

---

# BULLETIN

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

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

---

Volume 95, No. 26

June 30, 2010

---

### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

---

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

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

### CONTENTS

DOCKET .....	388
<b>CALENDAR</b> of July 13, 2010	
Morning .....	389
Afternoon .....	389/390

# CONTENTS

**MINUTES of Regular Meetings,  
Tuesday, June 22, 2010**

Morning Calendar .....391

**Affecting Calendar Numbers:**

739-76-BZ	243 West 30 <sup>th</sup> Street, Manhattan
102-95-BZ	50 West 17 <sup>th</sup> Street, Manhattan
242-02-BZ	1 North Railroad Street, Staten Island
74-49-BZ	515 Seventh Avenue, Manhattan
803-61-BZ	1416 Hylan Boulevard, Staten Island
617-80-BZ	770/80 McDonald Avenue, Brooklyn
16-92-BZ	72/84 Sullivan Street, aka 115 King Street, Brooklyn
189-96-BZ	85-12 Roosevelt Avenue, Queens
268-98-BZ	1252 Forest Avenue, Staten Island
44-99-BZ	194 Brighton Avenue, Staten Island
295-09-A & 296-09-A	81 and 83 Cortlandt Street, Staten Island
53-10-A	2031 Burr Avenue, Bronx
147-08-BZY	95-04 Allendale Street, Queens
274-09-A	3920 Merritt Avenue, aka 2927 Mulvey Avenue, Bronx
283-09-BZY thru 286-09-BZY	90-18 176 <sup>th</sup> Street, Queens

Afternoon Calendar .....399

**Affecting Calendar Numbers:**

36-10-BZ	1225 East 28 <sup>th</sup> Street, Brooklyn
302-08-BZ	4368 Furman Avenue, Bronx
6-09-BZ	24 Nelson Avenue, Staten Island
31-09-BZ	117-04 Sutphin Boulevard, Queens
173-09-BZ	845 Broadway, Brooklyn
194-09-BZ	2113 Utica Avenue, 2095-211 Utica Avenue, Brooklyn
219-09-BZ thru 223-09-BZ	802, 804, 806, 808 and 810 East 147 <sup>th</sup> Street, Bronx
270-09-BZ	1910 Homecrest Avenue, Brooklyn
326-09-BZ	38-15 138 <sup>th</sup> Street, 37-10 Union Street, Queens
327-09-BZ	255 Butler Street, Brooklyn
9-10-BZ	231-10 Northern Boulevard, Queens
27-10-BZ	117 Northfolk Street, Brooklyn
33-10-BZ	692 Broadway, Manhattan
37-10-BZ	1230 East 27 <sup>th</sup> Street, Brooklyn
41-10-BZ	522-566/596-600 First Avenue, Manhattan
65-10-BZ	55 Beaumont Street, Brooklyn
70-10-BZ	37-08 Union Street, Queens

**Corrections** .....404

220-08-BZ 95 Taaffe Place, Brooklyn

---

# DOCKET

---

New Case Filed Up to June 22, 2010  
-----

**110-10-BZY**

93-06 Shore Front Parkway, North side of Shore Front Parkway from B.94th to b.93rd Street, Block 16130, Lot(s) 11, Borough of **Queens, Community Board: 14**. Extension of Time (11-332) to complete construction under prior zoning district. R5A district.  
-----

**111-10-A**

211-08 Northern Boulevard, Southeast side of Northern Boulevard, 0' southeast of 211th Street., Block 7313, Lot(s) 5, Borough of **Queens, Community Board: 11**. Appeal challenging Department of Building's interpretation of Sec 32-14. R6-B w/ C2-2 district.  
-----

**112-10-BZ**

915 Dean Street, North side of Dean Street between Classon and Grand Avenues., Block 1133, Lot(s) 64, Borough of **Brooklyn, Community Board: 8**. Special Permit (73-44) to permit reduction in required parking in connection with 2nd floor change of use. M-1 district.  
-----

**113-10-BZY**

30-86 36th Street, West side of 36th Street, 152 feet north of 31st Avenue., Block 650, Lot(s) 80, Borough of **Queens, Community Board: 1**. Extension of Time (11-331) to complete construction under the prior zoning district. R5B district.  
-----

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

---

# CALENDAR

---

**JULY 27, 2010, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 27, 2010, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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

**395-60-BZ**

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application June 17, 2010 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted Automotive Repair Shop and Convenience Store use which expired on May 17, 2010. R-5 zoning district.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard, between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #5M**

-----

**200-98-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for 633 Realty LLC, owner; TSI East 41 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application July 27, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on April 30, 2008; Waiver of the Rules. C5-3(Mid) zoning district.

PREMISES AFFECTED – 633 Third Avenue, east side of Third Avenue, between East 40<sup>th</sup> and East 41<sup>st</sup> Streets, Block 1312, Lots 1401, 1456, Borough of Manhattan.

**COMMUNITY BOARD #6M**

-----

**290-99-BZ**

APPLICANT – Rothkrug, Rothkrut & Spector, for Almi Greenwich Associates, owner; Equinox Fitness Club, lessee.

SUBJECT – Application April 6, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Equinox fitness Club*) which expired on March 28, 2010. C1-6/R6 zoning district.

PREMISES AFFECTED – 99/101 Greenwich Avenue, south west corner of Greenwich Avenue and West 12<sup>th</sup> Street, Block 615, Lot 29, Borough of Manhattan.

**COMMUNITY BOARD #3M**

-----

**129-07-BZ /130-07-BZ thru 134-07-BZ**

APPLICANT – Gerald J. Caliendo, for Angel Gerasimou, owner.

SUBJECT – Application May 21, 2007 – Dismissal for lack of prosecution – Variance (72-21) to allow a residential

building, contrary to use regulations. M1-4 zoning district. PREMISES AFFECTED – 1101 Irving Avenue, corner formed by the north side of Irving Avenue and Decatur Street, Block 3542, Lot 12, Borough of Queens.

**COMMUNITY BOARD #5Q**

-----

**JULY 27, 2010, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 27, 2010, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**98-08-BZ**

APPLICANT – Gerald J. Caliendo, RA, for Property Holdings LLC/Moshik Regev, owner.

SUBJECT – Application April 18, 2008 – Variance (§72-21) to allow a four-story residential building containing four (4) dwelling units, contrary to use regulations (§42-00). M1-1 district.

PREMISES AFFECTED – 583 Franklin Avenue, 160' of the corner of Atlantic Avenue and Franklin Avenue, Block 1199, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

-----

**305-09-BZ**

APPLICANT – Davidoff Malito & Hutcher, LLP, for South Queens Boys & Girls Club, Inc., owner.

SUBJECT – Application November 5, 2009 – Variance to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (ZR §33-121) and height (ZR §33-431). C2-2/R5 zoning district.

PREMISES AFFECTED – 110-04 Atlantic Avenue, southeast corner of Atlantic Avenue and 110th Street, Block 9396, Lot 1, Borough of Queens.

**COMMUNITY BOARD #9Q**

-----

**6-10-BZ**

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance pursuant to §72-21 to allow for the legalization of an enlargement of a commercial building, contrary to ZR §22-00. R2 district.

PREMISES AFFECTED – 2147 Mill Avenue, Northeast side of Mill Avenue between Avenue U and Strickland Avenue. Block 8463, Lot 65, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

-----

---

# CALENDAR

---

**63-10-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for 163-18 Jamaica Realty Inc., owner; Lucille Roberts Health Clubs, Inc., lessee.

SUBJECT – Application April 28, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment on the second floor of a seven-story commercial building. C6-3 zoning district.

PREMISES AFFECTED – 163-18 Jamaica Avenue, south side of Jamaica, 126' east of Guy Brewer Boulevard, Block 10151, Lot 7, Borough of Queens.

**COMMUNITY BOARD #12Q**

-----

**85-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for 309-315 East Fordham Road LLC, owner; Fordham Fitness Group LLC, lessee.

SUBJECT – Application May 12, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment on the first and second floors of an existing two-story building. C4-4 zoning district.

PREMISES AFFECTED – 309-311 East Fordham Road, Northwest corner of Kingbridge Road and East Fordham Road. Block 3154, Lot 94, Borough of the Bronx.

**COMMUNITY BOARD #7BX**

-----

*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 22, 2010  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**739-76-BZ**

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application April 28, 2010 – Extension of Term for a UG15 Amusement Arcade (*Peter Pan Games*) which expired on April 10, 2010 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 18, 2009. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Todd Dale.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, an extension of the term of a special permit which expires on April 10, 2010, and an amendment to remove the requirement to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 8, 2010, after due notice by publication in *The City Record*, and then to decision on June 22, 2010; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection at 26<sup>th</sup> Avenue and Bell Boulevard, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1977 when, under the subject calendar number the Board granted an application, pursuant to ZR § 73-35, to permit the conversion of a retail store in a shopping center to an amusement arcade for a term of one year; and

WHEREAS, on May 6, 1997, under the subject calendar number, the Board permitted the relocation of the arcade from 212-65 26<sup>th</sup> Avenue to 212-95 26<sup>th</sup> Avenue; and

WHEREAS, the grant was extended and amended at various other times; most recently on November 18, 2008 when the Board granted a one-year extension to the term of the

special permit, to expire on April 10, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional year, and to eliminate the requirement to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that due, in part, to the fact that all of the businesses within the shopping center are reflected on the same certificate of occupancy, all outstanding matters at DOB are reflected therein and it is difficult to coordinate all approvals so that the applicant can obtain a certificate of occupancy within the designated timeframe; and

WHEREAS, the applicant also notes that the current certificate of occupancy, issued in 2000, does not have an expiration date, so it remains active; and

WHEREAS, based upon the submitted evidence, the Board finds that the proposed extension of term and elimination of the requirement to obtain a new certificate of occupancy between each extension of term are appropriate, with conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens, and amends* the resolution, said resolution having been adopted on February 8, 1977, as later amended, so that, as amended, this portion of the resolution shall read: “to grant a one-year extension of the term of the special permit, to expire on April 10, 2011; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, to expire on April 10, 2011;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT the above conditions shall appear on the certificate of occupancy;

THAT the operation of the arcade at the subject premises shall comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

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

(DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, June 22, 2010.

**102-95-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for The Argo Corporation as Agent for 50 West 17 Realty Company, owner; Renegades Associates d/b/a Splash Bar, lessee.

SUBJECT – Application March 8, 2010 – Extension of Term of a previously granted Special Permit (§73-244) for a

---

# MINUTES

---

UG12 Eating and Drinking Establishment (Splash) which expired on March 5, 2010. C6-4A zoning district.

PREMISES AFFECTED – 50 West 17<sup>th</sup> Street, south side of West 17<sup>th</sup> Street, between 5<sup>th</sup> Avenue and 6<sup>th</sup> Avenue, Block 818, Lot 78-20 67<sup>th</sup> Road, Borough of Manhattan.

## COMMUNITY BOARD #5M

### APPEARANCES –

For Applicant: Fredrick A. Becker.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for an extension of term for the continued operation of an eating and drinking establishment with dancing, that expired on March 5, 2010, and for an amendment to eliminate a condition of the grant; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with a continued hearing on June 15, 2010, and then to decision on June 22, 2010; and

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

WHEREAS, Community Board 5, Manhattan, submitted a letter stating that it does not have any comment on the application; and

WHEREAS, a few community members submitted written testimony in opposition to the application, citing general concerns about nightlife in the area; and

WHEREAS, an adjacent neighbor provided written testimony in support of the application; and

WHEREAS, the site is located on the south side of West 17<sup>th</sup> Street, between Sixth Avenue and Fifth Avenue, within a C6-4A zoning district; and

WHEREAS, the first floor of the building is operated as Splash Bar; and

WHEREAS, the Board has exercised jurisdiction over the site since March 5, 1996 when, under the subject calendar number, the Board granted an application, pursuant to ZR § 73-244, to permit the conversion of an existing eating and drinking establishment (Use Group 6) to an eating and drinking establishment with entertainment and a capacity of more than 200 persons, with dancing (Use Group 12), in the first floor and cellar of a 12-story building, for a term of two years; and

WHEREAS, the Board subsequently extended the grant on various occasions; and

WHEREAS, most recently, on August 7, 2007, the Board extended the term for three years, to expire on March 5, 2010; and

WHEREAS, on July 11, 2005, the Board provided a letter stating that individuals who are now required to go

outside to comply with the indoor smoking ban do not create non-compliance with the queuing restriction; and

WHEREAS, the applicant now seeks an additional extension of term; and

WHEREAS, the applicant also seeks an amendment to eliminate the following condition: “there will be no queuing of patrons on the sidewalk abutting the premises, or anywhere else outside of the building”; and

WHEREAS, the applicant represents that due to a new City requirement (as set forth in Administrative Code § 20-360.2) that all patrons to such establishments be videotaped upon entering, in consultation with security consultants, the club has provided a rope, which directs patrons to all enter from the same point; and

WHEREAS, the applicant states that the New York Police Department’s 13<sup>th</sup> Precinct recommends a queue area so that patrons entering the establishment do not block the street and to provide a frontal view for surveillance cameras; and

WHEREAS, the applicant states that the club also has a longstanding contract with a security monitoring business and provides for a security guard to direct patrons not to loiter in front of the building and to enter expeditiously at the designated entrance point; and

WHEREAS, the applicant asserts that the format of the line associated with security measures and the checking of identification can be distinguished from a line formed by those seeking admittance to a club, which may have a limited capacity; and

WHEREAS, the applicant asserts that the club only reaches capacity on two or three major events per year and that any line at the site during standard evenings, within the entrance area, moves very quickly and is only present due to the increased requirements for modern surveillance and safety; and

WHEREAS, the Board has reviewed the evidence regarding what queuing actually takes place at the site and has determined that the minimal queuing at the entrance facilitates the surveillance requirement and allows patrons to enter in an orderly manner; and

WHEREAS, the Board notes that the applicant proposes to maintain security personnel at the front of the building at all time to direct patrons not to loiter or form queues outside of the scope of what is described for surveillance and safety purposes; and

WHEREAS, the Board also notes that the applicant must maintain compliance with all requirements of the special permit; and

WHEREAS, the Board notes that the applicant notified those within a 200-ft. radius of the site and did not receive any complaints directly related to the inappropriate formation of lines at the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and elimination of the condition regarding queuing are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated March 5,

# MINUTES

1996, so that as amended this portion of the resolution shall read: "to extend the term for a period of three years to expire on March 5, 2013 and to eliminate the prior condition associated with queuing; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received March 8, 2010"-(2) sheets and "Received June 2, 1010"-(1) sheet; and *on further condition*:

THAT this grant shall expire on March 5, 2013;

THAT the site shall be maintained free of debris and graffiti;

THAT security personnel shall be stationed at the entrance of the club to ensure quick and orderly movement into and out of the club, between the hours of 10:00 p.m. and 4:00 a.m., and to otherwise direct patrons not to loiter in the area;

THAT all windows shall remain closed when the establishment is operating pursuant to the special permit;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by June 22, 2011;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 104718496)

Adopted by the Board of Standards and Appeals June 22, 2010.

-----

## 242-02-BZ

APPLICANT – Joseph Fullam, for Helen Fullam, owner.  
SUBJECT – Application March 25, 2010 – Amendment to a previously granted Variance (§72-21) for the construction of a two family residence contrary to parking requirement (§25-21) and (§25-622). R3X/SR zoning district.  
PREMISES AFFECTED – 1 North Railroad Street, west side of North Railroad between Belfield Avenue and Burchard Court, Block 6274, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #3SI

### APPEARANCES –

For Applicant: Philip L. Rampulla.

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

### THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously-granted variance for the construction of a two-family home contrary to the parking requirement; and

WHEREAS, a public hearing was held on this application on June 8, 2010 after due notice by publication in *The City Record*, and then to decision on June 22, 2010; and

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

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

WHEREAS, the site is located on the west side of North Railroad Street, between Belfield Avenue and Burchard Court, within an R3X zoning district within the Special South Richmond Development District (SRD); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 2003 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-family home, which does not comply with requirements for lot area and front yard, within an R3X (SRD) zoning district; and

WHEREAS, one of the conditions of the grant was that construction not commence prior to the completion of the City's comprehensive sewer project in the area; and

WHEREAS, subsequently, due to the delay of the completion of the sewer project, the applicant was unable to commence construction and, in 2007, sought an extension of the four-year term to complete construction; and

WHEREAS, on August 7, 2007, the Board granted an additional four-year term, to expire on July 22, 2011; and

WHEREAS, the applicant represents that the building plans have not changed since the 2003 approval, but that the adoption of new zoning text now requires three parking spaces, instead of the two approved, and that parking spaces not be located between the street line and the streetwall; and

WHEREAS, the applicant now seeks to amend the variance to permit waivers to the parking requirement and the location of the parking spaces, pursuant to ZR §§ 25-21 and 25-622, respectively; and

WHEREAS, the applicant states that construction has been delayed due to the requirement to wait for the Department of Environmental Conservation's (DEC) issuance of a wetland permit for sewer installation, related to an expansive sewer project in the area; and

WHEREAS, the applicant represents that absent the need to wait for the completion of the sewer project from the date of the 2003 grant to June 30, 2009, construction would have been completed prior to the enactment of the new zoning requirements and the requested amendments would not be required; and

WHEREAS, the applicant states that construction can now commence; and

WHEREAS, the applicant states that there is sufficient parking in the area and that the request to waive the requirement for a third parking space is appropriate given surrounding conditions; and



# MINUTES

WHEREAS, similarly, the applicant states that the location of the parking spaces will not be out of character with the surrounding area; and

WHEREAS, based upon the above, the Board finds that the requested waivers and amendment to the variance are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated July 22, 2003, so that as amended this portion of the resolution shall read: "to permit the reduction in the required number of parking spaces from three to two and to permit the parking layout as noted on the previously-approved plans; *on condition* that all use and operations shall substantially conform to the previously-approved plans; and *on further condition*:

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 500554376)

Adopted by the Board of Standards and Appeals June 22, 2010.

-----

## 74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owners.

SUBJECT – Application January 19, 2010 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage which expired on September 17, 2009; Waiver of the Rules. M1-6 (Garment Center) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of the intersection of Seventh Avenue and West 38<sup>th</sup> Street, Block 813, Lot 64, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to August 17, 2010, at 10 A.M., for continued hearing.

-----

## 803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Phillip and Martin Blessinger, owner; BP Products North America, Incorporated, lessee.

SUBJECT – Application April 27, 2010 – Extension of Term for the continued use of a Gasoline Service Station (*British Petroleum*) which expires on November 14, 2011; Waiver of the Rules. C2-1/R3-2 zoning districts.

PREMISES AFFECTED – 1416 Hylan Boulevard, corner of Hylan Boulevard, corner of Hylan Boulevard and Reid Avenue, Block 3350, Lot 30, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 10 A.M., for decision, hearing closed.

-----

## 617-80-BZ

APPLICANT – Eric Palatnik, P.C. for J & S Simcha, Incorporated, owner.

SUBJECT – Application February 5, 2010 – Extension of Term of a previously granted Variance (§72-21) of a UG9 catering establishment which expires on December 9, 2010; an Amendment to the interior layout; Extension of Time to Complete Construction and to obtain a Certificate of Occupancy which expires on March 14, 2010 and Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 770/780 McDonald Avenue, West side of McDonald Avenue, 20' south of Ditmas Avenue. Block 5394, Lots 1 & 11, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 10 A.M., for decision, hearing closed.

-----

## 16-92-BZ

APPLICANT – Sheldon Lobel, PC, for High Tech Park, Inc., owner.

SUBJECT – Application April 21, 2009 – Extension of Time to obtain a Certificate of Occupancy; Amendment to expand the variance into the portion of the lot fronting on King Street to allow a UG 16 warehouse and storage use and to facilitate a tax lot subdivision. R5/C1-3 zoning district.

PREMISES AFFECTED – 72/84 Sullivan Street, aka 115 King Street, north side of Sullivan Street, east of Van Brunt Street, Block 556, Lot Tent.43, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 10 A.M., for postponed hearing.

-----

# MINUTES

## 189-96-BZ

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D'Angelo-Cnandonga, lessee.

SUBJECT – Application March 15, 2010 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing (*Flamingos*) which expires on May 19, 2010. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue 58' eastside of Forley Street, Block 1502, Lot 3, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John C. Chen.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 10 A.M., for decision, hearing closed.

-----

## 268-98-BZ

APPLICANT – Sheldon Lobel, P.C., for 1252 Forest Avenue Realty Corporation, owner.

SUBJECT – Application April 14, 2010 – Extension of Term for the continued use of a Gasoline Service Station with accessory Convenience Store (*7-Eleven*) which expired on August 10, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on August 10, 2000; Waiver of the Rules. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1252 Forest Avenue, southwest corner of Forest Avenue and Jewett Avenue, Block 388, Lot 54, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Josh Rhinesmith.

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 10 A.M., for continued hearing.

-----

## 44-99-BZ

APPLICANT – Phillip L. Rampulla, for Michael Bottalico, owner.

SUBJECT – Application April 21, 2010 – Extension of Term for the continued use of an Automotive Repair Shop (UG16) which expired on February 1, 2010; Waiver of the Rules. R3A zoning district.

PREMISES AFFECTED – 194 Brighton Avenue, south side of Brighton Avenue, west of Summer Place, Block 117, Lot 20, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

**ACTION OF THE BOARD** – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

-----

## APPEALS CALENDAR

### 295-09-A & 296-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Karen Murphy, Trustee.

SUBJECT – Application October 20, 2009 – Proposed construction of one family home located within the bed of a mapped street (Bache Street), contrary to Section 35 of the General City Law. R3A Zoning District

PREMISES AFFECTED – 81 and 83 Cortlandt Street, south side of Cortlandt Street, bed of Bache Street, Block 1039, Lot 25 & 26, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 14, 2009, acting on Department of Buildings Application Nos. 520017393 & 520017400 reads in pertinent part:

“Proposed construction in the bed of a final mapped street is contrary to the law and must be referred to the BSA;” and

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

WHEREAS, a public hearing was held on this application on March 16, 2010, after due notice by publication in the *City Record*, with continued hearings on April 20, 2010 and May 25, 2010, and then to decision on June 22, 2010; and

WHEREAS, Community Board 3, Staten Island, recommends conditional approval of this application; and

WHEREAS, by letter dated December 7, 2009, the Fire Department states that it has reviewed the subject proposal, and requires that sprinklers be provided.

WHEREAS, by letter dated April 8, 2010, the applicant has agreed to provide sprinklers and has submitted a revised site plan reflecting that the homes will be sprinklered; and

WHEREAS, by letter dated November 5, 2009, the Department of Environmental Protection (“DEP”) states that there is (1) an existing twelve-inch diameter sanitary sewer, (2) a 42” diameter 7’-0” x 4’-6” storm sewer and a twelve-inch city water main in Cortlandt Street between Kramer Place and Haughwout Avenue, and (3) a 12’-0” x 5’-9” twin storm sewer crossing the bed of Bache Street between Cortlandt Street and Derby Court; and

WHEREAS, DEP further states that as per Drainage Plan #PRD-1B & 2B there are two future ten-inch diameter sanitary

---

# MINUTES

---

sewers and an 8'-0" x 5'-6" storm sewer in Cortlandt Street between Kramer Place and Haughwout Avenue, and a future 60" x 38" storm sewer in Bache Street between Cortlandt Street and Derby Court; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the width of the widening portions of Cortlandt Street between Kramer Place and Haughwout Avenue; (2) the distance between the westerly lot line of Lot 26 and the mapped street line; (3) the distance between the northern lot line of Lot 25 and Lot 26 and the existing twelve-inch sanitary sewer; (4) the 42" diameter 7'-0" x 4'-6" storm sewer and the existing twelve-inch diameter city water main in Cortlandt Street between Kramer Place and Haughwout Avenue; and (5) the location and the distances between the existing 12'-0" x 5'-9" twin storm sewers crossing the bed of Bache Street and the southern lot line of Lot 25 and Lot 26; and

WHEREAS, in addition, DEP initially stated that it requires the applicant to provide a minimum 35'-0" wide sewer corridor in the bed of Bache Street to the south of Cortlandt Street for the future 60" x 38" storm sewer for the purpose of installation, maintenance, and/or reconstruction of this sewer or to maintain the option to amend the drainage plan; and

WHEREAS, in response to DEP's request, the applicant submitted a letter dated May 11, 2010 agreeing to amend the drainage plan for the subject lots; and

WHEREAS, in response to DEP's request, on May 25, 2010 the applicant submitted a revised survey showing the following: (1) the width of the widening portions of Cortlandt Street between Kramer Place and Haughwout Avenue, (2) the distance between the westerly lot line of Lot 26 and the mapped street line, (3) the distance between the northern lot line of Lot 25 and Lot 26 and the existing twelve-inch sanitary sewer, and city water main in Cortlandt Street between Kramer Place and Haughwout Avenue, and (4) the location and the distances between the twin storm sewers crossing the bed of Bache Street and the southern lot line of Lot 25 and Lot 26; and

WHEREAS, at the request of DEP, the applicant has submitted a revised survey correcting some of the dimensions on the survey previously submitted to DEP on May 25, 2010; and

WHEREAS, by letter dated June 15, 2010, DEP stated that it reviewed the amended survey which shows 60'-0" of the total width of Cortlandt Street, 50'-0" of which will be available for the maintenance and/or reconstruction of the existing 12-inch diameter sanitary sewer, 42" diameter 7'-0" x 4'-6" storm sewer, and the 12-inch diameter city water main; and

WHEREAS, additionally, DEP noted that there is adequate room for the future 10-inch diameter sanitary sewer and 8'-0" x 5'-9" storm sewer, and the survey also shows that the 40'-0" wide easement for the existing twin 12'-0" x 5'-9" storm sewer is located approximately 5'-6" to the south of the property line and that the only lots which will benefit from the future 60" x 38" storm sewer in Bache Avenue between Cortlandt Street and Derby Court are the subject lots, which also front the future and existing sewers in Cortlandt Street; and

WHEREAS, based on the above, DEP had determined that the future 60" x 38" storm sewer is not required in Bache Avenue between Cortlandt Street and Derby Court and thus it has no objection to the proposed application; and

WHEREAS, by letter dated January 12, 2010, the Department of Transportation ("DOT") states that it has reviewed the project and has no objections; and

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

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

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated October 14, 2009, acting on Department of Buildings Application Nos. 520017393 and 520017400, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 9, 2010" -(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 DOB shall review the proposed lot subdivision prior to the issuance of any permit;

THAT the homes shall be sprinklered in accordance with 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals, June 22, 2010.

-----

## 53-10-A

APPLICANT – Sheldon Lobel, P.C., for West New York Property Consulting LLC, owner.

SUBJECT – Application April 12, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R7-1 zoning district. R5A zoning district.

PREMISES AFFECTED – 2031 Burr Avenue, 157' northwest of the corner of Burr Avenue and Westchester Avenue, Block 4249, Lot 39, Borough of Bronx.

## COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel and Josh Rhinesmith.

---

# MINUTES

---

## **ACTION OF THE BOARD – Appeal granted.**

### **THE VOTE TO GRANT –**

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

### **THE RESOLUTION –**

WHEREAS, this is an appeal requesting a Board determination that the owner of the site has obtained the right to complete a proposed four-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 18, 2010 after due notice by publication in *The City Record*, with a continued hearing on June 15, 2010, and then to decision on June 22, 2010; and

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

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

WHEREAS, the applicant proposes to develop the subject site with a four-story, eight-unit residential building; and

WHEREAS, the subject site was formerly located within an R7-1 zoning district; and

WHEREAS, however, on March 22, 2006 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Pelham Bay Rezoning, which rezoned the site to R5A; and

WHEREAS, the applicant represents that the building complies with the former R7-1 district parameters, specifically the floor area, the height, and the side yard width were permitted; and

WHEREAS, because the site is now within an R5A district, the proposed building does not comply with the maximum permitted floor area, height, or minimum side yard width; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, New Building Permit No. 200935391 was issued by DOB on November 29, 2005 (the “Permit”), permitting the construction of the subject building, prior to the Rezoning Date; and

WHEREAS, a DOB submission further states that the Permit was lawfully issued; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained a permit for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (“DOB”) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not

more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that although construction continued, it was not completed and a certificate of occupancy was not obtained within two years of the Rezoning Date; and

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

WHEREAS, the Board notes that the applicant failed to file an application to renew the NB Permit pursuant to ZR § 11-332 before the deadline of March 22, 2008 and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

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

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that aside from completing the foundation, as of the Rezoning Date, the applicant constructed the superstructure, constructed exterior walls, and installed staircases, electrical wiring, exterior finishes, windows, roofing, plumbing, and kitchen and bathroom fixtures; and

WHEREAS, the applicant states that the only work remaining to be completed is: interior finishes; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site prior to the Rezoning Date and prior to the expiration of the two-year period following the Rezoning Date; invoices; work orders; and check details; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to March 22, 2008 and the

# MINUTES

applicant represents that its analysis is based on work performed up to that date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; and

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

WHEREAS, the applicant states that the owner has expended \$712,587 or 84 percent, including hard and soft costs and irrevocable commitments, out of \$845,000 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, check details, and an affidavit from the property owner and general contractor; and

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

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

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant states that the floor area that would result if vesting is not permitted would be reduced from 5,789 sq. ft. (2.01 FAR) to 3,150 sq. ft. (1.1 FAR) and that the height would be reduced from four to three stories, eliminating the most marketable units on the fourth floor; and

WHEREAS, the applicant states that this would lead to serious loss because, in order to comply with the rezoning, at a minimum the owner would have to eliminate the entire fourth floor of the completed four-story building; and

WHEREAS, the applicant further states that a portion of the superstructure and foundation would have to be removed and one of the walls rebuilt in order to comply with the R5A side yard requirements; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with constructing a complying building; and

WHEREAS, the Board agrees that the need to re-design, the expense of demolition and reconstruction, and the actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures

made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 200935391, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 22, 2010.

-----

## 147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior zoning district. R5 zoning district

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97<sup>th</sup> Avenue, Block 10007, Lot 108, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 10 A.M., for decision, hearing closed.

-----

## 274-09-A

APPLICANT – Fire Department of New York, for Di Lorenzo Realty, Co, owner; 3920 Merritt Avenue, lessee.

SUBJECT – Application September 25, 2009 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3920 Merritt Avenue, aka 3927 Mulvey Avenue, 153' north of Merritt and East 233<sup>rd</sup> Street, Block 4972, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Jr.

**ACTION OF THE BOARD** – Laid over to August 17, 2010, at 10 A.M., for continued hearing.

-----

## 283-09-BZY thru 286-09-BZY

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Alco Builders, Inc., owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district.

# MINUTES

R4-1 zoning district.  
PREMISES AFFECTED – 90-18 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Mark Isaak.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 10 A.M., for decision, hearing closed.

-----  
*Jeff Mulligan, Executive Director*

Adjourned: P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JUNE 22, 2010 1:30 P.M.

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

## ZONING CALENDAR

### 36-10-BZ

APPLICANT – Eric Palatnik, P.C., for Karen Abramowitz, owner.

SUBJECT – Application March 22, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space ration (23-141); side yard (23-461) and rear yard (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1225 East 28<sup>th</sup> Street, south of Avenue L, Block 7646, Lot 34, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 15, 2010, acting on Department of Buildings Application No. 320129482, reads:

1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Open Space Ratio (OSR) is less than the required 150%.
3. Plans are contrary to Z.R. 23-461(a) in that the proposed minimum side yard is less than the required minimum 5'-0".
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on May 18, 2010 after due notice by publication in *The City Record*, and then to decision on June 22, 2010; and

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

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

WHEREAS, a neighbor provided testimony in opposition to the application, citing concerns about light and air; and

WHEREAS, the subject site is located on the east side of East 28<sup>th</sup> Street between Avenue L and Avenue M, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,850 sq. ft., and is occupied by a single-family home with a floor area of 2,183 sq. ft. (0.77 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,183 sq. ft. (0.77 FAR) to 2,844 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,425 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 60 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the northern side yard with a width of 3'-0" (an existing non-complying condition) and to maintain the southern side yard with a width of 8'-5" (two side yards with minimum widths of 5'-0" each are required); and

WHEREAS, the applicant also proposes to maintain the existing non-complying front yard with a depth of 13'-6" (a front yard with a minimum depth of 15'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard of

# MINUTES

30'-0" is required); and

WHEREAS, at hearing the Board directed the applicant to eliminate a portion of the proposed building that cantilevered over the side yard above the first floor and reduced the width of the side yard by 2'-0"; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the cantilever had been removed and, accordingly, the floor area was reduced from the initially proposed 2,883 sq. ft. (1.01 FAR); and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; on condition that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 3, 2010"-(3) sheets and "June 8, 2010"-(8) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,844 sq. ft. (1.0 FAR); a minimum open space ratio of 60 percent; a side yard with a minimum width of 3'-0" along the northern lot line; a side yard with a minimum width of 8'-5" along the southern lot line; a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT DOB shall review any porches for compliance;

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

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

THAT substantial construction be completed in

accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, June 22, 2010.

## 302-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for James Woods, owner.

SUBJECT – Application December 10, 2008 – Variance (§72-21) to permit an existing semi-detached residential building, contrary to side yard regulations (§23-462) R5 district.

PREMISES AFFECTED – 4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue, Block 5047, Lot 12, Borough of The Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

## 6-09-BZ

APPLICANT – Rampulla Associate Architects, for Joseph Romano, owner.

SUBJECT – Application January 2, 2009 – Variance (§72-21) to permit the legalization of an existing Automotive Repair Facility (UG 16B), contrary to ZR §32-10. C4-1 (Special South Richmond Development District & Special Growth Management District) zoning district.

PREMISES AFFECTED – 24 Nelson Avenue, south side from the corner of Nelson Avenue & Giffords Glenn, Block 5429, Lot 29 & 31, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip Rampulla and Henry Salmon.

**ACTION OF THE BOARD** – Laid over to August 3, 2010, at 1:30 P.M., for continued hearing.

## 31-09-BZ

APPLICANT – Eric Palatnik, PC, for R & R Auto Repair & Collision, owner.

SUBJECT – Application February 27, 2009 – Special Permit (§11-411, §11-412, §11-413) for re-instatement of previous variance, which expired on November 12, 1990; amendment for a change of use from a gasoline service

# MINUTES

station (UG16b) to automotive repair establishment and automotive sales (UG16b); enlargement of existing one story structure; and Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 117-04 Sutphin Boulevard, southwest corner of Foch Boulevard, Block 1203, Lot 13, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 3, 2010 at 1:30 P.M., for continued hearing.

## 173-09-BZ

APPLICANT – Law Offices of Howard Goldman LLC, for 839-45 Realty LLC, owner; 839 Broadway Realty LLC, lessee.

SUBJECT – Application May 21, 2009 – Variance (§72-21) to allow a seven-story mixed use building, contrary to use regulations (§32-00, 42-00). C8-2/M1-1 zoning districts.

PREMISES AFFECTED – 845 Broadway, between Locust and Park Streets, Block 3134, Lot 5, 6, 10, 11, Borough of Brooklyn.

## COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Howard Goldman.

**ACTION OF THE BOARD** – Laid over to August 3, 2010, at 1:30 P.M., for deferred decision.

## 194-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

## COMMUNITY BOARD # 18BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Paul Curiale, John Vasquez, Jaime Lopez, Everossv Bran.

**ACTION OF THE BOARD** – Laid over to August 3, 2010, at 1:30 P.M., for adjourned hearing.

## 219-09-BZ thru 223-09-BZ

APPLICANT – Gerald J. Caliendo, RA, for Daniel, Incorporated / East 147th Street LLC, owner.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow for five, two family residential buildings, contrary to §42-00. M1-2 district.

PREMISES AFFECTED – 802, 804, 806, 808 and 810 East 147<sup>th</sup> Street, South side of East 147<sup>th</sup> Street, east of the intersection of East 147<sup>th</sup> Street and Tinton Avenue. Block 2582, Lots 10, 11, 110, 111 and 112, Borough of Bronx.

## COMMUNITY BOARD # 1BX

APPEARANCES –

For Applicant: Sandy Anagnostou and Jessica Kooris.

**ACTION OF THE BOARD** – Laid over to August 17, 2010, at 1:30 P.M., for continued hearing.

## 270-09-BZ

APPLICANT – Richard Lobel, for Jack Kameo, owner.

SUBJECT – Application September 21, 2009 – Variance (§72-21) for the construction of a single family home on a vacant corner lot, contrary to floor area (§23-141), side yards (§23-461) and front yard (§23-47). R4-1 zoning district.

PREMISES AFFECTED – 1910 Homecrest Avenue, Bound by East 12<sup>th</sup> Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

## 326-09-BZ

APPLICANT – Bryan Cave LLP, for Flushing Commomd LLC c/o Rockefeller Development Corporation, owner.

SUBJECT – Application December 11, 2009 – Special Permit (§73-66) to allow for the development of four mixed use buildings (Flushing Commons) which exceed the height regulations around airports, contrary to §61-21. C4-3 zoning district.

PREMISES AFFECTED – 38-15 138th Street, 37-10 Union Street, Block bounded by 37th Avenue on north, 138th Street on west, 39th on south, Union Street on east, Block 4978, Lot p/o 25, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Judy Gallent.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 1:30 P.M., for decision, hearing closed.



# MINUTES

## 327-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 255 Butler, LLC, owner.

SUBJECT – Application December 17, 2009 – Special Permit (§73-19) to allow a Use Group 3 charter school (*Summit Academy*) with first floor retail use in an existing warehouse. M1-2 zoning district.

PREMISES AFFECTED – 255 Butler Street, corner lot on Nevins Street between Butler and Baltic Streets, Block 405, Lot 27, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Richard Lobel, Natasha Campbell, Alexandra Janelli and Chunyan Li.

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 1:30 P.M., for continued hearing.

## 9-10-BZ

APPLICANT – Eric Palatnik, P.C., for Ching Kuo Chiang, owner.

SUBJECT – Application January 22, 2010 – Variance (§72-21) to allow a restaurant use in an existing building, contrary to §22-00. R1-2 zoning district.

PREMISES AFFECTED – 231-10 Northern Boulevard, Northwest corner of 232nd Street, Block 8164, Lot 30, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik and Steve Chong.

For Opposition: David Brody, Howard Jackson, Michael Simon and Elliott Socci.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 3, 2010, at 1:30 P.M., for decision, hearing closed.

## 27-10-BZ

APPLICANT – Eric Palatnik, P.C., for Vadim Rabinovich, owner.

SUBJECT – Application March 1, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 117 Norfolk Street, between Shore Parkway and Oriental Boulevard, Block 8757, Lot 47, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Sergey Yishaev.

For Opposition: Mary Ann Okin and Judith Baron.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 3, 2010, at 1:30 P.M., for decision, hearing closed.

## 33-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Vornado Realty Trust, owner; 692 Broadway Fitness Club, Inc., lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment. M1-5B zoning district.

PREMISES AFFECTED – 692 Broadway (aka 384/8 Lafayette Street, 2/20 East 4<sup>th</sup> Street) southeast corner of intersection of Broadway and East 4<sup>th</sup> Street, Block 531, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 13, 2010, at 1:30 P.M., for decision, hearing closed.

## 37-10-BZ

APPLICANT – Eric Palatnik, P.C., for Hadassah Bakst, owner.

SUBJECT – Application March 22, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yard (§23-461) and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1230 East 27<sup>th</sup> Street, south of Avenue L, Block 7644, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 27, 2010, at 1:30 P.M., for decision, hearing closed.

## 41-10-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for NYU Hospital Center, owner; New York University, lessee.

SUBJECT – Application March 24, 2010 – Variance pursuant (§72-21) to allow for the enlargement of a community facility (*NYU Langone Medical Center*) contrary to rear yard (§24-36) and signage regulations (§§22-321, 22-

---

# MINUTES

---

331, 22-342). R8 zoning district.  
PREMISES AFFECTED – 522-566/596-600 First Avenue  
aka 400-424 East 34th Street and 423-437 East 30th Street,  
East 34th Street; Franklin D. Roosevelt; East 30th Street and  
First Avenue, Block 962, Lot 80, 108 & 1001-1107,  
Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 13,  
2010, at 1:30 P.M., for deferred decision.

-----

**65-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Anna Shterman,  
owner.

SUBJECT – Application May 3, 2010 – Special Permit  
(\$73-622) for the enlargement of an existing single family  
home contrary to floor area, lot coverage and open space  
(\$23-141) and less than the required rear yard (\$23-47). R3-  
1 zoning district.

PREMISES AFFECTED – 55 Beaumont Street, east side of  
Beaumont Street, south of Hampton Avenue, Block 8728,  
Lot 83, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judith Baron.

**ACTION OF THE BOARD** – Laid over to August 3,  
2010, at 1:30 P.M., for continued hearing.

-----

**70-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for Macedonia A.M.E.  
Church (Lot 46), owner; NYC Department of HPD (p/o lot  
25), lessee.

SUBJECT – Application May 6, 2010 – Special Permit (ZR  
\$73-66) to allow for the construction of a 14 story mixed use  
building to exceed the maximum height limits around  
airports, contrary to §61-21. C4-3 zoning district.

PREMISES AFFECTED – 37-08 Union Street Southwest  
corner of the intersection formed by Union Street and 37th  
Avenue, Block 4978, Lot 46, p/o lot 25, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Josh Rhinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 27,  
2010, at 1:30 P.M., for decision, hearing closed.

-----

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on May 18, 2010, under Calendar No. 220-08-BZ and printed in Volume 95, Bulletin No. 21, is hereby corrected to read as follows:

### 220-08-BZ

#### CEQR #09-BSA-056K

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district. PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

#### COMMUNITY BOARD #3BK

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 30, 2007, acting on Department of Buildings Application No. 310020410 reads, in pertinent part:

“Proposed...one (1) family dwelling (UG 2) in the subject M1-1 district is contrary to ZR 42-10, and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story and basement single-family home, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in the *City Record*, with continued hearings on December 15, 2009, March 23, 2010 and April 27, 2010, and then to decision on May 18, 2010; and

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

WHEREAS, Council Member Letitia James provided testimony in support of this application; and

WHEREAS, the site is located on the east side of Taaffe Place between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 87 feet, and a total lot area of 2,129 sq. ft.; and

WHEREAS, the site is occupied by a non-conforming two-story single-family home located at the rear of the property with a floor area of 1,534 sq. ft. (0.72 FAR) (the “Existing Home”), which is proposed to be demolished; and

WHEREAS, the applicant represents that the current residential use has existed without interruption since approximately 1887, and is therefore a legal non-conforming use; and

WHEREAS, the applicant proposes to build a three-story and basement single-family home with a floor area of 4,678 sq. ft. (2.19 FAR); and

WHEREAS, the applicant initially proposed a two-story and basement home which covered nearly the entire lot, with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0”, and a rear yard with a depth of 1'-2”; and

WHEREAS, the Board notes that the applicant’s original proposal did not include the square footage located in the basement towards the floor area calculations, and listed the floor area as 3,462 sq. ft. (1.63 FAR), but that when the basement is included the proposal had a floor area of 5,236 sq. ft. (2.46 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the size of the proposed home and to include the basement in the floor area calculations; and

WHEREAS, in response, the applicant revised its plans to the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR) including the basement, a total height of 39'-2 ½”, and a rear yard with a depth of 34'-9 ¾”; and

WHEREAS, residential use is not permitted in the M1-1 district; therefore, the applicant seeks a variance to permit the non-conforming use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the small size of the lot; and (2) the obsolescence of the existing building; and

WHEREAS, as to the lot’s size, the applicant states that the lot has a width of 25 feet and a depth of 87 feet; and

WHEREAS, the applicant represents that the 25-ft. width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floor plates to support a commercial or manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a land use map indicating that all conforming developments in the surrounding area are located on lots with widths exceeding that of the subject site; and

WHEREAS, the applicant represents that many lots in the area also have a greater depth than the subject site, and that any conforming development on the site would be undersized due to the site’s shallow depth in conjunction with its narrow width; and

WHEREAS, the Board notes that while the surrounding area includes several lots of similar size, such lots are primarily occupied by residential uses; and

WHEREAS, however, unlike other such lots occupied by residential buildings, the applicant represents that the Existing Home is obsolete for its intended purpose and therefore must be demolished; and

WHEREAS, as to the functional obsolescence of the Existing Home, the applicant represents that it is no longer suitable for residential use due to its age, construction, floor

---

# MINUTES

---

plate, floor-to-ceiling heights, size, and structural condition; and

WHEREAS, the applicant further represents that the above-mentioned features of the Existing Home make it similarly unsuitable for any conforming use; and

WHEREAS, the applicant states that the Existing Home was built prior to 1887; and

WHEREAS, the applicant submitted a certificate of occupancy which reflects that the subject site was occupied by a single-family home on July 7, 1961, and states that the single-family home was also recorded on an 1887 Sanborn map; and

WHEREAS, the applicant submitted a report by a consulting engineer (the "Engineer's Report"), which stated that the existing building cannot be renovated or rehabilitated for residential use due to its poor structural condition; and

WHEREAS, specifically, the Engineer's Report found that the Existing Home has the following structural problems: (1) substandard floor-to-ceiling heights, as the second floor of the building has a floor-to-ceiling height of only 7'-3"; and (2) lot line windows which are incapable of providing legal light and ventilation; and

WHEREAS, the Engineer's Report also noted conditions reflecting the general deterioration of the Existing Home, such as damage to the walls and ceiling, portions of the flooring have buckled, the roofing membrane is unsatisfactory, and the wood studs are deteriorated; and

WHEREAS, the Engineer's Report concluded that the Existing Home was built to obsolete standards which are inconsistent with modern building requirements and would necessitate demolition to meet current Building Code requirements; and

WHEREAS, the applicant notes that the existing home is also set back on the lot such that there is an oversized front yard and no rear yard, which is out of context with the other buildings on the subject block, all of which are situated closer to the street line; and

WHEREAS, the Board agrees that the home is obsolete to be re-used, and notes that demolition of the building results in a clear site that nevertheless is unique due to its narrowness and shallow depth; and

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

WHEREAS, the applicant submitted a feasibility study that analyzed a conforming manufacturing building with a total floor area of 2,129 sq. ft.; and

WHEREAS, the feasibility study concluded that the conforming scenario would not realize a reasonable return, and that the requested variance is necessary to develop the site with a habitable home; and

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

WHEREAS, the applicant represents that the proposed

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

WHEREAS, the applicant represents that the surrounding area is a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant states that the proposed residential use is consistent with the character of the area, which includes many residential buildings; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram showing the various uses in the vicinity of the site, which indicates that a number of residential buildings are located in the area surrounding the subject site; and

WHEREAS, specifically, the radius diagram reflected that residential buildings are located directly adjacent to the site on both the north and south sides and to the rear of the site; and

WHEREAS, the Board agrees that there is a context for residential use in the area and finds that the introduction of a single-family home will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant notes that the proposed 2.19 FAR is within the zoning district parameters of the adjacent R6 district and that no bulk waivers are requested; and

WHEREAS, the applicant submitted a neighborhood study indicating that a number of the smaller residential buildings on the subject block have floor areas larger than the proposed home and FARs ranging between 2.2 and 2.36; and

WHEREAS, the neighborhood study also reflected that at least seven residential buildings on the subject block have heights of 44'-0" or greater; and

WHEREAS, the applicant notes that the proposal also provides a 34'-9 3/4" rear yard, which is consistent with the adjacent R6 zoning district, which requires a rear yard with a minimum depth of 30'-0"; 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, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the site; and

WHEREAS, as noted above, the applicant initially proposed a two-story and basement home with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, during the course of the hearing process, and at the Board's direction, the applicant revised its plans to provide the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR), a total height of 39'-2 1/2", and a rear yard with a depth of 34'-9 3/4"; and

WHEREAS, at hearing, the Board questioned the amount of relief being requested, specifically with regards to the size of the home; and

WHEREAS, in response, the applicant noted that the size

---

# MINUTES

---

of the home is similar to the size of two-family or multiple dwellings that would be economically feasible; and

WHEREAS, in support of this assertion, the applicant provided additional analysis related to the feasibility of a similarly sized two-family home; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) 09BSA056K, dated June 25, 2008; and

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

WHEREAS, the New York City Department of Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials; and

WHEREAS, DEP has reviewed the April 2008 Phase I Environmental Site Assessment report and May 2009 Construction Health and Safety Plan and finds them acceptable and has concluded that the applicant can proceed with construction; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; 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 M1-1 zoning district, the construction of a three story and basement single-family home, which is contrary

to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 15, 2010”– (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories and basement, a maximum floor area of 4,678 sq. ft. (2.19 FAR); a total height of 39’-2 ½””; and a rear yard with a depth of 34’-9 ¾””, as shown on the BSA-approved plans;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP has issued a Notice of Satisfaction;

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

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

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation;

THAT construction shall proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, May 18, 2010.

**\*The resolution has been corrected in the part of the Resolved, which read: “...two-story single family home...” now reads: “three story and basement single family home...”. Corrected in Bulletin No. 26 Vol. 95, dated June 30, 2010.**