 zoning district and partially within a C1-4(R8) zoning district, a one-story enlargement in the rear yard of an existing nursing home, which is contrary to ZR § 24-33; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

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

WHEREAS, Community Board 9, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf or Amsterdam Nursing Home (the "Home"), a nonprofit institution; and

WHEREAS, the site is L-shaped and comprises two tax lots, located on the west side of Amsterdam Avenue, between West 112th Street and West 113th Street, with frontage on all three streets; and

WHEREAS, the subject site is within an R8 zoning district for the westernmost 100 feet along West 112th Street; the remainder of the site is within an R8 zoning district with a C1-4 overlay; and

WHEREAS, the subject site has a lot area of 26,238.75 sq. ft. and is improved upon with a 13-story and one-story 168,086 sq. ft. nursing home building, which accommodates 409 residents, and an adult day care center; and

WHEREAS, in 1992, the Home was granted permission to build an addition to the existing facility on the newly-acquired adjacent site on the southwest corner of Amsterdam Avenue and West 113th Street (tax lot 36); and

WHEREAS, the applicant represents that the proposed enlargement was designed to achieve efficient floor plates and to modernize the Home's facilities; and

WHEREAS, the Home also renovated an existing building on the newly-acquired lot and created the day care center; and

WHEREAS, the approvals necessary to construct the 1992 enlargement included: (1) a City Planning Commission special permit to permit the community facility floor area (6.5 FAR) to apply to the enlargement; (2) a disposition of city-owned property to the nursing home; (3) an amendment to the Cathedral Parkway Urban Renewal Plan to permit a nursing home on the acquired property; and (4) a City Planning Commission certification regarding community facility development within the subject Community District; and

WHEREAS, the applicant states that when the enlargement of the Home was built, a portion of the rear yard at the western end of the building was filled in with a 14-foot high structure, leaving an approximately 69-foot wide open area between that structure and the new wing fronting on Amsterdam Avenue; and

WHEREAS, the applicant represents that as part of the enlargement and renovation plan to be carried out pursuant to the 1992 proposal, the Home had planned to fill in the remainder of the rear yard with a one-story, 14-foot high addition; and

WHEREAS, this portion of the enlargement would have been as-of-right under then existing zoning as a permitted obstruction of one story and less than 23 feet in height in the rear yard of a community facility building; and

WHEREAS, the applicant represents that due to budgetary constraints, this part of the planned enlargement was never built; and

WHEREAS, the applicant notes that in 2004 there was a text amendment to ZR § 24-33 related to community facility use, which now permits limited rear yard encroachments only if located within 100 feet of the intersection of a wide street; exceptions include schools, hospitals, and houses of worship are except, but not nursing homes; and

WHEREAS, therefore, the westernmost portion (28 feet) of the proposed rear yard addition is not permitted as it is more than 100 feet from Amsterdam Avenue; and

WHEREAS, the applicant now proposes to build the one-story addition into the 32 ft. deep open space in the rear yard; and

WHEREAS, the applicant only requires a waiver for the 28 ft. by 32 ft. (896 sq. ft.) portion of the enlargement that will be located within the R8 portion of the site; the remainder of the enlargement is within 100 feet of the intersection where the community facility use is a permitted obstruction; and

WHEREAS, the enlargement complies with all the approvals of the 1992 proposal, and the enlarged building would still be within the previously-approved 6.5 FAR; and

WHEREAS, the applicant represents that an approval from the City Planning Commission is being sought for the modification of the previously-approved site plan to permit the rear yard obstruction; and

WHEREAS, the applicant proposes to build the one-story 2,462 sq. ft. enlargement and to move mechanical equipment now located on the roof of the existing portion of the building in the rear yard to the roof of the 13-story portion of the building; and

WHEREAS, the proposed enlargement will contain new facilities for residents' activities and allow for a reorganization of the Home's first floor services, which will permit the admissions office in the cellar to be relocated to the first floor; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Home, which have led to the proposal to construct the one story addition: (1) a need to provide a common space for residents to interact with others and attend instructional programs; (2) a need to provide a more accessible admissions office; and (3) a need to enlarge the adult day care program, which operates at full capacity; and

WHEREAS, in order to meet these needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the rear yard

waiver is necessary to complete the proposed plans and to create efficient use of the first floor for common space, the day care program, and to allow for the relocation of the admissions office; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement and redesign of the first floor is necessary to address the Home's 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 Home, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Home is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, specifically, the applicant states that the enlargement will be located in the rear yard where it is not visible from the street; and

WHEREAS, further, the applicant states that the enlargement will be surrounded by the Home's existing building on three sides and occupies space that would otherwise be separated by adjacent neighbors' yards by a fence and wall of at least 12 feet in height; 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 Home could occur on the existing lot given the existing conditions; and

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

WHEREAS, the applicant represents that the requested rear yard waiver is the minimum waiver necessary to accommodate the Home's current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will limit the enlargement to one-story and 14 ft. in height so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Home to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as a Type II action pursuant to Sections 617.13 of 6NYCRR; 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 partially within an R8 zoning district and partially within a C1-4(R8) zoning district, a one-story enlargement in the rear yard of an existing nursing home which is contrary to ZR § 24-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 27, 2006"- (3) sheets; and *on further condition*:

THAT the total building floor area of the post-enlargement building shall not exceed 170,549 sq. ft. (6.5 FAR), as illustrated on the BSA-approved plans;

THAT the proposed enlargement shall be one story and 14 ft. in height;

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

159-06-BZ

APPLICANT– Sheldon Lobel, P.C., for Shalom Kalnicki, owner.

SUBJECT – Application July 18, 2006 – Pursuant to ZR §72-21 for a variance to construct a single family home on a vacant lot which does not comply with the minimum lot width ZR §23-32 and less than the total required side yard, ZR §23-461. The premise is located in an R1-1 zoning district.

PREMISES AFFECTED – 4540 Palisade Avenue, east side of Palisade Avenue, 573' from 246th Street, Block 5923, Lot 231, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT **–**

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 29, 2006, acting on Department of Buildings Application No. 200903978, reads, in pertinent part:

"1. Proposed minimum lot width is contrary to Section 23-32 of NYC Zoning Resolution.
2. Proposed side yard is contrary to Section 23-461(a) of NYC Zoning Resolution."; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R1-1 zoning district mapped within a Special Natural Area District ("SNAD"), the construction of a two-story single-family dwelling, which does not comply with minimum lot width and required side yards, contrary to ZR §§ 23-32 and 23-461(a); and

WHEREAS, the proposed dwelling will have the following complying parameters: 4,059 sq. ft. of floor area, a Floor Area Ratio (FAR) of 0.41, an open space ratio of 195, a wall height of 25 ft., a total height of 38.4 ft., a front yard of 20 ft., a rear yard of 48 ft., and two parking spaces; and

WHEREAS, however, the lot has a non-complying width of 86.4 ft.; and

WHEREAS, further, the proposed dwelling will have one side yard of 18.25 ft. and one of 8.0 ft, which does not comply with R1-1 district side yard requirements; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on December 5, 2006; 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 a committee of the Board, including Chair Srinivasan and Commissioners Ottley-Brown and Hinkson; and

WHEREAS, the site is located on the east side of Palisade Avenue, approximately 573 ft. from 246th Street, and has 9,983.3 sq. ft. of lot area; and

WHEREAS, the site has an average width of 86.4 ft., with 100 ft. of frontage on Palisade Avenue, but a width of only 72.82 ft. at the rear lot line; and

WHEREAS, the site was formerly located within an R1-2 zoning district, and the lot was fully compliant with the requirements of this district in terms of its dimensions; and

WHEREAS, further, the site was previously developed with a single-family home that complied with the R1-2 zoning parameters; this dwelling was demolished by the prior owner and the site is now vacant; and

WHEREAS, subsequently, on October 11, 2005, the site was rezoned to R1-1; and

WHEREAS, under the R1-1 zoning, the minimum required lot width is 100 ft., and the minimum required side yard is 15 ft., with total side yards of at least 35 ft.; and

WHEREAS, further, because the site is within a SNAD, it is affected by an "area of no disturbance" regulation, which provides that no development is permitted along the site's northern and eastern perimeters; and

WHEREAS, the applicant states that the site cannot be developed at all without a variance, due to its width, and also contends that side 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 irregular shape of the lot; and (2) the slope that affects the site; (3) the afore-mentioned "area of no disturbance"; and (4) the site's vacancy; and

WHEREAS, as to the site's shape, that applicant states that although the site has 100 ft. of frontage on Palisade Avenue, because it narrows towards the rear lot line, the average width is only 86.4 ft., which is less than the required 100 ft. within the subject R1-1 district; and

WHEREAS, the Board agrees that no development on the site is possible unless this requirement is waived; and

WHEREAS, as to the steep slope, the applicant notes that the site slopes steeply upward from its northwest corner to its southeast corner, with the lowest elevation being 76 ft. and the highest being 98 ft.; a topographical map was submitted in support of this claim; and

WHEREAS, the applicant notes that this slope limits the location of new development to that portion of the lot least affected by the slope; and

WHEREAS, as to the "area of no disturbance", the applicant notes that this area was established to protect the afore-mentioned slope, and likewise constrains the location of any new development; and

WHEREAS, both the slope and the "area of no disturbance" push new development towards the southern portion of the lot; and

WHEREAS, the applicant states that since the location of construction is thus constrained, the project architect is unable to design a functional house with an efficient floor plan that also complies fully with the R1-1 district yard requirements; and

WHEREAS, the applicant notes that the proposed home is oriented in a traditional large lot manner, with its long side facing the street; any other orientation that might allow compliance with the side yard requirements would affect the value and utility of the house; and

WHEREAS, as to vacancy, the applicant notes that the lot is one of the few undeveloped lots in the immediate vicinity, aside from abutting lots that are also non-compliant as to width; and

WHEREAS, the Board is aware that a site does not have to be singularly unique in order to qualify for a variance, and finds that the convergence of unique conditions affecting the subject lot render it sufficiently uniquely compromised to sustain the requested waivers; and

WHEREAS, thus, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that a complying development could be constructed; and

WHEREAS, the applicant notes that the proposed house complies with all R1-1 district bulk parameters aside from lot width and side yards; and

WHEREAS, the applicant further notes that any impact on the adjacent lot to the south is minimized by the proposed southern side yard at the second floor, which, at its greatest point, measures 16.9 ft.; and

WHEREAS, finally, the applicant notes that the design and location of the proposed house has been preliminarily reviewed by staff at the Department of City Planning, and that a further review will be conducted by the City Planning Commission since the proposal must receive an authorization; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R1-1 zoning district mapped within a Special Natural Area District, the construction of a two-story single-family dwelling, which does not comply with minimum lot width and required side yards, contrary to ZR §§ 23-32 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 October 30, 2006"– (11) sheets; and *on further condition*:

THAT all bulk parameters, including side yards, shall be as reflected on the BSA-approved plans;

THAT no building permit shall be issues until the proposed home has received an authorization from the City Planning Commission for its location with a Special Natural Area District;

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

THAT the use and layout of the cellar shall be as approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

226-06-BZ

APPLICANT– Eric Palatnik, P.C., for Bracha Weinstock, owner.

SUBJECT – Application September 5, 2006 – Pursuant to ZR §73-622 for the enlargement of a single family semi-detached residence. This application seeks to vary ZR §23-141(a) for open space and floor area; ZR §23-461(b) for less than the minimum side yard of 8 feet; ZR §23-47 for less than the minimum rear yard and ZR §23-631 for perimeter wall height. The premise is located in an R3-2(HS) zoning district.

PREMISES AFFECTED – 1766 East 28th Street, between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 21, 2006, acting on Department of Buildings Application No. 302216420, 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. Proposed plans are contrary to ZR 23-461(b) in that the existing side yard is less than the required 8'-0".
4. Proposed plans are contrary to ZR 23-631(b) in that height of building exceeds 21'-0".
5. 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, in an R3-2 zoning district, the proposed enlargement of a semi-detached single-family dwelling, which does not comply with the zoning requirements for floor area, floor area ratio (FAR), open space ratio, side yard, 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 October 31, 2006, after due notice by publication in *The City Record*, and then to decision on December 5, 2006; and

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

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

WHEREAS, the adjacent neighbor provided testimony in opposition to the application, citing concerns about access to light and air; and

WHEREAS, the subject lot is located on the west side of East 28th Street, between Avenue R and Quentin Road; and

WHEREAS, the subject lot has a total lot area of 2,601 sq. ft., and is occupied by a 1,685 sq. ft. (0.65 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,685 sq. ft. (0.65 FAR) to 2,601 sq. ft. (1.00 FAR); the maximum floor area permitted is 1,301 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to reduce the open space from 1,691 sq. ft. to 1,301 sq. ft. (1,690.65 sq. ft. is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard of 4'-5½" (a side yard with a minimum width of 8'-0" is required); and

WHEREAS, the applicant proposes to provide a rear yard of 20'-3" (30'-0" is the minimum required); and

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

WHEREAS, the applicant proposes to maintain the existing non-complying perimeter wall height of 24'-0" and complying total height of 29'-5"; and

WHEREAS, the proposed enlargement will be two stories and will be located entirely at the rear of the existing home; and

WHEREAS, the Board notes that the proposed perimeter wall height is equal to that of the adjacent building, which is permitted pursuant to ZR § 73-622; and

WHEREAS, further, the Board notes that the entire enlargement is at the rear of the home and that the perimeter wall facing the street will not be changed; and

WHEREAS, in response to the neighbor's concerns, the Board notes that the special permit clearly contemplates enlargements which are situated at the rear of homes since they are deemed to have less impact on the character of the neighborhood and result in the least change to the streetscape as they are not visible from the street; and

WHEREAS, at hearing, the Board asked the applicant to identify the depth of rear yard, as the addition has a somewhat irregular shape; and

WHEREAS, the applicant provided revised drawings with a notation identifying the proper rear yard dimension of 20'-3"; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a semi-detached single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, side yard, 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 October 13, 2006"–(9) sheets and *on further condition*:

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 parameters of the building: a total floor area of 2,601 sq. ft. (1.00 FAR), a wall height of 24'-0", a total height of 29'-5", a front yard of 15'-6", a side yard of 4'-5 ½", a rear yard of 20'-3", and 1,301 sq. ft. of open space, all as illustrated on the BSA-approved plans;

THAT the garage shall be as approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

258-06-BZ
CEQR #07-BSA-017Q

APPLICANT– Anderson Kill & Olick, P.E., for Our Lady of the Snows Church, owner.

SUBJECT – Application September 20, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed one-story church sanctuary which would be built on a portion of the site

currently occupied by a parking lot. The applicant proposes to move out of its existing sanctuary on the same site, which was originally built a as a gymnasium / auditorium for the parochial school. The Premises is located in an R2 zoning district. The proposal is seeking waivers of Z.R. §24-111 and §23-141 with respect to the proposed one-story addition (additional floor area) exceeding the permitted community facility floor area in an R2 zoning district.
PREMISES AFFECTED – 79-48 259th Street, 258-15 80th Avenue, 79-33 258th Street, entire block bounded by Union Turnpike, 79th Avenue, 259th Street, 80th Avenue, 258th Street, Block 8695, Lots 1, 60, Borough of Queens.
COMMUNITY BOARD #13Q
APPEARANCES –
For Applicant: Robert Cook.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 8, 2006, acting on Department of Buildings Application No. 402303342, reads, in pertinent part:

"Proposed one story addition [additional floor area] for new church exceeds permitted community facility floor area in R2 district as per 24-11 ZR."; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R2 zoning district, the construction of a one-story church sanctuary, which is contrary to ZR § 24-111; and

WHEREAS, the application is brought on behalf of Our Lady of the Snows Church (the "Church"), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, and then to decision on December 5, 2006; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

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

WHEREAS, the site occupies the entire block bounded by Union Turnpike, 79th Avenue, 259th Street , 80th Avenue, and 258th Street; and

WHEREAS, the subject site has a total lot area of 118,560 sq. ft. and comprises two tax lots – lot 1 and lot 60; and

WHEREAS, lot 1, which encompasses the majority of the site, is occupied by the existing church building (the "Existing Building"), two parochial school buildings (serving 500 students), and three separate accessory parking lots; lot 60, a small lot located in the southeast corner of the site, is occupied by a two-story rectory building; a total of 166 accessory parking spaces are provided; and

WHEREAS, the applicant proposes to construct a one-story, semi-circular church sanctuary building, with a floor area of 13,665 sq. ft. and 800 seats (the "New Building"); and

WHEREAS, the New Building will be located in the southwest corner of the site, which is presently occupied by a parking lot; all of the existing buildings and the remainder of the parking will remain; and

WHEREAS, the proposed development complies with regulations applicable to community facilities in the subject R2 zoning district, except for the floor area and FAR; and

WHEREAS, specifically, the applicant proposes a total floor area of 71,441 sq. ft. (59,280 sq. ft. is the maximum permitted for a community facility in the subject R2 zoning district) and an FAR of 0.602 (0.50 is the maximum permitted for a community facility in the subject R2 zoning district); and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Church, which seeks to build a new church sanctuary in order to accommodate the growing congregation; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Church: (1) a significant increase in attendance over the past 57 years; (2) the school's need for a gymnasium/auditorium; and (3) a need to improve access and modernize facilities; and

WHEREAS, as to attendance, the applicant states that the Church now serves an average of 1,975 parishioners; and

WHEREAS, the applicant represents that the Existing Building has seating capacity for 350 congregants; therefore, in order to accommodate the large attendance, the Church must hold five masses on Sunday and two on Saturday; and

WHEREAS, the applicant represents that with the proposed 800-seat sanctuary, the number of masses could be reduced to three on Sunday and one on Saturday; and

WHEREAS, as to the need for a gymnasium/auditorium, the applicant represents that the Existing Building was built for use as a gymnasium for the school; and

WHEREAS, however, the building was converted into the Church's sanctuary and the gymnasium/auditorium was never replaced; and

WHEREAS, the applicant represents that the school has had to lease a gymnasium offsite that students' parents must drive them to; and

WHEREAS, the proposed plans provide for the Existing Building to revert to its intended use as a large gymnasium/auditorium for the school; and

WHEREAS, as to the inefficiency of the current facilities, the applicant represents that because the Existing Building was designed for other purposes, it is not well-suited for use as a church sanctuary; and

WHEREAS, specifically, the inadequacies of the Existing Building include the following: (1) the building is long and narrow, resulting in a long distance between the altar and the back pews, (2) the building is only accessible by a set of stairs or from an open ramp at the rear, which compromises handicapped accessibility, and (3) the building only has one restroom, which is not handicapped accessible

and cannot accommodate the large number of parishioners; and

WHEREAS, the improvements of the New Building include the following: (1) a semi-circular design of the sanctuary space, which allows for a more inclusive design with shorter distances from the altar, (2) improved ramped entrances and an elevator, and (3) the provision of additional restrooms, which are handicapped accessible; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the construction of the New Building is necessary to address the Church's needs, given the limitations of the Existing Building; and

WHEREAS, further, the Board notes that the New Building will be integrated with and relate to the existing buildings in an efficient manner; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the Existing Building for use as a sanctuary, when considered in conjunction with the programmatic needs of the Church, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, specifically, the applicant states that the proposed one-story New Building will have a lower height than the other buildings on the site; and

WHEREAS, additionally, the applicant notes that the church use has been uninterrupted at the site since approximately 1949 and therefore is a fixture in the community; and

WHEREAS, further, the applicant asserts that the larger capacity of the New Building and the resultant reduction in the number of church services will reduce pedestrian and vehicle congestion caused by overcrowded services; and

WHEREAS, the applicant notes that the Church has a surplus of parking spaces and asserts that the elimination of the 22 spaces currently located at the site of the New Building will not negatively impact the site or its surroundings; and

WHEREAS, the Board has reviewed a parking analysis which concludes that the parking demand generated by the New Building can be accommodated; and

WHEREAS, at hearing, some of the Board members asked the applicant if other site designs had been considered, such as orienting the New Building towards the commercial thoroughfare on the Union Turnpike/79th Avenue side, rather than towards the residential area on 258th Street; and

WHEREAS, the applicant responded that the proposed design allows the Church to best meet its programmatic needs since the proposal provides for the New Building to be connected to the Existing Building, for access to the community room therein; and

WHEREAS, further, the applicant represents that the proposed location of the New Building allows the Church to maintain a greater number of the existing parking spaces; and

WHEREAS, the Board agrees that the proposed New Building is compatible with the surrounding neighborhood in terms of bulk and height; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Church; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Church; and

WHEREAS, the applicant states that the proposed FAR of 0.602 only exceeds the permitted FAR of 0.50 by 0.102 and that the proposed floor area of 71,441 sq. ft. exceeds the permitted floor area of 59,280 sq. ft. by 12,161 sq. ft., a factor of approximately 20 percent; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Church to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA017Q, dated September 12, 2006; and

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

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

WHEREAS, the Board has determined that the proposed

action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a one-story church sanctuary, which is contrary to ZR § 24-111, *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 27, 2006"-(6) sheets and "Received November 30, 2006"-(1) sheet and *on further condition*:

THAT the total floor area of the site shall not exceed 118,560 sq. ft. (0.602 FAR), as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, December 5, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Michael S. Ross, Nicholas Recchia, Mitchell Ross and N. Nick Perry.

For Opposition: Robinson Hernandez and Darryl Hollon.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 6, 2007, at 1:30 P.M., for decision, hearing closed.

239-04-BZ

APPLICANT– Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Mitchell Ross and Ioah Sita.

ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

290-04-BZ

APPLICANT **–** Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT **–** Application August 20, 2004 **–** under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED **–** 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES **–** None.

ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for deferred decision.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail,

community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.
PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Earle Tolkman and Chuck Arclian.
ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

36-06-BZ
APPLICANT – Sheldon Lobel, P.C., for The RNR Group Ltd., owner.
SUBJECT – Application March 1, 2006 – Special Permit pursuant to Z.R. §73-53 to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,485 square feet.
PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Richard Lobel.
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
ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

50-06-BZ
APPLICANT – Jeffrey A. Chester, Esq., for 461 Carool Strait, LLC, owner.
SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.
PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Jeffrey Chester.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

55-06-BZ
APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.
SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR §72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR §33-26 and §33-23. Special Permit is also proposed pursuant to ZR §73-44 to allow reduction in required accessory parking spaces.
PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Phil Rampulla.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

67-06-BZ
APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.
SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. §72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR §22-00 and §36-21. The proposed number of parking spaces pursuant to a waiver of ZR §36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.
PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Joseph Morsellino, Marc Steinberg, Hiriam Rothkrug, Frank Trigglio, Kevin Barry and Stuart Walebuam.
For Opposition: Raymond M Farrell.
ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for continued hearing.

99-06-BZ
APPLICANT– Patrick W. Jones, P.C., for Norsel Realties c/o Steinberg & Pokoik, owners; Mothers Work, Inc., lessee.
SUBJECT – Application May 15, 2006 – Special Permit §73-36 – to permit the legalization of an existing physical cultural

establishment (Edamame Spa) located in the cellar portion of a 25 story commercial building located within a C5-3 (MID) Zoning District.
PREMISES AFFECTED – 575 Madison Avenue (a/k/a 53/57 East 56th Street, a/k/a 28/30 East 57th Street) East side of Madison Avenue, between East 56th and East 57th Streets, Block 1292, Lot 52, Borough of Manhattan.
COMMUNITY BOARD # 5M
APPEARANCES –
For Applicant: Patrick W. Jones.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for decision, hearing closed.

122-06-BZ
APPLICANT– Sheldon Lobel, P.C., for Revelation Development, Inc., owner.
SUBJECT – Application June 12, 2006 – Variance (§72-21) to permit the proposed enlargement of an existing medical office building and construction of residences without the required front and side yard. The Premise is located in a portion of an R5 and a portion of a C2-3/R5 zoning district. The proposal is seeking waivers relating to §23-45 and §24-34 (Front yard) and §23-462 and §24-35 (Side Yard).
PREMISES AFFECTED – 2671 86th Street, West 12th and West 11th Streets, Block 7115, Lot 27, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Irving Minken.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

137-06-BZ
APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.
SUBJECT – Application June 30, 2006 – Variance (§72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (§23-461) and does not line up with front yard line of adjacent lot (§23-45 (b)) in an R4A zoning district.
PREMISES AFFECTED – 1717 Hering Avenue, west side of Hering Avenue 325' south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.
COMMUNITY BOARD # 11BX
APPEARANCES –
For Applicant: Hiram Rothkrug.
For Opposition: Michael Treanor.
ACTION OF THE BOARD – Laid over to January 9, 2007, at 1:30 P.M., for continued hearing.

180-06-BZ
APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Yeshiva University, owner.
SUBJECT – Application August 18, 2006 – Zoning variance to allow a new six (6) story academic building (UG3) for Yeshiva University that would violate applicable lot coverage (§24-11), rear yard (§24-36 and §24-391) and height and setback requirements (§24-522).
PREMISES AFFECTED – 515 West 185th Street, northwest corner of Amsterdam Avenue and West 185th Street, Block 2156, Lots 46, 61, 64, 146, 147, Borough of Manhattan.
COMMUNITY BOARD #12M
APPEARANCES –
For Applicant: Al Fredericks, Ken Drucker and Jeffrey Rosengartell.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
ACTION OF THE BOARD – Laid over to January 23, 2007, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.